

## MEMORANDUM

Re: Service of Process  
July 29, 2013

Service, in its legal sense, is “the formal delivery of a writ, summons, or other legal process.”<sup>1</sup> This legal notice apprises a person of a court or administrative body's exercise of its jurisdiction over that person, enabling that person to respond. Rules have been enacted to ensure constitutional due process in regard to service. The Utah Rules of Civil Procedure provide for the details of service of process and the Utah Rules of Criminal Procedure make reference to the Rules of Civil Procedure.

A summons must be signed and issued in a timely and proper manner.<sup>2</sup> The summons must be signed by the plaintiff or the plaintiff's attorney or the court.<sup>3</sup> The summons must be served no later than 120 days after the filing of the complaint or charge.<sup>4</sup>

Service of summons must also be made to the appropriate person and by the appropriate method.<sup>5</sup> This is accomplished by

“delivering a copy of the summons and the complaint to the individual personally, or by leaving a copy at the individual's dwelling house or usual place of abode with some person of *suitable age and discretion* there residing, or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process.”<sup>6</sup>

No clear definition has been established or declared for “suitable age and discretion,” but courts have referred to specific minimum ages such as “fourteen years of age.”<sup>7</sup>

Furthermore, except for minors or incompetent individuals, the summons and complaint may be served “by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.”<sup>8</sup> Service is complete as of the date the receipt is signed.<sup>9</sup>

If a party is represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court.<sup>10</sup> Otherwise, service is completed by submitting the paper for electronic filing if the case has an e-file account, by sending it by email to the person's last known email address, by faxing it to the person's last known fax number, by mailing it to the person's last known address, by handing it to the person, by leaving it at the person's office with a person in charge of delivering correspondence to the person, or by leaving it at the person's dwelling or usual place of abode with a person of suitable age and discretion then residing at that place.<sup>11</sup> Service by mail, email or fax is complete upon sending.<sup>12</sup>

---

<sup>1</sup> SERVICE, Black's Law Dictionary (9th ed. 2009), service.

<sup>2</sup> See, Utah R. Civ. P. 4.

<sup>3</sup> Id. at (a).

<sup>4</sup> Id. at (c).

<sup>5</sup> See, Id. at (d).

<sup>6</sup> Id. at (d)(1)(A) (emphasis added).

<sup>7</sup> *Grant v. Lawrence*, 37 Utah 450, 108 P. 931, 932 (1910).

<sup>8</sup> Utah R. Civ. P. 4(d)(2)(A).

<sup>9</sup> Id. at (d)(2)(C).

<sup>10</sup> Utah R. Civ. P. 5(b)(1).

<sup>11</sup> Id.

<sup>12</sup> Id.

Unless otherwise directed by the court, papers shall be served by the party preparing them.<sup>13</sup> Every pleading, order or paper required by this rule to be served shall include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served.<sup>14</sup>

In criminal matters, after an indictment has been returned, the magistrate issues a warrant for arrest or a summons for the appearance of the accused.<sup>15</sup> “The summons may be served by a peace officer or any person authorized to serve a summons in a civil action” and “[t]he summons shall be served as in civil actions, or by mailing it to the defendant's last known address.”<sup>16</sup>

---

<sup>13</sup> Id. at (b)(2)

<sup>14</sup> Id. at (f).

<sup>15</sup> Utah R. Crim. P. 6(a).

<sup>16</sup> Id. at (c).