

## **Rule 5. Service and Filing of Other Pleadings and Papers**

(a) Service: When required. Except as otherwise provided in these Rules, every order required by its terms to be served, every pleading subsequent to the original complaint or petition, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, and similar paper shall be served upon each party. Any pleading or motion asserting a new or additional claim for relief filed after a default has been entered pursuant to SCR-Dom Rel 55(a) against any party shall be served upon the party in default in the manner provided for service of summons in SCR-Dom Rel 4.

(b) Service: How made.

(1) Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney of record whose appearance is not deemed to be terminated pursuant to SCR-Dom Rel 101(e)(4), the service shall be made upon the attorney unless service upon the party is ordered by the Court. Except as provided in subparagraph (b)(2) of this Rule, service upon the attorney or upon a party shall be made by delivering, transmitting by facsimile machine, or mailing a copy to the attorney or party at the attorney's or party's current address, if known. Delivery of a copy within this Rule means: Handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then living there. Service by mail or facsimile machine is complete upon mailing or transmission, respectively. This Rule shall not require a facsimile machine to be maintained in the office of an attorney or party. In the event of a dispute concerning service by facsimile machine, the burden of proof is upon the party transmitting the paper by facsimile machine to prove that the transmission was successful.

(2) Any post-judgment motion filed (1) after the appearance of counsel of the party to be served has been terminated pursuant to SCR-Dom Rel 101(e)(4), or (2) 60 or more days after judgment and the party to be served was not represented by counsel at the time of the entry of judgment, the motion shall be served in the manner provided for service of summons in SCR-Dom Rel 4.

(c) Proof of service. Proof of service of papers required or permitted to be served, other than those for which a method of proof is prescribed elsewhere in these Rules or by statute, shall normally be made by affixing a certificate of service to the paper to be served and filing the certificate with the paper. The certificate of service shall state the date and manner of service, and be signed by a member of the Bar of this Court or a party, if not represented by counsel.

In matters requiring a different method of proof of service or when a party elects to make proof of service by an alternative method, it may be by written acknowledgment or waiver of service signed by the person to be served, by affidavit of the person making the service, or by other proof satisfactory to the Court. Such proof of service shall be made in accordance with SCR-Dom Rel 4.

The Court may at any time allow the proof of service to be amended or supplied, unless to do so would result in material prejudice to a party. Failure to make proof of service will not affect the validity of service.

(d) Filing. All papers after the complaint or petition required to be served upon a party, for which the proof of service is a certificate of service, shall be filed with the Court within 7 calendar days after service; however, the Clerk shall not accept for filing deposition transcripts, interrogatories, requests for documents, requests for admission, and answers and responses thereto except as set forth below. The party serving such a discovery paper (e.g. a set of interrogatories or a request for production of documents) or noticing a deposition must, however, file with the Court a CERTIFICATE REGARDING DISCOVERY which shall indicate the title of the discovery paper served and the date on which it was served. The requesting party must retain the original discovery paper, and must also retain personally, or make arrangements for the reporter to retain, in their original and unaltered form, any deposition transcripts which have been made at the party's request. Such discovery papers and deposition transcripts must be retained until the case is concluded in this Court, and the time for noting an appeal or petitioning for a writ of certiorari has expired, or any such appeal or petition has been decided. Discovery papers and deposition transcripts may be filed, without leave of court, if they are appended to a motion or opposition to which they are relevant and may otherwise be filed if so ordered by the Court sua sponte or pursuant to motion.

When proof of service is by acknowledgment or waiver of service or by affidavit of the person making service the paper may be filed with the Court prior to the filing of the proof of service.

Where neither proof of service nor a responsive pleading has been filed, the Court shall take no action on the merits of a paper. The Court may impose sanctions for failure of a party to file a paper within the time limits of this paragraph.

(e) Filing with the Court defined. The filing of pleadings and other papers with the Court as required by these Rules shall be made by filing them with the Clerk, except that the judicial officer may permit papers to be filed with the judicial officer, in which event the judicial officer shall note thereon the filing date and forthwith transmit them to the office of the Clerk. On the date of the filing of any motion or any paper related to a motion (i.e., an opposition to a motion, memorandum of points and authorities, related exhibits or proposed order), the party filing such motion or paper shall deliver a chambers copy thereof to a depository designated by the Clerk of the Court for receipt of such papers by the assigned judicial officer. If the original document has been mailed, the chambers copy may be mailed to chambers. No pleadings or papers shall be delivered to the judicial officer's chambers unless the assigned judicial officer so orders.

## COMMENT

Pursuant to paragraph (a), if a new or additional claim is asserted against a party in default, that party must be served in the manner provided for service of summons in SCR-Dom Rel 4. Paragraph (b)(2) requires that service of post-judgment motions also be made by summons pursuant to SCR-Dom Rel 4 where the appearance of counsel of the party to be served has been terminated, or where the party was not represented by counsel and 60 days has elapsed since the judgment. Paragraph (d) specifies the time within which papers must be filed with the Court and provides that discovery papers or deposition transcripts shall not be filed unless relevant to a motion or opposition or authorized to be filed by order of the Court. Paragraph (e) requires that any party filing a

motion, or any paper related to a motion, hand-deliver a copy of such motion or paper to the chambers of the judicial officer assigned to the case unless the original paper has been mailed, in which instance the courtesy copy can likewise be mailed. Note, however, that original papers shall not be filed with a judicial officer, unless expressly permitted by a Court order, oral or written.