

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Notice of Proposed Amendments to Superior Court Rules of Civil Procedure

The District of Columbia Superior Court Rules Committee recently completed review of proposed amendments to Superior Court Rules of Civil Procedure 3-I, 5, 10-I, 39, 40-I and 79. The Rules Committee will recommend to the Superior Court Board of Judges that the amendments be approved unless, after consideration of comments from the Bar and the general public, the proposed amendments are withdrawn or modified.

Written comments must be submitted by May 4, 2022. Comments may be emailed as a PDF file to Pedro.Briones@dccsystem.gov or may be mailed to:

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

Rule 3-1. Actions Involving Real Property

Any pleading the adjudication of which may affect title to or interests in real property, including pleadings in change of name cases, must bear immediately below the title of the pleading the inscription "ACTION INVOLVING REAL PROPERTY." ~~On the filing of such a pleading, the clerk must place after the number assigned to the case the suffix "RP."~~

COMMENT TO 2017 AMENDMENTS

Under Rule 3-1, parties must identify pending actions that may impact the title of real property in the District of Columbia. See *First Md. Fin. Servs. Corp. v. District-Realty Title Ins. Corp.*, 548 A.2d 787, 791 (D.C. 1988) (citing Rule 3-1 and quoting *Anderson v. Reid*, 14 App. D.C. 54, 68 (1899) for proposition that “[t]he public records give constructive notice of their contents . . .”).

Rule 5. Serving and Filing Pleadings and Other Papers

(d) FILING.

(5) *How Electronic Filing Is Made.*

(A) *In General.* As permitted or required by statute, rule, or administrative order, pleadings and filings may be electronically filed. Electronic filing is complete on transmission, unless the filing party learns that the attempted transmission was undelivered or undeliverable.

(B) *Form of Electronically Filed Documents.*

(i) *Format.* All electronic filings must, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper filings, and in any other format as the court may require.

(ii) *Signatures.* Every document filed electronically through the court's authorized eFiling system is deemed to have been signed by the attorney who made or authorized the filing. Each filing must have either "/s/" or a typographical or imaged signature on the signature line. Below the signature line, the filing attorney must list his or her typed name, address, telephone number, email address, and Bar number.

(iii) *Self-Represented Parties.* If a self-represented party chooses to use the court's authorized eFiling system, the same format and signature requirements listed in Rule 5(d)(5)(B)(i) and (ii) apply to him or her except that no Bar number is required. A self-represented party will be responsible for the filing under Rule 11.

(C) *Maintenance of Original Document.* Unless the court orders otherwise, an original of all electronically filed documents, including original signatures, must be maintained by the filing party during the pendency of the case and through exhaustion of any appeals or appeal times, and the original documents must be made available, on reasonable notice, for inspection by other counsel or the court.

(D) *Service of Original Complaint and Related Documents.* After electronically filing the original complaint, a plaintiff is responsible for serving the defendant(s) in accordance with these rules. Proof of service must be filed electronically.

(E) *Electronic Filing and Service of Orders and Other Papers.* The court may issue, file, and serve notices, orders, and other documents electronically, subject to statute, administrative order, or other provisions of these rules, ~~statutes or administrative order.~~

(F) ~~*Who Must Electronically File*~~By a Represented Person—Generally Required; Exceptions. ~~By statute, rule or administrative order, all attorneys representing parties may be required to electronically file~~A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed by administrative order.

(G) ~~*Who May Electronically File*~~By an Unrepresented Person—When Allowed. ~~By statute, rule or administrative order, any self represented party, who has consented in writing,~~A person not represented by an attorney may electronically file and serve documents and may be electronically served, if such activities are provided for by the

court's eFiling program. By using the electronic filing system, the person consents to being served electronically.

(H) *Failure to Process Transmission*. If the electronic filing is not filed because of a failure to process it, through no fault of the filing party, the court must enter an order allowing the document to be filed nunc pro tunc to the date it was electronically filed, as long as the document is filed within 14 days of the attempted transmission.

(6) *Same as a Written Paper*. A paper filed electronically is a written paper for purposes of these rules.

(7) *Special Requirements for and Exceptions to Electronic Filing*.

(A) *Documents Filed Under Seal*. Unless otherwise ordered by the court, a motion to file documents under seal must be electronically filed and served, and the documents to be filed under seal must be separately electronically filed and served with the motion.

