

SUMMONS

[4:1] **Nature of “Summons”:** A “summons” is a form of court process issued in the course of a judicial proceeding. [CCP §17(b)(7)]

Its function is to *notify* defendants that a lawsuit is pending against them, that they have a limited period of time within which to file a response, and of the consequences if they fail to do so (*see* ¶4:75 *ff.*).

[4:2] **Service of summons as notice *and* as basis for personal jurisdiction:** Service of summons on a defendant *within the state* accomplishes two separate functions: It provides *notice* of the lawsuit *and* it generally establishes *personal jurisdiction* over that defendant (¶3:132 *ff.*).

On the other hand, if defendant is *outside the state* when served with summons, such service may be effective only as *notice* of the proceedings. For service outside the state to perfect personal jurisdiction, defendant must also have sufficient “minimum contacts” with the state (*see* ¶3:197 *ff.*).

[4:3] STRATEGY CONSIDERATIONS RE SERVICE OF SUMMONS

As discussed in this Chapter, *any* defendant *anywhere* can be served with summons—one way or another. Whether such service will subject defendant to personal jurisdiction is another question (it depends on defendant’s “contacts” with California; ¶4:2). But effecting service of summons by itself is usually *not* a major problem.

This being so, whether you represent plaintiffs or defendants, it makes sense to take a *practical* approach to serving summons:

(1) **If you represent plaintiff** and are having trouble locating or serving defendant, call defendant’s lawyer or insurance carrier and see if either is willing to accept service on defendant’s behalf. In many cases, they will have authority and be willing to do so. This is also a good idea where defendant is an out-of-state corporation or non-resident who could raise *jurisdictional* objections. You may find that defense counsel, or the insurance carrier representing defendant, has the same interest in litigating the case locally that you have and is willing to accept service and make a general appearance on defendant’s behalf, waiving any jurisdictional objection.

If you do not know the names or whereabouts of defendants, also consider seeking leave of court for an *early deposition* pursuant to CCP §2025.210(b). *See* ¶8:444.

(2) **If you represent defendant** and are asked to accept service on defendant’s behalf, make sure you have your client’s authority (in writing if possible) before agreeing to it. Obviously, you won’t make a general appearance if there is any issue as to the court’s juris-

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diction, or if the three-year statute on service of summons (CCP §583.210; see ¶4:31) has already run. But in other cases there is usually no valid reason to refuse to accept service. Authority from the client should be forthcoming if you explain that there is no way to prevent service, and that resisting service will merely run up the costs for which the client ultimately may be held liable.

(One possible exception: Defense counsel often will *not* recommend accepting service where the defendant is a *foreign* national, living abroad. Plaintiffs' counsel often have trouble effecting valid service in such cases because of special treaty requirements; see ¶4:316.)

- (3) **Moving to quash summons** rarely makes sense where based on defects in the *manner* of service (e.g., papers left with someone not authorized to receive service on defendant's behalf). Except perhaps where the statutes authorizing dismissal for delay in service have run (see ¶11:51), there is little to gain by a motion to quash.

A. REQUIREMENTS—IN GENERAL

1. [4:4] **Constitutional Requirement re Summons:** A failure to serve a defendant with the summons and complaint means the court has no jurisdiction over defendant. [*JHVS Group, LLC v. Slate* (2024) 107 CA5th 30, 36-37, 327 CR3d 727, 732—preliminary injunction against party who was never served with summons is void on its face] A summons must provide notice and opportunity to be heard in compliance with the Fourteenth Amendment due process clause. Basically, this requires a *reasonable effort* to notify the absentee of the proceedings pending against him and of his right to appear and defend the action. “The means employed must be such as one desirous of actually informing the [defendant] might reasonably adopt to accomplish it.” [*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 US 306, 314, 70 S.Ct. 652, 657]
 - a. [4:5] **Applies to all civil actions:** The nature of the claim sued upon (e.g., personal claims vs. property claims) is not controlling as to the method of service constitutionally required. Rather, the sufficiency of any particular method of service depends on its ability to inform the defendant of the *potential adverse consequences* of the lawsuit. [*Greene v. Lindsey* (1982) 456 US 444, 450-451, 102 S.Ct. 1874, 1878-1879]
 - b. [4:6] **“Best” method not constitutionally required:** The Constitution does not require personal service of summons in every case. Nor does it require, as a substitute for personal service, the method which is “most likely” to reach the defendant. All that is required is a method *reasonably* likely to provide notice. [See *Greene v. Lindsey* (1982) 456 US 444, 455, 102 S.Ct. 1874, 1881]

