

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**RULE PROMULGATION ORDER 20-02**

(Amending Super. Ct. Crim. R. 12.4, 45, and 49)

**WHEREAS**, pursuant to D.C. Code § 11-946, the Board of Judges of the Superior Court approved amendments to Superior Court Rules of Criminal Procedure 12.4, 45, and 49; and

**WHEREAS**, pursuant to D.C. Code § 11-946, the amendments to these rules, to the extent that they modify the corresponding federal rules, have been approved by the District of Columbia Court of Appeals; it is

**ORDERED**, that Superior Court Rules of Criminal Procedure 12.4, 45, and 49 are hereby amended and enacted as set forth below; and it is further

**ORDERED**, that the amendments shall take effect April 20, 2020, and shall govern all proceedings thereafter commenced and insofar as just and practicable all pending proceedings.

## **Rule 12.4. Disclosure Statement**

### **(a) ~~Who Must File~~ WHO MUST FILE.**

(1) *Nongovernmental Corporation.* Any nongovernmental corporate party must file a statement identifying the party's parent corporation and subsidiaries and any publicly held corporation that holds 10% or more of its stock.

(2) *Partnership.* Any partnership that is a party must file a statement identifying all partners, including silent partners.

(3) *Organizational Victim.* On order of the court, the government must file a statement identifying any organizational victim of the alleged criminal activity. If the organizational victim is a corporation or partnership, the statement must also disclose the information required by Rule 12.4(a)(1) or (2) to the extent it can be obtained through due diligence.

### **(b) ~~Time for Filing; Supplemental Filing~~ TIME TO FILE; LATER FILING.** A party must:

(1) file the Rule 12.4(a) statement within 28 days after~~upon~~ the defendant's initial appearance or the court's order; and

(2) promptly file a ~~supplemental~~later statement if any required information changes~~upon any change in the information that the statement requires.~~

## COMMENT TO 2020 AMENDMENTS

New subsection (a)(3), addressing disclosure of organizational victims, differs from its federal counterpart. Based on the high volume of cases, the Superior Court provision requires the government to file a statement identifying an organizational victim only if ordered by the court.

Subsections (b)(1) and (2) were amended consistent with the 2018 amendments to Federal Rule of Criminal Procedure 12.4.

## COMMENT TO 2016 AMENDMENTS

This is a new rule.

Paragraph (a) differs from the federal rule by adopting language from District of Columbia Court of Appeals Rule 28. Specifically, it expands the requirement of filing a disclosure statement to include corporate subsidiaries and partnerships. In addition, the disclosure requirement covers institutional parties but not institutional victims.

Paragraph (b) is identical to the federal rule.

## **Rule 45. Computing and Extending Time**

(a) **COMPUTING TIME.** The following rules apply in computing any time period specified in these rules, in any court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 45(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 45(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute, rule or court order, the last day ends at midnight in the court's time zone.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined.* "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(B) any day declared a holiday by the President or Congress, or observed as a holiday by the court.

(b) **EXTENDING TIME.**

(1) *In General.* When an act must or may be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party's motion made:

(A) before the originally prescribed or previously extended time expires; or

(B) after the time expires if the party failed to act because of excusable neglect.

(2) *Exception.* The court may not extend the time to take any action under Rule 35, except as stated in that rule.

(c) ADDITIONAL TIME AFTER CERTAIN KINDS OF SERVICE. Whenever a party must or may act within a specified time after being served and service is made in the manner provided under ~~Superior Court Rule of Civil Procedure 549(ab)(23)(C), (D), and (F) (mailing), (D) (leaving with the clerk), or (F) (other means consented to)~~, 3 days are added after the period would otherwise expire under Rule 45(a).

#### COMMENT TO 2020 AMENDMENTS

The cross-references to Civil Rule 5 have been updated to reflect the new filing and service provisions found in Criminal Rule 49.

#### COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Criminal Procedure 45*, as amended in 2009 and 2016, except for 1) deletion of reference to local rules and 2) modification of subsection (a)(6)(B) to include holidays observed by the court, which made federal subsection (a)(6)(C) inapplicable. As explained in the Advisory Committee Notes to the federal rule, the 2009 federal amendments were intended to simplify and clarify the process for computing deadlines.

#### COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002, and to conform to a change in paragraph (c) of the federal rule in 2007. It is substantially identical to the federal rule. It retains a distinction, now in subparagraph (a)(3), that permits an extra day for computing time when the clerk's office is actually closed.

In subparagraph (a)(4)(B), the phrase "or observed as a holiday by the court" was added to account for local holidays, such as District of Columbia Emancipation Day, that are observed by the court.

Subparagraph (b)(2) includes a change made to the federal rule in 2005. In that year, *Federal Rule 45* was amended to conform to contemporaneous changes made to *Federal Rules 29* (Motion for Judgment of Acquittal), *33* (New Trial) and *34* (Arresting Judgment), removing the requirement that the court act within seven days on motions for enlargement of time.

The subject matter of former paragraph (d), concerning the timing of written motions and affidavits, is addressed in Rule 47. That paragraph has been deleted from this rule.

## **Rule 49. Serving and Filing Papers**

### **(a) ~~When Required~~ SERVICE ON A PARTY.**

~~(1) *What Is Required.* A party must serve on every other party~~ Each of the following must be served on every party: any written motion (other than one to be heard ex parte), opposition, written notice, designation of the record on appeal, or similar paper.

~~(2) *Serving a Party's Attorney. How Made.* Service must be made in the manner provided for in a civil action. Unless the court orders otherwise, ~~W~~when these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party, ~~unless the court orders otherwise.~~~~

(3) *Service: How Made.* A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address—in which event service is complete upon mailing;

(D) leaving it with the clerk's office if the person has no known address;

(E) sending it to a registered user using the court's electronic-filing system or sending it by other electronic means that are permitted or required by administrative order or that the person consented to in writing—in which event service is complete upon sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

### **(b) FILING.**

(1) *When Required; Certificate of Service.* Any paper that is required to be served must be filed no later than a reasonable time after service. No certificate of service is required when a paper is served using the court's electronic-filing system. When a paper is served by other means, a certificate of service must be filed with it or within a reasonable time after service or filing.

(2) *Means of Filing.*

(A) *Electronically.* A paper is filed electronically by filing it with the court's electronic-filing system. A filing made through a person's electronic-filing account and authorized by that person, together with the person's name on a signature block, constitutes the person's signature. A paper filed electronically is written or in writing under these rules.

(B) *Nonelectronically.* A paper not filed electronically is filed by delivering it:

(i) to the clerk's office; or

(ii) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk's office.

(3) *Means Used by Represented and Unrepresented Parties.*

(A) *Represented Party.* A party represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is otherwise allowed or required by this rule or administrative order of the Chief Judge.

(B) *Unrepresented Party.* A party not represented by an attorney must file nonelectronically, unless allowed to file electronically by court order or administrative order of the Chief Judge.

(4) *Signature Block.* Every written motion and other paper must be signed by at least one attorney of record in the attorney's name—or by a person filing a paper if the person is not represented by an attorney. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or person's attention.

(5) *Acceptance by the Clerk.* The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules.

(c) *SERVICE AND FILING BY NONPARTIES.* A nonparty may serve and file a paper only if doing so is required or permitted by law. A nonparty must serve every party as required by Rule 49(a), but may use the court's electronic-filing system only if allowed by court order or administrative order of the Chief Judge.

(de) *Notice of a Court Order* NOTICE OF A COURT ORDER.

(1) *In General.* In all cases where a party or the party's attorney is not present, immediately ~~upon the entry of~~ after entering an order on a post-arraignment motion, the clerk must serve notice of the entry on each party. ~~a notice of the entry of the order and~~ The clerk must make a note in record the service on the docket ~~of the service.~~ Service must be made in the manner provided for in a civil action.

(2) *Time to Appeal Not Affected by Lack of Notice.* ~~A party's~~ Lack of notice of the entry of the order does not affect the time ~~to~~ for appeal, or relieve—or authorize the court to relieve—~~the~~ a party's ~~for~~ failing ~~to~~ to appeal within the time allowed, except as permitted by the ~~Rules of the~~ District of Columbia Court of Appeals Rules.

(32) *Who Can Perform the Clerk's Function.* Nothing in this rule ~~shall~~ precludes a judge or magistrate judge or his or her authorized staff member from performing the function of the clerk prescribed in Rule 49(~~de~~)(1).

