6-07/530.00 Partnerships or Other Unincorporated Associations

• 6-07/530.10 Properly Named Defendant

Plaintiffs often inadvertently fail to name both the firm and partners as defendants in the summons. For example, if the only defendants sued are “AB and CD copartners doing business under the firm name of ABCD,” the individuals are the only defendants in the action and the firm is not a defendant. (Maclay Co. v. Meads, 14 CA 363; Potts v. Whitson, 52 CA 2d 199) Similarly, where the defendants were designated as “A B and C D doing business as W L”, it was held that the association W L was not a party defendant. (Bums v. Downs, 42 CA 2d 322) Conversely, where the suit is against a firm name, the statement that the firm consists of certain named persons does not render such persons defendants liable individually. Phrases such as “d.b.a. XY Company”, or “composed of AB and CD partners thereof”, or “partners doing business under the fictitious name of XY Company” and the like have been held to be merely descriptive words of the defendants specifically named and they do not add to the number of defendants. (Billings v. Finn, 55 Cal.App. 134, 136 [202 P. 938])

(CCP 369.5)

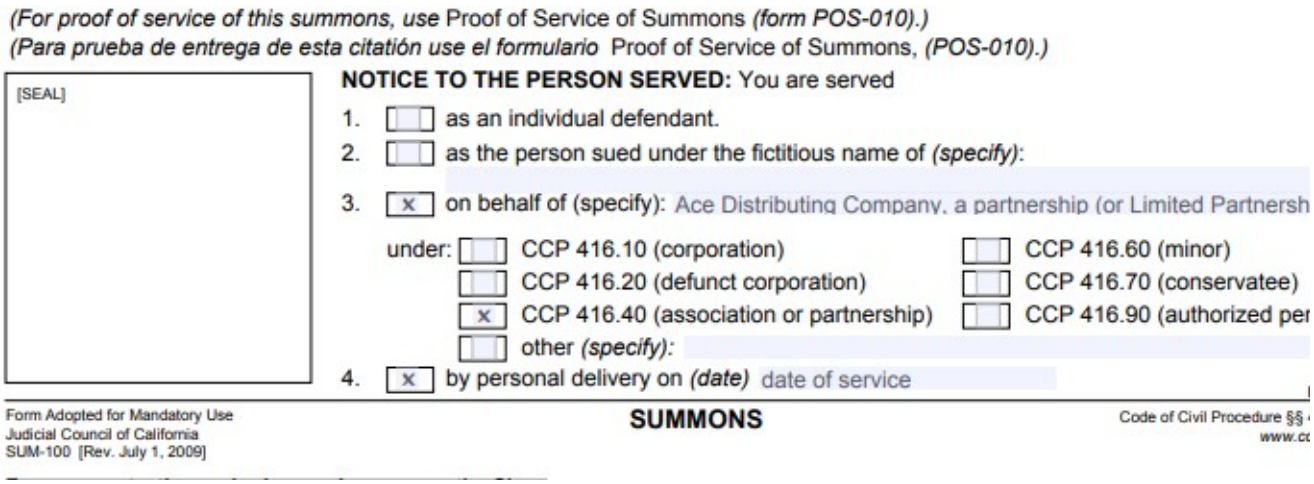
• 6-07/530.20 General or Limited Partnership

Service on a general or limited liability company is effected by serving the person designated as its agent for service of process. If its designated agent is a corporation, service must be made on the person listed as the corporation’s agent for service of process on its information return filed with the Secretary of State. Service on a partnership may be made by delivery to:

1. The person designated as an agent for service with Secretary of State, (CCP 416.40 (a))
2. A general partner, (CORP 15901.16 (b)),
3. To the party designated by court order. (CORP 18200), (CCP 413.30)
4. Secretary of State or any employee of the Secretary of the State by court order (CORP 16310)
5. A general manager. (CCP 416.40 (c))

Before a summons against a partnership is assigned out for service, the “ Notice to the Person Served” at the bottom of the summons shall be completed by (1) inserting the name of the defendant partnership or unincorporated association after the words “on behalf of,” (2) checking the box “CCP 416.40 (Association or Partnership)” and, (3) when applicable, checking the box “as an individual defendant.” This shall be done on

the copy of the summons that is left with the defendant. If the summons is served using the substitute method, both copies of the summons shall be completed in this manner.