If such a method is followed, due process is satisfied even if defendant did not receive *actual* notice of the proceedings. [*Evans v. Department of Motor Vehicles* (1994) 21 CA4th 958, 971, 26 CR2d 460, 468—administrative proceedings; *In re Emily R.* (2000) 80 CA4th 1344, 1353, 96 CR2d 285, 290—notice by publication satisfies due process in dependency proceedings where alleged father’s address is unknown and cannot be determined with due diligence]

- c. [4:7] **Notice by MAIL as constitutional minimum where defendant’s whereabouts ascertainable:** The Supreme Court has refrained from passing on the constitutionality of particular methods of service. But it has held that where a defendant’s name and address are reasonably ascertainable, “*notice by mail or other means as certain to ensure actual notice*” is the minimum the Constitution requires. Notice by publication in a newspaper (§4:245) or posting on defendant’s property is not sufficient when defendant’s address is known or can be obtained. [*Mennonite Bd. of Missions v. Adams* (1983) 462 US 791, 800, 103 S.Ct. 2706, 2712 (emphasis added); see also *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 US 478, 490-491, 108 S.Ct. 1340, 1347-1348]

- (1) [4:8] **Ascertaining defendant’s whereabouts:** A defendant’s whereabouts are “reasonably ascertainable” if shown in a public record in the locality in which the proceeding is pending. [*Mennonite Bd. of Missions v. Adams* (1983) 462 US 791, 797-800, 103 S.Ct. 2706, 2710-2712 & fn. 4]

If public records do not disclose defendant’s whereabouts, plaintiff must make *some* effort to locate defendant. The Supreme Court has not set any standards for such efforts except to state that “extraordinary efforts” (e.g., hiring a private investigator) are *not* required. [*Mennonite Bd. of Missions v. Adams*, *supra*, 462 US at 798, 103 S.Ct. at 2711, fn. 4]

[4:9-10] *Reserved.*

- d. [4:11] **Compare—statutory requirements:** The Constitution may permit methods of service *not* permissible under state law. For example, notice by mail alone may satisfy due process requirements; but it does *not* constitute valid service on local residents under California law, unless accompanied by defendant’s acknowledgment of receipt (§4:225). Since our statutory standards are more demanding than required by due process, constitutional issues re service of summons are rarely reached in California actions.
- (1) [4:12] **Statutory methods of service:** The four basic methods for serving persons within California (personal service, substitute service, service by mail coupled with acknowledgment of receipt, and service by publication)

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are discussed in detail below (see ¶4:180 ff.). There are different methods for serving a defendant outside California but within the U.S. (see ¶4:291 ff.) and for service on a defendant in a foreign country (see ¶4:315 ff.).

[4:13-14] *Reserved.*

2. [4:15] **Statutory Requirements re Summons:** Even though the constitutional notice requirement is satisfied, service of summons is not effective to confer jurisdiction over a defendant unless applicable statutory requirements are also met. I.e., even if defendant has actual notice of the lawsuit, defendant must still be served in compliance with the statutes discussed in this Chapter. [*Ruttenberg v. Ruttenberg* (1997) 53 CA4th 801, 808, 62 CR2d 78, 82; *Renoir v. Redstar Corp.* (2004) 123 CA4th 1145, 1152, 20 CR3d 603, 608]

