

1   **Rule 4. Process.**

2   **(a) Signing of summons.** The summons must be signed and issued by the plaintiff or  
3   the plaintiff's attorney. Separate summonses may be signed and issued.

4   **(b) Time of service.** Unless the summons and complaint are accepted, a copy of the  
5   summons and complaint in an action commenced under Rule 3(a)(1) must be served no  
6   later than 120 days after the complaint is filed, unless the court orders a different period  
7   under Rule 6. If the summons and complaint are not timely served, the action against  
8   the unserved defendant may be dismissed without prejudice on motion of any party or  
9   on the court's own initiative.

10   **(c) Contents of summons.**

11   (1) The summons must:

12       (A) contain the name and address of the court, the names of the parties to the  
13       action, and the county in which it is brought;

14       (B) be directed to the defendant;

15       (C) state the name, address and telephone number of the plaintiff's attorney, if  
16       any, and otherwise the plaintiff's address and telephone number;

17       (D) state the time within which the defendant is required to answer the  
18       complaint in writing;

19       (E) notify the defendant that in case of failure to answer in writing, judgment by  
20       default will be entered against the defendant; and

21       (F) state either that the complaint is on file with the court or that the complaint  
22       will be filed with the court within 10 days after service; and

23       (G) include the bilingual notice set forth in the form summons approved by the  
24       Utah Judicial Council.

25   (2) If the action is commenced under Rule 3(a)(2), the summons must also:

26           (A) state that the defendant need not answer if the complaint is not filed within  
27           10 days after service; and

28           (B) state the telephone number of the clerk of the court where the defendant may  
29           call at least 14 days after service to determine if the complaint has been filed.

30           (3) If service is by publication, the summons must also briefly state the subject  
31           matter and the sum of money or other relief demanded, and that the complaint is on  
32           file with the court.

33           **(d) Methods of service.** The summons and complaint may be served in any state or  
34           judicial district of the United States. Unless service is accepted, service of the summons  
35           and complaint must be by one of the following methods:

36           **(1) Personal service.** The summons and complaint may be served by any person 18  
37           years of age or older at the time of service and not a party to the action or a party's  
38           attorney. If the person to be served refuses to accept a copy of the summons and  
39           complaint, service is sufficient if the person serving them states the name of the  
40           process and offers to deliver them. Personal service must be made as follows:

41           (A) Upon any individual other than one covered by paragraphs (d)(1)(B),  
42           (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and complaint to the  
43           individual personally, or by leaving them at the individual's dwelling house or  
44           usual place of abode with a person of suitable age and discretion who resides  
45           there, or by delivering them to an agent authorized by appointment or by law to  
46           receive process;

47           (B) Upon a minor under 14 years old by delivering a copy of the summons and  
48           complaint ~~to the minor and also to the a parent or guardian of the minor's father,~~  
49           ~~mother, or guardian~~ or, if none can be found within the state, then to any person  
50           having the care and control of the minor, or with whom the minor resides, or by  
51           whom the minor is employed;

52           (C) Upon an individual judicially declared to be incapacitated, of unsound mind,  
53           or incapable of conducting the individual's own affairs, by delivering a copy of  
54           the summons and complaint to the individual and to the guardian or conservator  
55           of the individual if one has been appointed; the individual's legal representative  
56           if one has been appointed, and, in the absence of a guardian, conservator, or legal  
57           representative, to the person, if any, who has care, custody, or control of the  
58           individual;

59           (D) Upon an individual incarcerated or committed at a facility operated by the  
60           state or any of its political subdivisions, by delivering a copy of the summons  
61           and complaint to the person who has the care, custody, or control of the  
62           individual, or to that person's designee or to the guardian or conservator of the  
63           individual if one has been appointed. The person to whom the summons and  
64           complaint are delivered must promptly deliver them to the individual;

65           (E) Upon a corporation not otherwise provided for in this rule, a limited liability  
66           company, a partnership, or an unincorporated association subject to suit under a  
67           common name, by delivering a copy of the summons and complaint to an officer,  
68           a managing or general agent, or other agent authorized by appointment or law to  
69           receive process and by also mailing a copy of the summons and complaint to the  
70           defendant, if the agent is one authorized by statute to receive process and the  
71           statute so requires. If no officer or agent can be found within the state, and the  
72           defendant has, or advertises or holds itself out as having, a place of business  
73           within the state or elsewhere, or does business within this state or elsewhere,  
74           then upon the person in charge of the place of business;