(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010).)*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. [ ] as an individual defendant.
2. [ ] as the person sued under the fictitious name of *(specify)*:
3. [x] on behalf of (specify): Ace Distributing Company, a partnership (or Limited Partnersh

under: [ ] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
[ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
[x] CCP 416.40 (association or partnership) [ ] CCP 416.90 (authorized per
[ ] other *(specify)*:

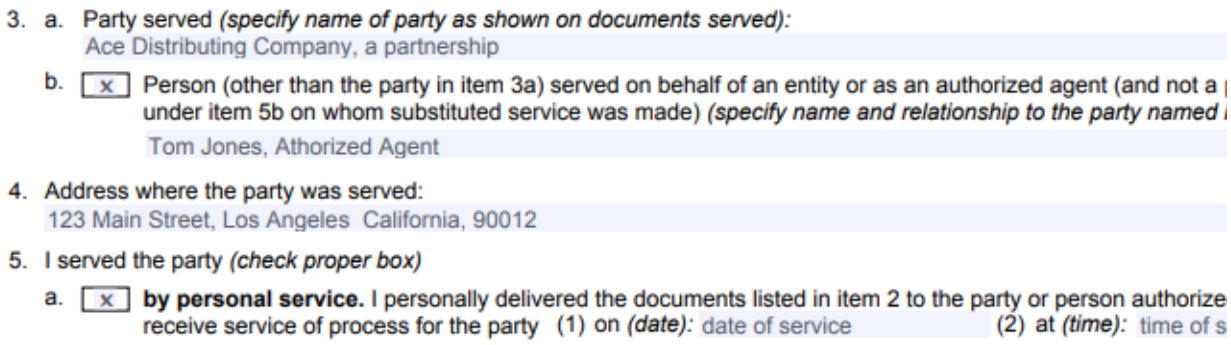
4. [x] by personal delivery on *(date)* date of service

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§
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When completing the Proof of Service, be sure to include all information regarding the person served and the manner of such service. EXAMPLE: "Serve Ace Distributing Company, a partnership." The agent for service is listed as Tom Jones and instructions for service request service on Tom Jones, Authorized Agent for Service. Contact is made with Tom Jones. The Proof of Service should state the party served: Ace Distributing Company, a partnership. Tom Jones, Agent for Service of Ace Distributing Company, a partnership. The address of the service must appear on the Proof of Service. You must indicate the manner of service as personal (CCP 415.10).



3. a. Party served *(specify name of party as shown on documents served)*:
   Ace Distributing Company, a partnership
   b. [x] Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a
   under item 5b on whom substituted service was made) *(specify name and relationship to the party named*
   Tom Jones, Athorized Agent
4. Address where the party was served:
   123 Main Street, Los Angeles California, 90012
5. I served the party *(check proper box)*
   a. [x] **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorize
   receive service of process for the party (1) on *(date)*: date of service (2) at *(time)*: time of s

If the service is made by substitution (CCP 415.20), you must include the name and title or relationship. The party must be informed of the general nature of the process. The name of the responsible party per CCP 416.10 must still be indicated. A copy of the Summons and Complaint must be mailed to the Party served. Service by substitution must show attempts (diligence). Dates and times of all previous attempts of service declaration of diligence must documented on the Proof of Service. The declaration of diligence will be on an attached page.

3. a. Party served *(specify name of party as shown on documents served):*
Ace Distributing Company, a partnership

b. [x] Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a pers
under item 5b on whom substituted service was made) *(specify name and relationship to the party named in ite*
Tom Jones, Athorized Agent

4. Address where the party was served:
123 Main Street, Los Angeles California, 90012

5. I served the party *(check proper box)*

a. [ ] **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on *(date):* (2) at *(time):*

b. [x] **by substituted service.** on *(date):* date of service at *(time):* time I left the documents listed in ite
in the presence of *(name and title or relationship to person indicated in item 3):*
Susan Smith, secretary to Tom Jones, Authorized Agent

(1) [x] **(business)** a person at least 18 years of age apparently in charge at the office or usual place of busin of the person to be served. I informed him or her of the general nature of the papers.