Unless otherwise provided by statute, notice of a claim against a defendant in a civil action is given by service of a summons on the person. [CCP §413.10; see *Renoir v. Redstar Corp.*, supra, 123 CA4th at 1152, 20 CR3d at 608]

- a. [4:16] **Governing statutes:** The applicable California statutory requirements are contained in CCP §410.10 et seq., covering:
- The *contents* of summons (¶4:75 ff.);
 - Who may *issue* summons (¶4:65 ff.);
 - Who may *serve* summons (¶4:110 ff.);
 - *Upon whom* summons may be served (¶4:121 ff.);
 - The *manner* in which summons may be served within California, outside the state, and abroad (¶4:180 ff.);
 - *Proof of service* of summons (¶4:360 ff.);
 - The procedures for *challenging* service of summons (¶4:410 ff.).
- b. [4:17] **Statutes liberally construed:** The statutory requirements are construed to uphold jurisdiction, rather than defeat it. As long as the defendant receives actual notice of the lawsuit, *substantial compliance* with the Code provisions governing service of summons will generally be held sufficient. [*Pasadena Medi-Center Assocs. v. Sup.Ct. (Houts)* (1973) 9 C3d 773, 778, 108 CR 828, 832; *Summers v. McClanahan* (2006) 140 CA4th 403, 407-411, 44 CR3d 338, 341-344 (discussing “liberal construction” of service of process law); compare ¶4:25 (complete failure to comply with statutory service requirements)]

An exception to liberal statutory construction exists when courts interpret the service by publication statute (see ¶4:245).

Strict compliance is also required when interpreting the service periods for actions challenging decisions of legislative bodies. [See *Wagner v. City of South Pasadena* (2000) 78 CA4th 943,

950, 93 CR2d 91, 96—need for timeliness and certainty in determining compliance with Gov.C. §65009(c)]

(1) **Application**

- [4:18] P served Parthenon Computers, Inc. on behalf of “Ironsides Computer Corporation.” Parthenon was doing business under the fictitious name “Ironsides Computers,” but there was no separate corporation by that name. Service on Parthenon was upheld. It clearly had notice of the proceedings and was not prejudiced by the technical error in how it was served. [*Hammer Collections Co., Inc. v. Ironsides Computer Corp.* (1985) 172 CA3d 899, 902, 218 CR 627, 629; see *Pinkerton’s, Inc. v. Sup.Ct. (Schrieber)* (1996) 49 CA4th 1342, 1349, 57 CR2d 356, 360-361—same]

[4:19-24] *Reserved.*

- (2) [4:25] **Compare—total failure to comply with statutory service requirements:** Actual notice of the action is not itself a valid substitute for proper service of process and will not confer jurisdiction over defendant when there has been a *complete failure* to comply with the statutory service of process requirements. [*American Express Centurion Bank v. Zara* (2011) 199 CA4th 383, 392, 131 CR3d 99, 105; *Dill v. Berquist Const. Co., Inc.* (1994) 24 CA4th 1426, 1439, 29 CR2d 746, 753, fn. 12—rule of liberal construction cannot cure total failure to comply with statutory service provisions]

(a) **Application**

- [4:26] The persons who may be served on behalf of a corporation are designated by statute (CCP §416.10; see ¶4:135 ff.). Serving someone else *cannot* be considered “substantial” compliance. [*Dill v. Berquist Const. Co., Inc.* (1994) 24 CA4th 1426, 1439, 29 CR2d 746, 753; see ¶4:99 ff.]

[4:27-29] *Reserved.*

- c. [4:30] **Effect of delay in service:** Delay in service may be ground for dismissal of the action.

