

## **SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

### **Notice of Proposed Amendments to Superior Court Rules Governing Domestic Relations Proceedings**

The Rules Committee of the Superior Court of the District of Columbia recently completed review of proposed amendments to Rules 4 and 43 of the Superior Court Rules Governing Domestic Relations Proceedings. The Rules Committee will recommend to the Superior Court Board of Judges that the amendments be approved and adopted unless, after consideration of comments from the Bar and the general public, the proposed amendments are withdrawn or modified.

Written comments must be received by November 2, 2022. Comments may be emailed to [Pedro.Briones@dccsystem.gov](mailto:Pedro.Briones@dccsystem.gov) or may be mailed to:

Pedro E. Briones  
Associate General Counsel  
District of Columbia Courts  
500 Indiana Avenue, N.W., Room C620  
Washington, D.C. 20001

All comments submitted in response to this notice will be available to the public. New language is underlined, and deleted language is stricken through.

## [Domestic Relations] Rule 4. Process

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### (c) SERVING A SUMMONS AND COMPLAINT.

(1) *In General.* A summons must be served with a copy of the complaint and any scheduling or other order directed to the parties at the time of filing. The plaintiff is responsible for having the summons, complaint, and any order directed to the parties at the time of filing served within the time allowed by Rule 4(i) and for furnishing the necessary copies to the person who makes service.

(2) *Methods of Service.* Service of the summons, complaint, and any order must be made in one of the following ways:

(A) by any person who is at least 18 years of age and not a party:

(i) delivering a copy of each to an individual personally; ~~or~~

(ii) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(iii) delivering a copy of each to the individual's employer by leaving it at the individual's place of employment with a clerk or person in charge.

(B) by mailing a copy of each to the person to be served by registered or certified mail, return receipt requested;

(C) by mailing a copy of each by first-class mail, postage prepaid, to the person to be served, together with 2 copies of a Notice and Acknowledgment conforming substantially to the form maintained by the clerk's office and a return envelope, postage prepaid, addressed to the sender, and unless good cause is shown for not doing so, the court must order the party served to pay the costs incurred in securing an alternative method of service authorized by this rule if the person served does not complete and return, within 21 days after mailing, the Notice and Acknowledgment of receipt of the summons;

(D) by the Metropolitan Police Department as authorized by D.C. Code § 13-302.01(b) (2012 Repl.);

(E) by a United States marshal or deputy marshal as authorized by D.C. Code § 13-302 (2012 Repl.);

(F) in any manner authorized by Rule 4(f);

(G) in any other manner authorized by statute; ~~or~~

(H) by any other method to which the person to be served consents in writing, with an acknowledgement that the person:

(i) received the summons, complaint, and any order;

(ii) understands that the person must answer the complaint within 21 days after signing the consent; and

(iii) understands that judgment by default may be entered against the person if the person fails to answer the complaint within that time; ~~or~~

(I) by sending a copy of each to a registered user using the court's electronic filing system—in which event service is complete on transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(J) by transmitting a copy of each to the individual by electronic means, including, but not limited to email, text message, or social media—in which event service is

complete on transmission, but is not effective if the serving party learns that it did not reach the person to be served.

(3) *Alternative Methods of Service.* If the court determines that, after diligent effort, a plaintiff or petitioner has been unable to accomplish service by a method prescribed in Rule 4(c)(2), the court may permit an alternative method of service reasonably calculated to give actual notice of the action to the defendant or respondent. The court may specify how the plaintiff or petitioner must prove that service was accomplished by the alternative method. ~~Alternative methods of service include, but are not limited to:~~

~~— (A) by delivering a copy to the individual's employer by leaving it at the individual's place of employment with a clerk or person in charge;~~

~~— (B) by transmitting a copy to the individual by electronic means, including, but not limited to email, text message, or social media—in which event service is complete on transmission, but is not effective if the serving party learns that it did not reach the person to be served; or~~

~~— (C) by posting on the court's website; or~~

~~— (D) any other manner that the court deems just and reasonable.~~

(4) *Service by Publication.*

(A) *When Allowed.* The court may permit service by publication, instead of service under Rule 4(c)(2) or (3), if:

(i) a summons for the defendant has been issued and returned “not to be found,” and an affidavit establishes that the defendant is a nonresident or has been absent from the District of Columbia for at least 6 months;

(ii) the defendant cannot be found after diligent efforts; or

(iii) the defendant, by concealment, seeks to avoid service of process.

(B) *Manner of Publication.* An order of publication must be published in at least one legal newspaper or periodical of daily circulation and any other newspaper or periodical specifically designated by the court, at least once a week for 3 successive weeks or as otherwise ordered by the court.

(C) *Definition of Legal Newspaper or Periodical.* A legal newspaper or periodical means a publication designated by the court that is:

(i) devoted primarily to publication of opinions, notices, and other information from the District of Columbia courts;

(ii) circulated generally to the legal community; and

(iii) published at least on each weekday that the court is in session.

(D) *Posting Order of Publication in the Clerk's Office and the Court's Website.* In accordance with D.C. Code § 13-340 (2018 Supp.), in a divorce or child custody proceeding, on a finding that the plaintiff is unable to pay the cost of publishing without substantial hardship to the plaintiff or the plaintiff's family, the court may permit publication to be made by posting the order of publication in the clerk's office and on the court's website for 21 days.

