

§ 68.Summons directed to defendant—Fictitious names

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Process

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IV. Form and Requisites of Summons

B. Designation and Names of Parties

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[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

- West's Key Number Digest, [Process](#)  31, 32

Trial Strategy

- [Proof of Liability for Entity's Failure to Acquire Fictitious Name Certification, 56 Am. Jur. Proof of Facts 3d 103](#)

There is no provision in the Federal Rules of Civil Procedure for suit against persons under fictitious names, unless the plaintiffs obtain an order permitting the use of fictitious names,¹ although the court may permit a plaintiff proceeding in forma pauperis to serve a summons directed to "John Doe" where the actual defendant has actual notice of the action; the summons contains the action's correct cause number, and an inspection of the number in the office of the court specified in the complaint would reveal a letter in which the plaintiff clarifies the identity of "John Doe"; and the plaintiff has taken reasonable steps to identify the "John Doe" defendant in the complaint.² In some jurisdictions, a plaintiff may bring suit against a defendant in the name of "John Doe," where the true name of the defendant is unknown when suit is instituted, and, when service is made, for the sheriff to add the true name after an alias.³ A plaintiff seeking to proceed against a "Jane Doe" defendant must exercise due diligence in seeking to ascertain the defendant's name; if the plaintiff knows or should know the defendant's true name, a "Jane Doe" designation in the summons may be treated as a jurisdictional defect.⁴ A summons served in a "John Doe" form is jurisdictionally sufficient only if the actual defendants are adequately described and would have known, from the description in the complaint, that they were the intended defendants.⁵

CUMULATIVE SUPPLEMENT

Cases:

"John Doe" pleadings are an acceptable practice if the "John Doe" is an actual person or entity that can be identified through discovery and served accordingly. [Epperson v. City of Humboldt](#), 183 F. Supp. 3d 897 (W.D. Tenn. 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Roe v. Borup](#), 500 F. Supp. 127, 31 Fed. R. Serv. 2d 1045 (E.D. Wis. 1980).
- 2 [Howard v. Shelton](#), 277 F.R.D. 168 (S.D. Miss. 2011).
- 3 [Safeway Stores, Inc. v. Ramirez](#), 99 Ariz. 372, 409 P.2d 292 (1965) (recognizing the rule, but noting that the true name was not inserted after an alias in the instant case, and stating that it is not enough merely to serve a person with process unless it is made known to such person that that he or she is a defendant and is being served in the place of one of the fictitious persons).
- 4 [Maurro v. Lederman](#), 7 Misc. 3d 863, 795 N.Y.S.2d 867 (Sup 2005).
As to service on unknown by publication, see § 142.
- 5 [Carmer v. Odd Fellows](#), 66 A.D.3d 1435, 885 N.Y.S.2d 852 (4th Dep't 2009).

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