- (1) [4:31] **Dismissal statutes:** Dismissal is *discretionary* if summons and complaint are not served within *2 years* after commencement of the action (CCP §583.420(a)(1), see ¶11:111.5). If not served within *3 years*, dismissal is *mandatory* (CCP §§583.210, 583.250; see ¶11:51).
- (2) [4:32] **Local rules:** Local case management rules may require service of summons within a short period of time (e.g., 60 days) after commencement of the action (see ¶12:53, 12:71 ff.). Violation of these rules may result

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in sanctions, including dismissal of the action if lesser sanctions are ineffective. [See Gov.C. §68608(b) (*discussed at* ¶12:92 *ff.*); and *Tliche v. Van Quathem* (1998) 66 CA4th 1054, 1055, 78 CR2d 458, 459]

(a) [4:33] **No dismissal when counsel is to blame:** However, dismissal is *not* a permitted sanction if the delay was the fault of plaintiff's counsel rather than plaintiff. [*Garcia v. McCutchen* (1997) 16 C4th 469, 476, 66 CR2d 319, 324; *see* ¶9:1277.3]

[4:34-39] *Reserved.*

3. [4:40] **Compare—Federal Rules:** The methods of service under the Federal Rules are substantially the same as California law. In addition, the Federal Rules authorize service by any means allowable under state law (see FRCP 4(e)(1)). Thus, practitioners familiar with California service rules can utilize the same procedures in federal court.

a. [4:41] **Effect of delay in service:** The Federal Rules require prompt service of summons. The action is subject to dismissal (without prejudice) if summons is not served within 90 days after filing the suit unless “good cause” for the delay is shown. [FRCP 4(m)]

b. [4:42] **No nationwide service:** In most cases, federal courts do *not* have nationwide jurisdiction. Service on persons outside the state in which the federal court is located is subject to the same limitations as in state court actions. [FRCP 4(e); *and see discussion at* ¶3:631 *ff.*]

[4:43-44] *Reserved.*

4. [4:45] **Papers to be Served on Defendant Together With Summons and Complaint:** Various papers must be served on the defendant together with copies of the summons and complaint:

- [4:46] **“ADR information package”:** The court will make an “ADR information package” available to the plaintiff when suit is filed, which plaintiff must serve on each defendant together with the summons and complaint. [CRC 3.221(c); *see* ¶1:478 *ff.*]

- [4:47] **Case cover sheet in complex cases:** Plaintiff must file a case cover sheet describing the type of case involved (*see* ¶6:40). If plaintiff indicates on the cover sheet that the case is “complex” under CRC 3.400 (*see* ¶12:47 *ff.*) or a “collections case” under CRC 3.740 (*see* ¶12:18.5), a copy of the cover sheet must be served together with the summons and complaint. [CRC 3.220(a); *see* ¶6:40.2]

- [4:48] **Local rules requiring service of additional materials:** Many courts have their own rules, which vary widely, about additional documents that must be served with the summons and complaint. [See, e.g., L.A. Sup.Ct. Rule 2.3(a)(1)(E); Marin Sup.Ct. Rules 2.3, 2.5; San Diego Sup.Ct. Rule 2.1.5]

FORM: For example, the L.A. Superior Court requires a Civil Case Cover Sheet Addendum and Statement of Location (Certificate of Grounds for Assignment to Courthouse Location) (Los Angeles Superior Court) (LASC LACIV 109) (L.A. Sup.Ct. Rule 2.3(a)(1)(E)). See *Form 4:1* in Rivera, *Cal. Prac. Guide: Civ. Pro. Before Trial FORMS* (TRG).

- [4:49] **Statement of damages in personal injury and wrongful death cases:** Because the complaint must not allege the amount of damages claimed in personal injury and wrongful death cases (see ¶6:279), a separate statement of damages must be served before a default judgment can be entered (see ¶5:82 ff.). Thus, if there is a likelihood of default, it may be good practice to serve the statement of damages on defendant along with the summons and complaint (see ¶5:93).