75           (F) Upon an incorporated city or town, by delivering a copy of the summons and  
76           complaint as required by statute, or in the absence of a controlling statute, to the  
77           recorder;

78           (G) Upon a county, by delivering a copy of the summons and complaint as  
79           required by statute, or in the absence of a controlling statute, to the county clerk;

- 80           (H) Upon a school district or board of education, by delivering a copy of the  
81           summons and complaint as required by statute, or in the absence of a controlling  
82           statute, to the superintendent or administrator of the board;  
83           (I) Upon an irrigation or drainage district, by delivering a copy of the summons  
84           and complaint as required by statute, or in the absence of a controlling statute, to  
85           the president or secretary of its board;  
86           (J) Upon the state of Utah or its department or agency by delivering a copy of the  
87           summons and complaint to the attorney general and any other person or agency  
88           required by statute to be served; and  
89           (K) Upon a public board, commission or body by delivering a copy of the  
90           summons and complaint as required by statute, or in the absence of a controlling  
91           statute, to any member of its governing board, or to its executive employee or  
92           secretary.

93       **(2) Service by mail or commercial courier service.**

94           (A) The summons and complaint may be served upon an individual other than  
95           one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier  
96           service in any state or judicial district of the United States provided the  
97           defendant signs a document indicating receipt.

98           (B) The summons and complaint may be served upon an entity covered by  
99           paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in  
100          any state or judicial district of the United States provided defendant's agent  
101          authorized by appointment or by law to receive service of process signs a  
102          document indicating receipt.

103          (C) Service by mail or commercial courier service shall be complete on the date  
104          the receipt is signed as provided by this rule.

105       **(3) Acceptance of service.**

106       **(A) Duty to avoid expenses.** All parties have a duty to avoid unnecessary  
107       expenses of serving the summons and complaint.

108       **(B) Acceptance of service by party.** Unless the person to be served is a  
109       minor under 14 years old or an individual judicially declared to be incapacitated,  
110       of unsound mind, or incapable of conducting the individual's own affairs, a  
111       party may accept service of a summons and complaint by signing a document  
112       that acknowledges receipt of the summons and complaint.

113       **(i) Content of proof of electronic acceptance.** If acceptance is obtained  
114       electronically, the proof of acceptance must demonstrate on its face that the  
115       electronic signature is attributable to the party accepting service and was  
116       voluntarily executed by the party. The proof of acceptance must demonstrate  
117       that the party received readable copies of the summons and complaint prior  
118       to signing the acceptance of service.

119       **(ii) Duty to avoid deception.** A request to accept service must not be  
120       deceptive, including stating or implying that the request to accept service  
121       originates with a public servant, peace officer, court, or official government  
122       agency. A violation of this paragraph may nullify the acceptance of service  
123       and could subject the person to criminal penalties under applicable Utah law.

124       **(C) Acceptance of service by attorney for party.** An attorney may accept service  
125       of a summons and complaint on behalf of the attorney's client by signing a  
126       document that acknowledges receipt of the summons and complaint.

127       **(D) Effect of acceptance, proof of acceptance.** A person who accepts service of  
128       the summons and complaint retains all defenses and objections, except for  
129       adequacy of service. Service is effective on the date of the acceptance. Filing the  
130       acceptance of service with the court constitutes proof of service under Rule 4(e).

131       **(4) Service in a foreign country.** Service in a foreign country must be made as  
132       follows:

- 133                   (A) by any internationally agreed means reasonably calculated to give notice,  
134                   such as those means authorized by the Hague Convention on the Service Abroad  
135                   of Judicial and Extrajudicial Documents;
- 136                   (B) if there is no internationally agreed means of service or the applicable  
137                   international agreement allows other means of service, provided that service is  
138                   reasonably calculated to give notice:
- 139                       (i) in the manner prescribed by the law of the foreign country for service in  
140                   that country in an action in any of its courts of general jurisdiction;
- 141                       (ii) as directed by the foreign authority in response to a letter of request  
142                   issued by the court; or
- 143                       (iii) unless prohibited by the law of the foreign country, by delivering a copy  
144                   of the summons and complaint to the individual personally or by any form of  
145                   mail requiring a signed receipt, addressed and dispatched by the clerk of the  
146                   court to the party to be served; or
- 147                   (C) by other means not prohibited by international agreement as may be directed  
148                   by the court.

