

REPRESENTING YOURSELF IN FEDERAL COURT (*Pro Se*)

For detailed information, reference Chapter 10 of the Handbook for Self-Represented Litigants

What happens if you are named as a defendant in a case?

When a case is filed in federal court, the plaintiff has 120 days to serve the summons and complaint on the defendant in accordance with Rule 4 of the Federal Rules of Civil Procedure.

The plaintiff may request that the defendant waive service of the summons by mailing the complaint and a **Waiver of Summons Form** in accordance with Rule 4(d) of the Federal Rules of Civil Procedure. If the defendant agrees to waive service of the summons, the **defendant receives an automatic extension of time to answer the complaint**. If the defendant refuses to waive service of the summons, the plaintiff may ask the court to order the defendant to pay any costs incurred to serve the summons and complaint on the defendant, including the cost of hiring a process server.

Typically, the plaintiff will serve the summons and complaint upon the defendants by either delivering them in person (personal service) or mailing them to the defendant.

A defendant who is serviced with a summons and complaint has two options in defending the case:

1. **File an Answer** – Within 21 days (or 60 if the defendant is a federal government agency or employee) the defendant may file an answer with the Court.
2. **File a Motion to Dismiss** – Within 21 days (or 60 days if the defendant is a government agency or employee) the defendant may file a **motion to dismiss** for any of the reasons listed in Rule 12 of the Federal Rules of Civil Procedure.
3. **Do nothing**. – The defendant may do nothing.

If the defendant fails either to answer the complaint or to move to dismiss the complaint, the **plaintiff** may ask the Court to enter a **default judgment** against the defendant in accordance with Rule 55 of the Federal Rules of Civil Procedure. A default judgment means the **plaintiff “wins”** the case and can now collect damages from the defendant without ever having to prove his or her allegations.

If a default judgment is entered improperly against the defendant, the defendant may file a **motion to vacate** the default judgment under Rule 60 of the Federal Rules of Civil Procedure. If the defendant can demonstrate sufficient grounds for the motion to vacate, the case may be reopened.