Some local court rules (e.g., San Diego) in fact *require* plaintiff to serve, along with the summons and complaint, a notice specifying the amount of general and special damages in personal injury and wrongful death cases. [San Diego Sup.Ct. Rule 2.1.5(B)]

5. [4:50] **Requirements May be Waived by Defendant:** The constitutional and statutory requirements re summons exist for defendant's protection and therefore are subject to waiver by defendant, provided the waiver is knowing and voluntary. [See *D.H. Overmyer Co., Inc., of Ohio v. Frick Co.* (1972) 405 US 174, 185-186, 92 S.Ct. 775, 782]

- a. [4:51] **General appearance:** By making a general appearance in the action, defendant submits to the court's personal jurisdiction (¶3:158) and no further service of summons is required.
- b. [4:52] **Appointing agent for service of process:** A party may, by contract, appoint someone as agent to receive service of process on the party's behalf in actions arising from the contract (¶3:158.3, 4:146). Also, such designation may be required by statute in order for the defendant to engage in regulated activities or businesses (see ¶4:141).

Such provisions effectively waive the requirement that summons be served personally. Service on the designated agent satisfies due process even if the party does not know the agent personally, as long as the agent in fact forwards the summons upon receipt. [*National Equip. Rental, Ltd. v. Szukhent* (1964) 375 US 311, 316, 84 S.Ct. 411, 414]

- (1) [4:53] **Compare—jurisdiction requirements:** But service on a designated agent does not necessarily subject a nonresident to local personal jurisdiction in actions unrelated to its local activities (see ¶3:158.3, 3:197 ff.).

➡ [4:54] **PRACTICE POINTER:** This procedure can facilitate enforcement of debts in several ways:

The agent *need not be a disinterested person*, because the agent's only obligation is to forward summons to the debtor. [See *National Equip. Rental, Ltd. v. Szukhent* (1964) 375 US 311, 317, 84 S.Ct. 411, 415—designated agent was related to officer of plaintiff corporation] This greatly facilitates personal service, particularly where defendant is a nonresident.

In addition, defendant's *time to respond* to the complaint runs from personal service on the agent, not from when the papers are actually received by defendant. Again, this is a particular advantage where the debtor is a nonresident.

- c. [4:55] **Confession of judgment no longer enforceable:** Previously, confession of judgment procedures were available to effectively waive service of summons (see *D.H. Overmyer Co. Inc., of Ohio v. Frick Co.* (1972) 405 US 174, 185-186, 92 S.Ct. 775, 782). “A confession of judgment is in effect a private admission to liability for a debt without trial, upon which a court places its imprimatur when submitted to the clerk for entry.” [*Efstratis v. First Northern Bank of Dixon* (1997) 59 CA4th 667, 672, 69 CR2d 445, 448]

Confessions of judgment are no longer the accepted practice in California and will not be entered. However, confessions of judgment obtained or entered before January 1, 2023 remain enforceable. [CCP §1132]

[4:56-64] *Reserved.*


B. ISSUANCE OF SUMMONS

1. [4:65] **General Procedure:** Blank summons forms are available from the clerk of each court or on the court's website. The summons is a mandatory Judicial Council form; see ¶4:76.

- [4:66] Plaintiff's counsel fills in the blanks showing counsel's name and address, and the names of each party plaintiff and defendant named in the complaint. Then, any time after commencing the action (and paying the requisite filing fees), the court clerk will “issue” summons at the request of plaintiff's counsel. [CCP §412.10; *Maginn v. City of Glendale* (1999) 72 CA4th 1102, 1107, 85 CR2d 639, 643 (citing text)]
- [4:67] The clerk “issues” summons by affixing a signature (or signature stamp) and the court seal (or facsimile) to the form prepared by plaintiff's counsel. [See CCP §412.20(a)]

The clerk retains the original summons in the court files and provides a copy to the plaintiff who requested issuance of summons. [CCP §412.10]

If local rules permit or require electronic filings, the court must electronically transmit a copy of the summons to the requesting party. [CCP §1010.6(e)(5); CRC 2.259(e); see ¶9:91 ff.]