149                   **(5) Other service.**

150                   (A) If the identity or whereabouts of the person to be served are unknown and  
151                   cannot be ascertained through reasonable diligence, if service upon all of the  
152                   individual parties is impracticable under the circumstances, or if there is good  
153                   cause to believe that the person to be served is avoiding service, the party  
154                   seeking service may file a motion to allow service by some other means. An  
155                   affidavit or declaration supporting the motion must set forth the efforts made to  
156                   identify, locate, and serve the party, or the circumstances that make it  
157                   impracticable to serve all of the individual parties.

158                   (B) If the motion is granted, the court will order service of the complaint and  
159                   summons by means reasonably calculated, under all the circumstances, to

160        apprise the named parties of the action. The court's order must specify the  
161        content of the process to be served and the event upon which service is complete.  
162        Unless service is by publication, a copy of the court's order must be served with  
163        the process specified by the court.

164        (C) If the summons is required to be published, the court, upon the request of the  
165        party applying for service by other means, must designate a newspaper of  
166        general circulation in the county in which publication is required.

167        **(e) Proof of service.**

168        (1) The person effecting service must file proof of service stating the date, place, and  
169        manner of service, including a copy of the summons. If service is made by a person  
170        other than by an attorney, sheriff, constable, United States Marshal, or by the  
171        sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or  
172        unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn  
173        Declarations Act.

174        (2) Proof of service in a foreign country must be made as prescribed in these rules  
175        for service within this state, or by the law of the foreign country, or by order of the  
176        court.

177        (3) When service is made pursuant to paragraph(d)(4)(C), proof of service must  
178        include a receipt signed by the addressee or other evidence of delivery to the  
179        addressee satisfactory to the court.

180        (4) Failure to file proof of service does not affect the validity of the service. The court  
181        may allow proof of service to be amended.

182

183        **Advisory Committee Notes**

184        ~~Rule 4 constitutes a substantial change from prior practice. The rule modernizes and~~  
185        ~~simplifies procedure relating to service of process. Although this rule and Rule 3 retain~~

186 ~~the ten-day summons procedure for commencement of actions, this rule endeavors to~~  
187 ~~make practice under the ten-day summons provision more consistent with practice in~~  
188 ~~actions commenced by the filing of a complaint. The rule retains portions of prior Rule~~  
189 ~~4, adopts portions of the present federal Rule 4, and adopts entirely new language in~~  
190 ~~other areas. The rule eliminates the statement (appearing in paragraph (m) of the prior~~  
191 ~~rule) that all writs and process may be served by any constable of the court. In the~~  
192 ~~committee's view, this rule does not properly deal with the question of who may serve~~  
193 ~~types of process other than the summons and complaint. In recommending the~~  
194 ~~elimination of paragraph (m), the committee did not intend to change the law~~  
195 ~~governing eligibility to serve such other process.~~

196 Paragraph (a). This paragraph eliminates the prior rule's reference to the issuance of  
197 summonses. See paragraph (b). Otherwise the paragraph is identical to the former  
198 paragraph (a).

199 Paragraph (b). This paragraph, a substantial change from the prior rule, requires that in  
200 an action commenced under Rule 3(a)(1), the summons, together with a copy of the  
201 complaint, must be served within 120 days of the filing of the complaint. The time  
202 period was borrowed from Rule 4(j), Federal Rules of Civil Procedure.

203 Paragraph (c). This paragraph makes minor revisions to the corresponding paragraph  
204 of the prior rule. In addition to data historically required to appear in the summons, the  
205 address of the court and information concerning the plaintiff or plaintiff's attorney are  
206 also required.