(2) [ ] **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usu place of abode of the party. I informed him or her of the general nature of the papers.

(3) [ ] **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mai address of the person to be served, other than a United States Postal Service post office box. I inform him or her of the general nature of the papers.

(4) [x] I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be serve at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on *(date):* date mailed from *(city):* city mailed from **or** [ ] a declaration of mailing i

(5) [x] I attach a **declaration of diligence** stating actions taken first to attempt personal service.

• 6-07/530.30 Association

Service on an association not a general or limited partnership may be by delivery to:

1. The person designated as an agent for service as filed with the Secretary of State (CCP 416.40 (a))
2. President or other head of the association,
3. Vice president,
4. Secretary or Assistant Secretary,
5. Treasurer or Assistant Treasurer,
6. General manager, or
7. Authorized person by the association to receive process

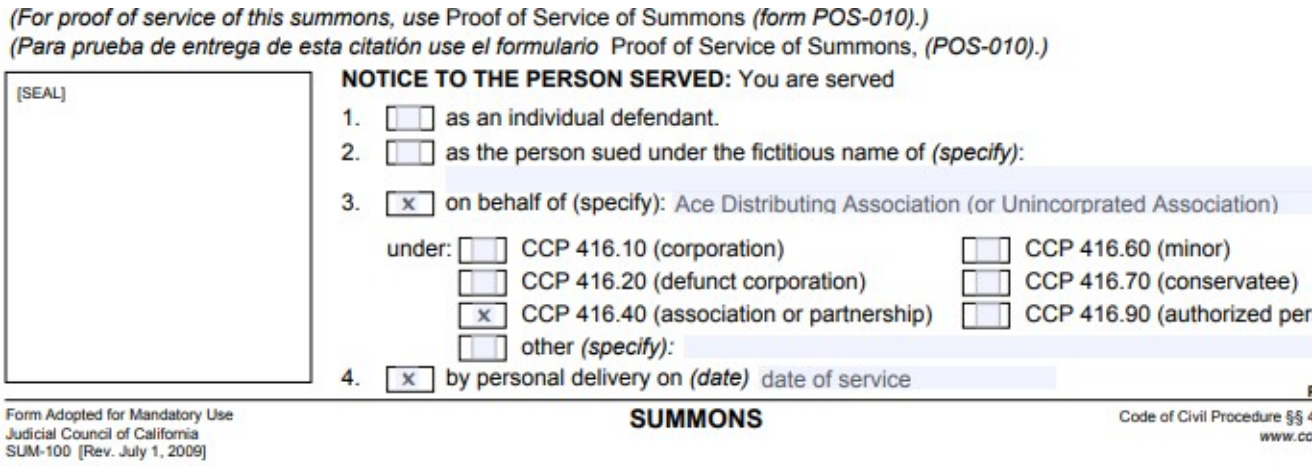
The court may order that service be made upon the unincorporated association by delivery of a copy of the process to any one or more of the association's members designated in the order and by mailing a copy of the process to the association at its last known address. Service in this manner constitutes personal service upon the unincorporated association. (CORP 18220) The service can be effectively made even after dissolution of the partnership. (Cotton v. Perishable Air Conditioners, 18 CA 2d 575)

An unincorporated association is a group of members who share a common purpose and who function under a common name, including churches, labor unions, political parties, professional or trade associations, social clubs, and homeowners' associations. (Barr v. United Methodist Church, 90 CA 3d 259; Tenants Association of Park Santa Anita v. Southers, 222 CA 3d 1293)