- [4:68] Copies of the summons are then conformed to show the clerk’s signature and date of issuance. The copies are then available for service on the defendants (¶4:110 ff.).
- [4:69] *Reserved.*
2. [4:70] **Amended Summons:** An amended summons is necessary only when the complaint is amended to add a *new party* defendant (as distinguished from amendments substituting the defendant’s true name for a “Doe”). In such a case, a new summons is required because the new party is not named in the original; hence service of the original would not confer jurisdiction. [CCP §412.10, Judicial Council Comment]
 - a. [4:71] **Not required for defendants named in original summons:** But there is no need for an amended summons against a defendant named in the original summons (as a “Doe” or otherwise)—even if the complaint is amended before service. I.e., the summons issued on the *original* complaint can be served together with the *amended* complaint. [*Gillette v. Burbank Comm. Hosp.* (1976) 56 CA3d 430, 433-434, 128 CR 636, 637-638]
-  [4:72] **PRACTICE POINTER:** According to the Judicial Council, the preferred practice in such a case is to obtain issuance of a summons on amended complaint. [See CCP §412.10, Judicial Council Comment] However, this is not actually required according to *Gillette* (¶4:71).
3. [4:73] **Replacement Summons:** If the original summons is lost or destroyed, the clerk of the court will simply issue another to replace it, at the request of plaintiff’s counsel. No court order or showing of any kind is required. [See CCP §412.10, Judicial Council Comment]
- [4:74] *Reserved.*

C. CONTENT OF SUMMONS

1. [4:75] **Civil Actions Generally:** The following information is required in a summons issued in civil actions generally, under CCP §412.20(a):
 - **Warning to defendant:** In boldface print at the *top* of the summons, in both English and Spanish: “Notice! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read information below.” [CCP §412.20(a)(6)]

Other languages: The above warning must appear in both English and Spanish. In addition, each county, by ordinance, may require such warning in any other

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foreign language. [CCP §412.20(b)] (So far as is known, however, no county has done so.)

- **Title of the court** in which the action is pending. [CCP §412.20(a)(1)]
- **Names of all parties** (each plaintiff, and each defendant named in the complaint; i.e., do not use “et al.”). [CCP §412.20(a)(2)]

If there is not enough room for all names on the summons form, an “additional parties attachment” form must be used.

FORM: Additional Parties Attachment (mandatory Judicial Council form SUM-200(A)), see *Form 4:3* in Rivera, *Cal. Prac. Guide: Civ. Pro. Before Trial FORMS* (TRG).

(1) **Effect of misspelling or other error in defendant’s name:** See discussion at ¶6:92 ff.

- **Notice that responsive pleading must be filed:** The summons must notify defendant that defendant has 30 days after service within which to file a written pleading; that defendant’s default may be taken if defendant fails to do so; that defendant may seek an attorney’s advice, and this should be done promptly so that a responsive pleading may be filed within the time required. [See CCP §412.20(a)(3)-(5) for required wording]

- a. [4:76] **Use of Judicial Council forms satisfies these requirements:** Use of the Judicial Council mandatory form summons, with the proper information inserted in the blanks, automatically satisfies the above requirements (¶4:75). [See CCP §412.20(c)]

FORM: Summons (SUM-100), see *Form 4:2* in Rivera, *Cal. Prac. Guide: Civ. Pro. Before Trial FORMS* (TRG).

(1) [4:77] **Caution:** Make sure you use the *most current* version of the Judicial Council forms. Use of outdated Summons forms may result in defective service.

➡ [4:78] **PRACTICE POINTER:** All Judicial Council forms are downloadable from the California Courts website (www.courts.ca.gov).

- b. [4:79] **Date on summons not important:** All summons forms have a place for insertion of the date they are issued. But the date is *not* required by CCP §412.20(a) (¶4:75). Thus, failure to include the date, or even *misdating* a summons, does not affect its validity. [*Hibernia Sav. & Loan v. Churchill* (1900) 128 Cal. 633, 635, 61 P 278, 279; *Ystrom v. Handel* (1988) 205 CA3d 144, 152, 252 CR 110, 114]

2. [4:80] **Actions With Special Summons Requirements:** There are a few actions in which there are special summons requirements, including:

- a. [4:81] **Unlawful detainer proceedings:** Unlawful detainer defendants have 10 days (excluding Saturdays, Sundays,