

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 22-14

(Amending Super. Ct. Dom. Rel. R. 4)

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the Board of Judges of the Superior Court approved amendments to Rule 4 of the Rules Governing Domestic Relations Proceedings; it is

ORDERED, that Rule 4 of the Rules Governing Domestic Relations Proceedings is hereby amended as set forth below; and it is further

ORDERED, that the amendments shall take effect immediately and shall govern all proceedings hereafter commenced and insofar is just and practicable all pending proceedings.

Rule 4. Process

(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.

(B) by mailing a copy of each to the person to be served [at the person's dwelling or usual place of abode](#) 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 sending 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 may 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) and any other manner~~ method 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.

(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.

(3) *Proving Service by Electronic Methods*. Proof of service by an electronic method specified in Rule 4(c)(2)(J) must demonstrate that the electronic method was reasonably calculated to give the defendant actual notice of the case.

(4) *Proving Service by Alternative Methods*. Proof of service by an alternative method specified in Rule 4(c)(3) must demonstrate that the plaintiff or petitioner complied with the order authorizing the alternative method.

(4) *Validity of Service*. Failure to prove service does not affect the validity of service.

(5) *Amending Proof*. The court may permit proof of service to be amended.

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. 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). Subsection (c)(6) was amended consistent with the addition of subsection (c)(2)(I) and (J). Subsection (h)(3) was amended to specify how proof of service is to be made for electronic service under new subsection (c)(2)(J) and former subsections (c)(4) and (c)(5) were redesignated accordingly.

In domestic relations cases, service at the defendant's place of employment under subsection (c)(3) may raise substantial privacy concerns and create a significant risk of unfair prejudice at the workplace. The court should take these factors into account in deciding whether to authorize service at the defendant's place of employment and should consider whether the imposition of any special conditions or requirements may provide greater protection of the defendant's privacy or make the defendant's receipt of actual notice of the case more likely. Safeguards the court should consider include, but are not limited to, requiring that the papers be served in a sealed envelope marked

“confidential” and that the process server’s affidavit specify the name and title of the person with whom the papers were left.

Rule 4. Process

(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.

(B) by mailing a copy of each to the person to be served at the person's dwelling or usual place of abode 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;

(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;

(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 sending 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 may include 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, and any other method 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) may, at the plaintiff's or the court's election, be attempted either concurrently or successively.

(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.

(3) *Proving Service by Electronic Methods*. Proof of service by an electronic method specified in Rule 4(c)(2)(J) must demonstrate that the electronic method was reasonably calculated to give the defendant actual notice of the case.

(4) *Proving Service by Alternative Methods*. Proof of service by an alternative method specified in Rule 4(c)(3) must demonstrate that the plaintiff or petitioner complied with the order authorizing the alternative method.

(5) *Validity of Service*. Failure to prove service does not affect the validity of service.

(6) *Amending Proof*. The court may permit proof of service to be amended.

COMMENT TO 2022 AMENDMENTS

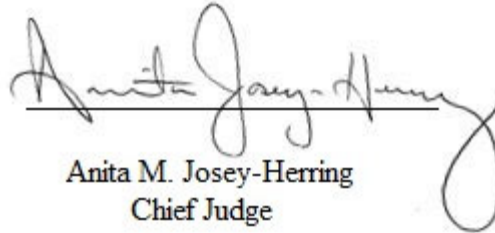
Subsection (c)(2) was amended to provide greater flexibility for plaintiffs and petitioners to accomplish service. New subsection (c)(2)(I) permits service using the court's electronic filing system. New subsection (c)(2)(J) (former subsection (c)(3)(B)) now permits electronic service without requiring leave from the court and includes a non-exhaustive list of examples of electronic service methods. 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). Subsection (c)(6) was amended consistent with the addition of subsection (c)(2)(I) and (J). Subsection (h)(3) was amended to specify how proof of service is to be made for electronic service under new subsection (c)(2)(J) and former subsections (c)(4) and (c)(5) were redesignated accordingly.

In domestic relations cases, service at the defendant's place of employment under subsection (c)(3) may raise substantial privacy concerns and create a significant risk of unfair prejudice at the workplace. The court should take these factors into account in deciding whether to authorize service at the defendant's place of employment and should consider whether the imposition of any special conditions or requirements may provide greater protection of the defendant's privacy or make the defendant's receipt of actual notice of the case more likely. Safeguards the court should consider include, but are not limited to, requiring that the papers be served in a sealed envelope marked "confidential" and that the process server's affidavit specify the name and title of the person with whom the papers were left.

* * *

By the Court:

Date: December 22, 2022



Anita M. Josey-Herring
Chief Judge

Copies to:

All Judges
All Magistrate Judges
All Senior Judges
Avrom Sickel, Director, Family Court
Library
Daily Washington Law Reporter
Pedro E. Briones, Associate General Counsel