Service of only one copy of the summons and complaint on a partner is sufficient to bind both the partnership and the partner served where both the partnership and the partner are named defendants. (Bruhnke v. Wilson, Los Angeles Superior Court App. Dept., Civ. App. 4538, citing Colquhoun v. Pack, 28 CA 319, and Morrisey v. Gray, 162 C 638, 644-7). However, the notice to the person served on the copy of the summons must also indicate that service is made upon the person as an individual as well as on behalf of the associates, and the certificate of service must recite such notification. (CCP 412.30)

Notice of the capacity in which a person is served on behalf of a partnership or other unincorporated association in the manner prescribed by CCP 412.30 must appear on the copy of the summons that is served. No default in a case may be taken against any partnership or other such association unless the certificate of service of the summons recites that such notice appeared on the copy of the summons. (CCP 412.30) When service is intended to be made upon the person as an individual as well as on behalf of the associates, the notice must so indicate.

Before a summons against an unincorporated association is assigned out for service, the “Notice to the Person Served” at the bottom of the summons shall be completed by (1) inserting the name of the defendant partnership or unincorporated association after the words “on behalf of,” (2) checking the box “CCP 416.40 (Association or Partnership)” and, (3) when applicable, checking the box “as an individual defendant.” This shall be done on the copy of the summons that is left with the defendant. If the summons is served using the substitute method, both copies of the summons shall be completed in this manner.



(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010).)*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. [ ] as an individual defendant.
2. [ ] as the person sued under the fictitious name of *(specify)*:
3. [x] on behalf of (specify): Ace Distributing Association (or Unincorprated Association)

under: [ ] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
[ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
[x] CCP 416.40 (association or partnership) [ ] CCP 416.90 (authorized per
[ ] other *(specify)*:

4. [x] by personal delivery on *(date)* date of service

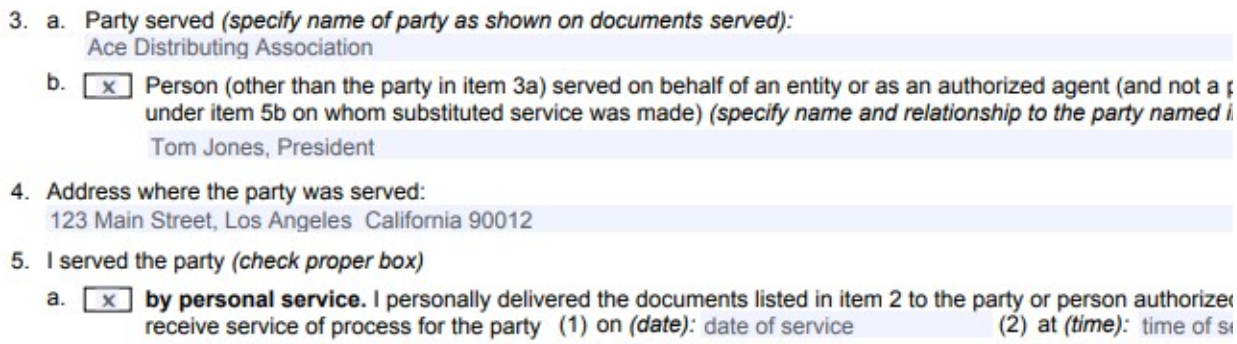
Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 4
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When completing the Proof of Service, be sure to include all information regarding the

person served and the manner of such service. EXAMPLE: “Serve Ace Distributing Association (or other unincorporated association).” The process server discovers the president of the association is Tom Jones and instructions for service request service on Tom Jones, President. Contact is made with Tom Jones. The Proof of Service should state the party served: Ace Distributing Association by serving Tom Jones, President. The address of the service must appear on the Proof of Service. You must indicate the manner of service as personal (CCP 415.10).