(d) *Filing.* ~~A party must file with the court a copy of any paper the party is required to serve. A paper must be filed in a manner provided for in a civil action.~~

(e) *Communications by Counsel to the Court.* ~~Copies of all communications, memoranda and briefs (other than those regarding matters to be heard ex parte) submitted by counsel to a judge or magistrate judge and relating to a proceeding pending before him or her must be delivered to each of the parties.~~

## COMMENT TO 2020 AMENDMENTS

Consistent with the 2018 federal amendments to *Federal Rule of Criminal Procedure 49*, the filing and service provisions, which were previously addressed by reference to the civil rules, are now included in Rule 49.

## COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) includes “opposition” in the list of papers a party must serve on every other party.

Consistent with the former rule, paragraph (c) explicitly requires the clerk to notify the parties of orders on motions entered outside their presence. The clerk must mail notice of the entry of the orders to the parties and must make an entry on the docket that the notice has been mailed. This requirement is in keeping with District of Columbia Court of Appeals Rule 4(b)(5), which defines entry of an order made outside the presence of the parties with reference to the entry on the criminal docket reflecting the mailing of notice.

Paragraph (e) is retained from the former rule. It was added to insure that all parties are informed of any communication delivered to a judicial officer. The term “judge” in former paragraph (e) of this rule was replaced with the term “judge or magistrate judge” to make it applicable to communications by counsel with magistrate judges. The parenthetical phrase “other than those regarding matters to be heard ex parte” was added to parallel similar language in paragraph (a) of this rule.

## **Rule 12.4. Disclosure Statement**

### **(a) WHO MUST FILE.**

(1) *Nongovernmental Corporation.* Any nongovernmental corporate party must file a statement identifying the party's parent corporation and subsidiaries and any publicly held corporation that holds 10% or more of its stock.

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### **(b) TIME TO FILE; LATER FILING.** A party must:

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Subsections (b)(1) and (2) were amended consistent with the 2018 amendments to *Federal Rule of Criminal Procedure 12.4*.

## **COMMENT TO 2016 AMENDMENTS**

This is a new rule.

Paragraph (a) differs from the federal rule by adopting language from District of Columbia Court of Appeals Rule 28. Specifically, it expands the requirement of filing a disclosure statement to include corporate subsidiaries and partnerships. In addition, the disclosure requirement covers institutional parties but not institutional victims.

Paragraph (b) is identical to the federal rule.



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(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 45(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 45(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute, rule or court order, the last day ends at midnight in the court's time zone.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined.* "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(B) any day declared a holiday by the President or Congress, or observed as a holiday by the court.

(b) **EXTENDING TIME.**

(1) *In General.* When an act must or may be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party's motion made:

(A) before the originally prescribed or previously extended time expires; or

(B) after the time expires if the party failed to act because of excusable neglect.

(2) *Exception.* The court may not extend the time to take any action under Rule 35, except as stated in that rule.

(c) ADDITIONAL TIME AFTER CERTAIN KINDS OF SERVICE. Whenever a party must or may act within a specified time after being served and service is made in the manner provided under Rule 49(a)(3)(C), (D), and (F), 3 days are added after the period would otherwise expire under Rule 45(a).

#### COMMENT TO 2020 AMENDMENTS

The cross-references to Civil Rule 5 have been updated to reflect the new filing and service provisions found in Criminal Rule 49.

#### COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Criminal Procedure 45*, as amended in 2009 and 2016, except for 1) deletion of reference to local rules and 2) modification of subsection (a)(6)(B) to include holidays observed by the court, which made federal subsection (a)(6)(C) inapplicable. As explained in the Advisory Committee Notes to the federal rule, the 2009 federal amendments were intended to simplify and clarify the process for computing deadlines.

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In subparagraph (a)(4)(B), the phrase "or observed as a holiday by the court" was added to account for local holidays, such as District of Columbia Emancipation Day, that are observed by the court.

Subparagraph (b)(2) includes a change made to the federal rule in 2005. In that year, *Federal Rule 45* was amended to conform to contemporaneous changes made to *Federal Rules 29* (Motion for Judgment of Acquittal), *33* (New Trial) and *34* (Arresting Judgment), removing the requirement that the court act within seven days on motions for enlargement of time.

The subject matter of former paragraph (d), concerning the timing of written motions and affidavits, is addressed in Rule 47. That paragraph has been deleted from this rule.

