

アメリカ合衆国の民事訴訟手続の概要

◎訴状 (complaint) の裁判所への提出; 裁判所による呼出状 (summons) の発行

◎訴状・呼出状の被告への送達 (service) (又は呼出状送達の省略 [=免除] の要請の郵送)

- ・ 21 日 (60 日) 以内に答弁書 (answer) 又は訴えの却下を求める申立てがなされないとき→ 欠席判決 (judgment by default) の申立て
- ・ 訴えの却下を求める申立て (事物・対人管轄権の欠如; 裁判地の不適正; 訴状・呼出状の不適切; 送達の不適切; 救済が与えられうるような請求の原因を主張していないこと (motion to dismiss for failure to state a claim upon which relief can be granted; demurrer)) → 訴えの却下
- ・ 答弁書の原告への送達, 裁判所への提出→事実 (および法律) 問題について争う。

◎開示手続 (depositions (証言録取書); written interrogatories (質問書); production of documents or things or permission to enter upon land or other property; physical and mental examinations; requests for admission (自白の要求))
required disclosures (義務的開示)

・ 略式判決 (summary judgment) の申立て——there is no genuine issue as to any material fact の場合に認められる。

◎事実審理前協議 (pretrial conference)

◎事実審理 (trial) (陪審が用いられる場合)

陪審の編成

冒頭陳述 (opening statement)

証拠調

原告の主たる証明 (case in chief)

原告側証人①直接尋問 (direct examination) → 反対尋問 (cross examination) → 再直接尋問 → 再反対尋問

原告側証人②……………

- ・ 法律上当然の判決 (judgment as a matter of law); 指図評決 (directed verdict); 訴えの却下 (nonsuit; involuntary dismissal) を求める申立て

被告の主たる証明 (case in chief)

原告の反証 (rebuttal)

被告の反証 (rebuttal)

最終弁論 (closing argument)

原告→被告→原告

陪審に対する説示 (charge; instruction)

陪審の評議 (deliberation)

評決 (verdict) ——general verdict / special verdict

◎判決の登録 (entry of judgment)

- ・ 法律上当然の判決を求める再度の申立て (renewed motion for judgment as a matter of law); 評決無視判決を求める申立て (motion for judgment notwithstanding the verdict; judgment non obstante veredicto; judgment n.o.v.)
- ・ 再審理の申立て (motion for a new trial)

【具体的事例】

- ・過失不法行為によって被った精神的苦痛に対する損害賠償請求
——原則として認められない。

しかし、

- ①原告が身体的損害も被っている場合、
 - ②原告が当該事故の *zone of danger* にいた場合、
- に精神的苦痛に対する損害賠償が認められる州が多い。
- ・夫とジョギングをしていたときに夫が自動車にはねられた。それを目撃した原告が夫に対する事故によってショックを受けたとして精神的損害について損害賠償を請求。
 - ・原告が①身体的被害を受けたこと、又は②事故の *zone of danger* にいたことが訴状に書かれていない場合。
 - ・訴状には書かれているが、原告が身体的被害を受けたこと、及び／又は、事故の *zone of danger* にいたことをいずれも否定する書面証拠を被告が提出できる場合。
 - ・原告が身体的被害を受けたこと、及び／又は、事故の *zone of danger* にいたことを証明する証拠が非常に弱い場合。

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____
_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)

Civil Action No. _____

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: _____
(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within _____ days (give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: _____

Signature of the attorney or unrepresented party

Printed name

Address

E-mail address

Telephone number

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
_____)	
<i>Defendant</i>)	

WAIVER OF THE SERVICE OF SUMMONS

To: _____
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.