3. a. Party served *(specify name of party as shown on documents served):*
Ace Distributing Association
b. [x] Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a p
under item 5b on whom substituted service was made) *(specify name and relationship to the party named i*
Tom Jones, President
4. Address where the party was served:
123 Main Street, Los Angeles California 90012
5. I served the party *(check proper box)*
a. [x] **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorize
receive service of process for the party (1) on *(date):* date of service (2) at *(time):* time of s

If the service is made by substitution (CCP 415.20), you must include the name and title or relationship. The party must be informed of the general nature of the process. The name of the responsible party per CCP 416.10 must still be indicated. A copy of the Summons and Complaint must be mailed to the Party served. Service by substitution must show attempts (diligence). Dates and times of all previous attempts of service declaration of diligence must documented on the Proof of Service. The declaration of diligence will be on an attached page.

3. a. Party served *(specify name of party as shown on documents served):*
Ace Distributing Association

b. [x] Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a under item 5b on whom substituted service was made) *(specify name and relationship to the party named*
Tom Jones, President

4. Address where the party was served:
123 Main Street, Los Angeles California 90012

5. I served the party *(check proper box)*

a. [ ] **by personal service.** I personally delivered the documents listed in item 2 to the party or person authoriz receive service of process for the party (1) on *(date):* (2) at *(time):*

b. [x] **by substituted service.** on *(date):* date of service at *(time):* time I left the documents listed in the presence of *(name and title or relationship to person indicated in item 3):*
Susan Smith, receptionist

(1) [x] **(business)** a person at least 18 years of age apparently in charge at the office or usual place of b of the person to be served. I informed him or her of the general nature of the papers.

(2) [ ] **(home)** a competent member of the household (at least 18 years of age) at the dwelling house o place of abode of the party. I informed him or her of the general nature of the papers.

(3) [ ] **(physical address unknown)** a person at least 18 years of age apparently in charge at the usua address of the person to be served, other than a United States Postal Service post office box. I in him or her of the general nature of the papers.

(4) [x] I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be s at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on *(date):* date mailed from *(city):* city mailed from **or** [ ] a declaration of ma

(5) [x] I attach a **declaration of diligence** stating actions taken first to attempt personal service.

• 6-07/530.40 Limited Liability Partnership

Service on a Limited Liability Partnership may be made by delivery to:

The person designated as an agent for service as indicated by the Secretary of State,

A general partner,

A general manager,

Any natural person designated by it as an agent, or

Any person named in the latest certificate of the corporate agent filed pursuant to Section 1505 at the office of that corporate agent if a corporate agent has been designated.

1. The person designated as an agent for service with Secretary of State, (CORP 16309 (a)).
2. A general partner, (CORP 15901.16 (b)),
3. Secretary of State if Foreign Limited Liability Partnership (CORP 16959 (k))
4. To the party designated by court order. (CORP 18200), (CCP 413.30)

5. Secretary of State or any employee of the Secretary of the State by court order (CORP 16962 (f))
6. General Manager. (CCP 416.40 (c))

The court may make an order that the service be made upon the registered limited liability partnership or foreign limited liability partnership by delivering by hand to the Secretary of State, or to any person employed in the Secretary of State's office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing that service. The Secretary of State who receives the process, or the person employed in the Secretary of State's office in the capacity of assistant or deputy who receives the process, is required to accept such process. (CORP 16962 (f))

Notice of the capacity in which a person is served on behalf of a partnership or other unincorporated association in the manner prescribed by CCP 412.30 must appear on the copy of the summons that is served. No default in a case may be taken against any partnership or other such association unless the certificate of service of the summons recites that such notice appeared on the copy of the summons. (CCP 412.30) When service is intended to be made upon the person as an individual as well as on behalf of the limited liability partnership, the notice must so indicate.

Before a summons against a limited liability partnership is assigned out for service, the “Notice to the Person Served” at the bottom of the summons shall be completed by (1) inserting the name of the defendant limited liability partnership after the words “on behalf of,” (2) checking the box “CCP 416.40 (Association or Partnership)” and, (3) when applicable, checking the box “as an individual defendant.” This shall be done on the copy of the summons that is left with the defendant. If the summons is served using the substitute method, both copies of the summons shall be completed in this manner. Use 6-07/530.20 General or Limited Partnership as an example in completing the Summons.

When completing the Proof of Service, follow the examples provided in 6-07/530.20 General or Limited Partnership.