(B) *Exhibits and Real Objects*. Exhibits to declarations or other documents that are real objects (e.g., x-ray film or vehicle bumper) or which otherwise may not be comprehensibly viewed in an electronic format may be filed and served by non-electronic means, unless a different procedure is required by statute, rule, the court, or administrative order.

(C) *Chambers Copies*.

~~(i)~~ Paper chambers copies of electronically filed documents exceeding 25 pages must be delivered to the clerk. Otherwise, unless specifically requested by the court or required by administrative order, paper chambers copies of electronically filed documents do not need to be delivered to the court.

~~(ii) When motions are served, unless otherwise provided by administrative order, a copy of the proposed order must be provided to the court in a format that can be edited.~~

(e) PRIVACY REQUIREMENTS. Privacy requirements are set forth in Rule 5.2.

COMMENT TO THE 2021 AMENDMENTS

Subsection (d)(4)(A) was amended to eliminate the requirement that the moving party provide an addressed envelope or mailing label with the chambers copy of a motion.

Subsection (d)(7)(A) was amended to require electronic filing and service not only of motions to file documents under seal but also of the documents to be filed under seal.

COMMENT TO 2019 AMENDMENTS

This rule incorporates many of the 2018 amendments to *Federal Rule of Civil Procedure* 5. The Superior Court rule already contained specific electronic filing provisions, but these were amended and reorganized to be more consistent with the newly-added federal electronic filing provisions. For instance, the provision declaring that “a paper filed electronically is a written paper for purposes of these rules” was moved from subsection (d)(5)(A) to new subsection (d)(6). The documents excepted from electronic filing were then moved to new subsection (d)(7). The federal amendments to proof of service provisions are addressed in Rule 5-1. Finally, the reference to a judge's eService email address in subsection (d)(7)(C)(ii) was deleted as obsolete.

COMMENT TO OCTOBER 2017 AMENDMENTS

Consistent with the Federal Rules of Civil Procedure, the provisions regarding privacy requirements appear in new Rule 5.2.

COMMENT TO MARCH 2017 AMENDMENTS

Rule 5 differs substantially from *Federal Rule of Civil Procedure 5*, as amended in 2007.

Subsection (a)(1)(B) excludes language from the federal rule that permits courts to make exceptions to the requirement that every pleading subsequent to the original complaint be served on each of the parties when there is a large number of defendants. This omission allows the court to make such exceptions in all cases.

Subsection (a)(1)(E) omits the former reference to a designation of record on appeal. District of Columbia Court of Appeals Rule 10 is a self-contained provision for the record on appeal, and it provides for service. This provision has also been deleted from the federal rule. Deleted from subsection (a)(2) is the provision that no service need be made upon parties in default for failure to appear. It is required, for example, that a copy of a Rule 55-II(a) motion and affidavit be sent to a defendant who is in default. If new or additional claims are asserted against parties in default, then such parties must be served in the manner provided in Rule 4.

Subsection (b)(3) is omitted from this rule because it is inapplicable. The Superior Court does not supply parties with facilities to transmit electronically filed documents.

Section (d) differs substantially from its federal counterpart. It includes a significant amount of Superior Court specific material. Subsection (d)(1) is different in the following ways: 1) the substitution of language that specifies the 7-day period within which papers must be filed with the court; 2) the omission of language requiring a certificate of service; 3) the addition of a provision excluding papers filed under Rule 12-I(d)(2) and (e) from the filing requirements of section (d); and 4) the modification of language, which states that the specified discovery requests and responses must not be filed except as provided in subsection (d)(2) or until they are used in the proceeding.

Subsection (d)(2) is unique to the Superior Court rule. It provides exceptions for filing discovery papers. Additionally, it provides rules for retaining discovery papers and submitting certificates regarding discovery.

Subsection (d)(3) is the same as subsection (d)(2) of the federal rule except that the title has been modified and the phrase “clerk’s office” is substituted for “clerk” throughout.

Subsection (d)(4) is unique to the Superior Court rule. It provides the rules for submitting chambers copies. Specifically, it requires that any party filing a motion, any paper related to a motion or a pretrial statement and other papers described in Rule 16(d) and (e), deliver a chambers copy of the motion or papers to judge assigned to the case via a designated depository at the courthouse. If the original paper has been mailed, the copy can likewise be mailed. Note, as to this matter, original papers should never, unless ordered otherwise, be filed with a judge.

Subsection (d)(5) replaces subsection (d)(3) of the federal rule. This subsection provides the specific rules for electronically filing documents in the Superior Court.

Subsection (d)(6) is unique to the Superior Court rule. It provides exceptions to the mandatory electronic filing rules in subsection (d)(5). Certain documents may be filed conventionally if they meet the requirements in this subsection.