## **Rule 49. Serving and Filing Papers**

### **(a) SERVICE ON A PARTY.**

(1) *What Is Required.* Each of the following must be served on every party: any written motion (other than one to be heard *ex parte*), opposition, written notice, designation of the record on appeal, or similar paper.

(2) *Serving a Party's Attorney.* Unless the court orders otherwise, when these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party.

(3) *Service: How Made.* A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address—in which event service is complete upon mailing;

(D) leaving it with the clerk's office if the person has no known address;

(E) sending it to a registered user using the court's electronic-filing system or sending it by other electronic means that are permitted or required by administrative order or that the person consented to in writing—in which event service is complete upon sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

### **(b) FILING.**

(1) *When Required; Certificate of Service.* Any paper that is required to be served must be filed no later than a reasonable time after service. No certificate of service is required when a paper is served using the court's electronic-filing system. When a paper is served by other means, a certificate of service must be filed with it or within a reasonable time after service or filing.

(2) *Means of Filing.*

(A) *Electronically.* A paper is filed electronically by filing it with the court's electronic-filing system. A filing made through a person's electronic-filing account and authorized by that person, together with the person's name on a signature block, constitutes the person's signature. A paper filed electronically is written or in writing under these rules.

(B) *Nonelectronically.* A paper not filed electronically is filed by delivering it:

(i) to the clerk's office; or

(ii) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk's office.

(3) *Means Used by Represented and Unrepresented Parties.*

(A) *Represented Party.* A party represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is otherwise allowed or required by this rule or administrative order of the Chief Judge.

(B) *Unrepresented Party*. A party not represented by an attorney must file nonelectronically, unless allowed to file electronically by court order or administrative order of the Chief Judge.

(4) *Signature Block*. Every written motion and other paper must be signed by at least one attorney of record in the attorney's name—or by a person filing a paper if the person is not represented by an attorney. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or person's attention.

(5) *Acceptance by the Clerk*. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules.

(c) SERVICE AND FILING BY NONPARTIES. A nonparty may serve and file a paper only if doing so is required or permitted by law. A nonparty must serve every party as required by Rule 49(a), but may use the court's electronic-filing system only if allowed by court order or administrative order of the Chief Judge.

(d) NOTICE OF A COURT ORDER.

(1) *In General*. In all cases where a party or the party's attorney is not present, immediately after entering an order on a post-arraignment motion, the clerk must serve notice of the entry on each party. The clerk must record the service on the docket.

(2) *Time to Appeal Not Affected by Lack of Notice*. Lack of notice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as permitted by the District of Columbia Court of Appeals Rules.

(3) *Who Can Perform the Clerk's Function*. Nothing in this rule precludes a judge or magistrate judge or his or her authorized staff member from performing the function of the clerk prescribed in Rule 49(d)(1).

## COMMENT TO 2020 AMENDMENTS

Consistent with the 2018 federal amendments to *Federal Rule of Criminal Procedure 49*, the filing and service provisions, which were previously addressed by reference to the civil rules, are now included in Rule 49.

## COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) includes "opposition" in the list of papers a party must serve on every other party.

Consistent with the former rule, paragraph (c) explicitly requires the clerk to notify the parties of orders on motions entered outside their presence. The clerk must mail notice of the entry of the orders to the parties and must make an entry on the docket that the notice has been mailed. This requirement is in keeping with District of Columbia Court of Appeals Rule 4(b)(5), which defines entry of an order made outside the presence of

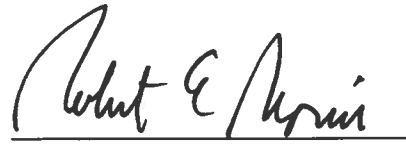
the parties with reference to the entry on the criminal docket reflecting the mailing of notice.

Paragraph (e) is retained from the former rule. It was added to insure that all parties are informed of any communication delivered to a judicial officer. The term “judge” in former paragraph (e) of this rule was replaced with the term “judge or magistrate judge” to make it applicable to communications by counsel with magistrate judges. The parenthetical phrase “other than those regarding matters to be heard ex parte” was added to parallel similar language in paragraph (a) of this rule.

\* \* \*

By the Court:

Date: 2/20/20



Robert E. Morin  
Chief Judge

Copies to:

All Judges  
All Magistrate Judges  
All Senior Judges  
William Agosto, Director, Criminal Division  
Library  
Daily Washington Law Reporter  
Laura Wait, Associate General Counsel