207 Paragraph (d). In prescribing the persons who may serve process, this paragraph  
208 eliminates the prior rule's distinction between in-state and out-of-state service. The  
209 paragraph is consistent with other changes in the rule designed to simplify and unify  
210 practice for in-state and out-of-state service. In order to be eligible to serve a summons  
211 or complaint, persons who are not sheriffs or other law enforcement personnel must be  
212 at least 18 years of age at the time of service. For eligibility to make service in a foreign  
213 country, see paragraph (d)(3). Subparagraph (d)(1)(A) presents the general rule for

214 personal service on individuals who are not infants, incompetent, or incarcerated.  
215 Subparagraph (B) deals with service on infants and subparagraph (C) with service on  
216 incompetent persons. Subparagraphs (A), (B) and (C) are patterned after Rule 4(e),  
217 Federal Rules of Civil Procedure. Subparagraph (D) deals with service on persons who  
218 are incarcerated or committed to the custody of a state institution. Subparagraph (E)  
219 deals with service on business entities. Subparagraphs (F) through (I) change and  
220 modernize service on political subdivisions of the state. Subparagraphs (J) and (K)  
221 provide for service on the state and its departments, agencies, boards and commissions  
222 with only minor changes from the prior rule. Subparagraph (d)(2) adds a provision for  
223 service by mail or commercial courier service within any judicial district of the United  
224 States. The term "mail" refers to services provided by the United States Postal Service.  
225 The term "commercial courier service" refers to businesses that provide for the delivery  
226 of documents. Examples of "commercial courier service" include Federal Express and  
227 United Parcel Service. Methods of service by mail or commercial courier service must  
228 provide for a document indicating receipt. Subparagraphs (A) and (B) specify who must  
229 sign the document indicating receipt. For service under Subparagraph (d)(2) to be  
230 effective, the court must be clearly convinced that the proper person signed the  
231 document indicating receipt. Infants or incompetent persons may not be served by mail  
232 or commercial courier service. Subparagraph (C) details when service by mail or  
233 commercial courier service is complete.

234 Paragraph (d)(3). This paragraph provides several alternative means by which service  
235 must be made in foreign countries and provides for proof of such service.

236 Paragraph (d)(4). This paragraph replaces most of paragraph (f) of the prior rule. It is  
237 designed to permit alternative means of service where the identity or whereabouts of  
238 the person to be served is unknown, where personal service is impracticable, or where a  
239 party avoids personal service. Under the circumstances identified in the rule, this  
240 paragraph permits the court to fashion means of service reasonably calculated to  
241 apprise the parties of the pendency of the action. Use of this provision is not limited to

242 actions traditionally considered in rem or quasi in rem. See ~~Carlson v. Bos~~, 740 P.2d  
243 1269, 1272 (Utah 1987). The present rule eliminates specific mention of service by  
244 telegraph or telephone (in paragraph (1) of the prior rule) since such service could be  
245 ordered under this paragraph if appropriate. The court's order of substituted service  
246 must specify the content of service and the event or events as of which service will be  
247 deemed complete. A copy of the order must itself be served so that the party served will  
248 be able to determine the sufficiency of service and the time as of which his or her  
249 response is due.

250 Paragraph (e). This paragraph replaces paragraph (g) in the prior rule. It requires proof  
251 of service to be filed "promptly" and in any event before a responsive pleading is due.  
252 The rule eliminates failure to file proof of service as a basis for challenging the validity  
253 of service. The rule contains specific requirements for proof of service depending upon  
254 who serves and what method of service is used. If the summons and complaint are  
255 served by mail or commercial courier service, subparagraph (1) requires the receipt  
256 signed by defendant or defendant's agent to be included in the proof of service.

257 Paragraph (f) adds an option for a plaintiff to request a defendant to waive service. This  
258 provision is similar to federal Rule (4)(d). The defendant is required to return the  
259 waiver of service within 20 days (30 days for a defendant outside the United States)  
260 from the date the request for waiver is sent. The rule grants a defendant who waives  
261 service additional time to file a response to the complaint. A defendant who does not  
262 return the request for waiver of service will be assessed plaintiff's actual costs in  
263 effecting service under other provisions of this rule.

264 2016 Amendments

265 Paragraph (d)(3) contemplates delivery and acceptance of the summons and complaint  
266 by various methods, including electronic delivery and signature. Elimination of the  
267 express procedure for seeking waiver of service under paragraph (f) does not eliminate  
268 the parties' ability to agree to accept service under paragraph (d)(3).