Subsection (d)(4) of the federal rule is omitted in its entirety from Superior Court Rule 5.

COMMENT TO 2006 AMENDMENTS

This Rule expresses the Court's concern about access to, and dissemination of, private information in the Court's public records to the detriment of individuals whose privacy is compromised simply because their otherwise private information is contained in court filings. The risk of invasion of privacy is heightened where the court's public records are made available through the internet. Although the Rule does not expressly prohibit all use of personal identifiers and other private information, such as home addresses, it is the policy of the Court that parties not include home addresses and other private information in any court filings unless it is necessary to the matter being litigated or is otherwise expressly required by statute or other Rules of the Court, such as, for example, Rules 16(a)(2), 10-1(b), and 4(l)(2).

COMMENT

Several changes are made to Federal Rule of Civil Procedure 5. Deleted from paragraph (a) is the provision that no service need be made upon parties in default for failure to appear. It is required, for example, that a copy of a Rule 55-11(a)(3) affidavit be sent to a defendant who is in default. If new or additional claims are asserted against parties in default, then such parties must be served in the manner provided in Rule 4. Unlike the federal rule which permits courts to make exceptions to the requirement that every pleading subsequent to the original complaint be served upon each of the parties because of the large number of defendants, the local rule would allow the Court to make such exceptions in all cases. 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, any paper related to a motion or a pretrial statement and other papers described in SCR Civil 16(d) and (e), deliver a chambers copy of such motion or papers to judge assigned to the case via a designated depository at the Courthouse. If the original paper has been mailed, the copy can likewise be mailed. Note, as to this matter, original papers should never, unless ordered otherwise, be filed with a judge.

Rule 10-I. Pleadings: Stationery and Locational Information

(b) LOCATIONAL INFORMATION: PLEADINGS AND OTHER PAPERS.

(2) *Substitute Address.* A party is not required to state the party's residence address if:

(A) the party is a participant in the District of Columbia's Address Confidentiality Program (D.C. Code §§ 4-555.01 to -.12 (2019 Repl. & 2020 Supp.)) or has a reasonable basis to fear harassment or harm to the party or the party's family if the party's residence address is disclosed; and

(B) the party substitutes the address of the party's attorney or other agent authorized to accept service copies for the party.

(3) *Confidential Address.* If no substitute address is available, a party may file a motion asking the court to treat the party's address as confidential and to designate the clerk as an agent authorized to accept service copies for the party. If the court grants the motion, the clerk must accept service copies for the party and must immediately send the service copies, by first-class mail, to the party's confidential address.

(c) NONCONFORMANCE WITH ABOVE. A pleading or other paper not conforming to the requirements of this rule will not be accepted for filing.

COMMENT TO AUGUST 2021 AMENDMENTS

Section (b) was moved to subsection (b)(1). Subsection (b)(2) was added to permit a party to use a substitute address consistent with the District of Columbia's Address Confidentiality Program (D.C. Code §§ 4-555.01 to -.12 (2019 Repl. & 2020 Supp.)).

COMMENT TO APRIL 2021 AMENDMENTS

Section (b) was amended, consistent with Rule 11(a), to require self-represented parties to provide their email addresses.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 39. Trial by Jury or by the Court

(a) WHEN A DEMAND IS MADE. When a jury trial has been demanded under Rule 38, ~~the action must be designated on the docket as a jury action.~~ The trial on all issues so demanded must be by jury unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that on some or all of those issues there is no right to a jury trial.

(b) WHEN NO DEMAND IS MADE. Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) ADVISORY JURY; JURY TRIAL BY CONSENT. In an action not triable of right by a jury, the court, on motion or on its own:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is one for which an applicable statute provides a nonjury trial.

COMMENT TO 2017 AMENDMENTS

Rule 39 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 39*. As with the prior version of the rule, the exception in subsection (c)(2) is framed in terms of local practice.

COMMENT

Identical to *Federal Rule of Civil Procedure 39* except that "statutes of the United States" in section (a) has been changed to "applicable law" and the exception clause in section (c) has been rephrased so as to comprehend any applicable statute.

Rule 40-I. Assignment of Cases

(a) IN GENERAL. The clerk will randomly assign new civil actions to judgescalendars in the Civil Division.

(b) SPECIAL ASSIGNMENTS. The Chief Judge may specially assign a civil action for all purposes to a specific calendar or a single judge. The Chief Judge may delegate to the Presiding Judge of the Civil Division the authority to make special assignment of cases to a judge currently assigned to the Civil Division.

