

Members of a nonprofit organization sued the Department of Homeland Security in federal court for posting a statement that "faith in God is essential to the security of the United States of America" on a wall in one of its offices. The nonprofit members claim that the posted statement violates the First Amendment establishment clause. The complaint does not mention the Secretary of Homeland Security.

The nonprofit members sent a copy of the complaint and summons by certified U.S. mail to the civil-process clerk at the U.S. attorney's office and the Attorney General of the United States.

The Department of Homeland Security maintains that service was inadequate.

Must the nonprofit members do anything else to perfect service of process in this case?

- A. No, because all of the necessary entities were properly served.
- B. No, because the federal rules allow the complaint and summons to be sent by certified mail.
- C. Yes, they must serve the Department of Homeland Security.
- D. Yes, they must serve the Secretary of Homeland Security.

Explanation:

Special service-of-process rules

Incompetent or minor	Plaintiff must follow rules of state where service is made
Federal government/agency	<p>Plaintiff must deliver summons & complaint to all of the following:</p> <ul style="list-style-type: none">• (1) U.S. attorney for district where action is brought or designated employee <i>or</i> (2) civil-process clerk at U.S. attorney's office via registered or certified mail• U.S. Attorney General via registered or certified mail AND• agency or officer whose conduct is challenged via registered or certified mail
Foreign government	<p>Plaintiff must deliver summons & complaint:</p> <ul style="list-style-type: none">• by special arrangement between plaintiff & foreign state• if no special arrangement, by international convention• if no convention, by sending to head of ministry of foreign affairs via mail requiring signed receipt OR• if no notice by mail within 30 days, by sending two copies to U.S. Secretary of State via mail requiring signed receipt
State or local government	<p>Plaintiff must either:</p> <ul style="list-style-type: none">• deliver notice to chief executive officer OR• follow rules of state where government is located

A defendant must receive notice of a lawsuit through **service of process**—ie, proper delivery of the [summons and complaint](#). Federal Rule of Civil Procedure (FRCP) 4(i) has special service-of-process requirements when the **defendant is the United States** or a federal **agency or employee** acting within an official capacity. This rule requires that the plaintiff **deliver a copy** of the summons and complaint **to all of the following**:*

- the **U.S. attorney** (or designated agent) for the district where the suit is filed OR the **civil-process clerk** at the U.S. attorney's office by registered or certified mail
- the **U.S. Attorney General** by registered or certified mail *and*
- any **agency or officer** whose official conduct is being challenged by registered or certified mail.

Here, the nonprofit members sued the Department of Homeland Security in federal court. They properly sent a copy of the complaint and summons by certified mail to the

civil-process clerk at the U.S. attorney's office and the U.S. Attorney General **(Choice A)**. But to perfect service of process, they must also serve the Department of Homeland Security—the agency whose official conduct is being challenged.

*Process must be served on the appropriate U.S. attorney and the U.S. Attorney General because these individuals are responsible for representing the United States, federal agencies, and federal employees acting in their official capacity.

(Choice B) Although FRCP 4(i) permits the plaintiff to serve the summons and complaint by certified mail, service of process is not perfected unless *all* of the entities requiring service receive it (not seen here).

(Choice D) A nonparty agency or employee (eg, the Secretary of Homeland Security) need only be served if the suit challenges the nonparty's order (not seen here).

Educational objective:

When suing the United States, its agencies, or its employees, the plaintiff must serve process on (1) the U.S. attorney (or designated agent) for the district where the suit is filed or the civil-process clerk at the U.S. attorney's office, (2) the U.S. Attorney General, and (3) any agency or officer whose official conduct is being challenged.

References

- Fed. R. Civ. P. 4(i) (serving the United States and its agencies or employees).