

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the party believes that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment be taken against that defendant. By waving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

You will find enclosed two forms which must be signed and returned to the sender: (1) Waiver of Service of Summons and (2) Notice and Acknowledgment of Receipt. The Waiver of Service of Summons will be filed as a pleading in the Court's file. The Notice and Acknowledgment of Receipt is kept by the United States Marshal's Service, and a copy is sent to the court for the court's records.