(c) PROCEEDINGS AFTER ASSIGNMENT. All proceedings in a case after its assignment, including trial, will be scheduled and conducted by the judge assigned judgeto the calendar or case.

(d) REASSIGNMENT. When a judge's assignment to the Civil Division is concluded, the Chief Judge or the Presiding Judge may designate the judge or judges to whom the cases on the calendar of the previous judge will be reassigned.

(e) ASSIGNMENT TO A MAGISTRATE JUDGE. Nothing in this rule precludes the assignment of civil actions to magistrate judges under Rule 73.

(f) RELATED CASES.

(1) "*Related Case*" *Defined*. Civil cases are deemed related when the earliest is still pending on the merits in the Superior Court and they:

(A) involve common property;

(B) involve common issues of fact;

(C) grow out of the same event or transaction; or

(D) involve common and unique issues of law, which appear to be of first impression in this jurisdiction.

(2) *Notification of Related Cases*. The parties must notify the clerk of the existence of related cases as follows:

(A) At the time of filing a civil case, the plaintiff or his attorney must indicate on a form provided by the clerk, the name, docket number and relationship of any related cases in the Superior Court or in the District of Columbia Court of Appeals. The plaintiff must serve a copy of this form on the defendant with the complaint. The defendant must serve a statement with the first responsive pleading either objecting or concurring with the related case designation.

(B) When ~~ever~~ an attorney or party becomes aware of the existence of a related case, he or she must immediately notify, in writing, the judges on whose calendars the cases appear.

(g) REFILED CASES. If a case is refiled after it was dismissed, with or without prejudice, the clerk must reassign the case to the original judgecalendar unless the Presiding Judge orders otherwise. Additionally, cases are deemed refiled where a case is dismissed, with or without prejudice, and a second case is filed involving the same parties and relating to the same subject matter.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. The rule was also reorganized to clarify general assignment procedures. The provisions related to trial continuances were moved to Rule 16(k), which addresses other continuances; its location in Rule 40-I was a vestige of the

original rule on assignment of trials by the assignment commissioner. Section (f), "Related Cases," has been moved from Rule 42(f). Section (g) is new, and it describes the procedure for assigning refiled cases.

COMMENT

Federal Rule of Civil Procedure 40 which authorized the establishment of local systems for the assignment and calendaring of cases has been deleted. It has been replaced by SCR Civil 40-I which describes the Superior Court's Assignment System. Note that the second and third sentences of paragraph (a) contain essentially the same provisions as appeared in former Rule 40-II(d) and that language of the last sentence of paragraph (a) is essentially the same as that which formerly appeared in paragraph (f) of Rule 40-I.

Paragraph (b), on random distribution of cases among the judges, is derived from former Rule 40-II(c). Its purpose is to insure equitable allocation of the caseload to all judges assigned to the Division and to preclude any potential for litigants to predetermine the judge to whom the case will be assigned.

Rule 79. Records Kept by the Clerk

(a) CIVIL DOCKET.

(1) *In General.* The clerk must keep a record known as the "civil docket" in the form and manner prescribed by the Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge. The clerk must enter each civil action in the docket. ~~Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.~~

(2) *Items to Be Entered.* The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk;

(B) process issued, and proofs of service or other returns showing execution; and

(C) appearances, orders, verdicts, and judgments.

(3) *Contents of Entries; Jury Trial Demanded.* Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the substance and date of entry of each order and judgment. ~~When a jury trial has been properly demanded or ordered, the clerk must enter the word "jury" in the docket.~~

(b) **CIVIL JUDGMENTS AND ORDERS.** The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The Executive Officer of the District of Columbia Courts will, subject to the supervision of the Chief Judge, prescribe the form and manner in which such copies must be kept.

(c) **INDEXES; CALENDARS.** Under the court's direction, the clerk must:

(1) keep indexes of the docket and of the judgments and orders described in Rule 79(b); and

(2) prepare calendars of all actions ready for trial, distinguishing jury trials from nonjury trials.

(d) **OTHER RECORDS.** The clerk must keep any other records required by the Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge.

(e) **ENTRY ON DOCKET.** Nothing in these rules precludes a judge or magistrate judge or his or her authorized judicial staff member from making entries on the docket.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 79*, as amended in 2007, but maintains two local distinctions—1) references to “Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States” have been changed to “Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge”; and 2) section (e), allowing entries by judges or magistrate judges and their staff, has been added.