(5) *Serving a Minor or Incompetent Person.* A minor or an incompetent person in the United States must be served by following District of Columbia law (D.C. Code §§ 13-332, -333 (2012 Repl.)) or the state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within the United States must be served in the manner prescribed by Rule 4(g)(2)(A), (g)(2)(B), or (g)(3).

(6) *Manner of Conducting Service*. Service of process under Rule 4(c)(2)(A)-~~(J)(H)~~ may, at the plaintiff's or the court's election, be attempted either concurrently or successively.

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(d) **SERVING A NOTICE OF HEARING AND ORDER DIRECTING APPEARANCE**. A Notice of Hearing and Order Directing Appearance must be served on the defendant, respondent, or other named person, along with the complaint, petition, or motion, in one of the following ways:

- (1) by any person who is at least 18 years of age and not a party:
  - (A) delivering a copy of each to that individual personally;
  - (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
  - (C) leaving a copy of each at the individual's place of employment with someone of suitable age and discretion;
- (2) by mailing a copy of each to the person to be served at the person's dwelling or usual place of abode or at the person's place of employment, by certified mail, return receipt requested, and also by separate first-class mail;
- (3) by the Metropolitan Police Department as authorized by D.C. Code § 13-302.01 (2012 Repl.);
- (4) by a United States marshal or deputy marshal as authorized by D.C. Code § 13-302 (2012 Repl.); or
- (5) in any manner authorized by applicable statute.

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(h) **PROVING SERVICE**

(1) *In General*. Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(A) *Service by Delivery*. If service is made by delivery pursuant to Rule 4(c)(2)(A), (c)(2)(D), (c)(2)(E), (c)(2)(F), (d)(1), (d)(3), or (d)(4), the return of service must be made under oath (unless service was made by the United States marshal or deputy United States marshal) and must specifically state:

- (i) the caption and number of the case;
- (ii) the process server's name, residential or business address, and the fact that he or she is eighteen (18) years of age or older;
- (iii) the date, time, and place when service was made;
- (iv) the fact that a summons, a copy of the complaint, and any order directed by the court to the parties at the time of filing setting the case for a hearing were delivered to the person served; and
- (v) if service was made by delivery to a person other than the party named in the summons, then specific facts from which the court can determine that the person to whom process was delivered meets the appropriate qualifications for receipt of process set out in Rule 4(c)(2)(A)(ii), (c)(2)(A)(iii), (d)(1)(B), or (d)(1)(C).

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(3) *Proving Service by ~~Alternative~~ Electronic Methods.* Proof of service by an ~~alternative~~ electronic method specified in Rule 4(c)(2)(J)(3) must demonstrate that the electronic method was reasonably calculated to give the defendant actual notice of the case. ~~plaintiff or petitioner complied with the order authorizing the alternative method.~~

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## COMMENT TO 2022 AMENDMENTS

Subsection (c)(2) was amended to provide greater flexibility for plaintiffs and petitioners to accomplish service. New subsection (c)(2)(I) permits service using the court's electronic filing system. New subsection (c)(2)(J) (former subsection (c)(3)(B)) now permits electronic service without requiring leave from the court and includes a non-exhaustive list of examples of electronic service methods. New subsection (c)(2)(A)(iii) (former subsection (c)(3)(A)) now permits service by delivery to an individual's employer without leave from the court. The language of former subsection (c)(3)(C) related to service by posting on the court's website was moved to subsection (c)(4)(D). Finally, subsections (c)(6), (h)(1)(A)(v), and (h)(3) were amended consistent with revisions described above.

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## [Domestic Relations] Rule 43. Evidence

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(b) IN OPEN COURT. At trial, the witnesses' testimony must be taken in open court unless otherwise provided by these rules. For good cause ~~in-compelling circumstances~~ and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

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### COMMENT TO 2022 AMENDMENTS

Subsection (b) was amended consistent with the [pending] 2022 amendments to Civil Rule 43(b) to facilitate remote testimony by eliminating the requirement that a party seeking to present live testimony from a remote location establish "compelling circumstances." Factors that may be relevant to whether good cause exists to allow contemporaneous remote testimony include, but are not limited to: (1) any agreement of the parties; (2) the age, infirmity, or illness of the witness; (3) the convenience of the proposed witness and the parties, (4) the willingness of the witness to testify in person; (5) the cost of producing the witness in person in relation to the importance of the testimony; and (5) any unfair prejudice or surprise to another party.

Videoconferencing is ordinarily preferred over audio-only transmission, although the latter may be sufficient in some cases, and the court may require videoconferencing as an appropriate safeguard. Other examples of appropriate safeguards include, but are not limited to: (1) prohibiting anyone from being physically present with the witness, or requiring the identification of any such person; (2) prohibiting the witness from consulting notes or other documents, or requiring disclosure of any such documents; (3) prohibiting electronic or other communications with the witness during the testimony; (4) establishing procedures for showing documents or exhibits to the witness during direct and cross examination; (5) establishing procedures to ensure that the witness's testimony can be seen and/or heard; (6) establishing requirements to ensure that the witness's surroundings or backdrop does not cause unfair prejudice; and (7) requiring the witness and the parties to test arrangements before the witness testifies.

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