

## **Rule 4. Process**

### **(a) CONTENTS; AMENDMENTS.**

- (1) *Summons*. A summons must:
  - (A) name the court and the parties;
  - (B) be directed to the defendant;
  - (C) state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff;
  - (D) state the time within which the defendant must file a response to the complaint and appear in court;
  - (E) notify the defendant that a failure to file a response to the complaint and to appear at any scheduled hearing will result in a default judgment against the defendant for the relief demanded in the complaint;
  - (F) be signed by the clerk; and
  - (G) bear the court's seal.
- (2) *Notice of Hearing and Order Directing Appearance*. A Notice of Hearing and Order Directing Appearance must:
  - (A) name the court and the parties;
  - (B) specify the date and time of the hearing;
  - (C) be directed to the defendant or individual whose attendance is required;
  - (D) state the name and address of the filer's attorney or, if unrepresented, of the filer;
  - (E) state the time period within which any response is required;
  - (F) notify the defendant or individual that failure to appear may result in issuance of a bench warrant and a default judgment or order;
  - (G) be signed by the clerk; and
  - (H) bear the court's seal.
- (3) *Amendments*. The court may permit a summons or notice to be amended.
- (4) *Service Outside the District of Columbia*. A summons, notice, or order in lieu of summons should correspond as nearly as possible to the requirements of a statute or rule whenever service is made pursuant to a statute or rule that provides for service of a summons, notice, or order in lieu of summons on a party not an inhabitant of or found within the District of Columbia.

### **(b) ISSUANCE.**

- (1) *Summons*. At the time the complaint is filed, the clerk must issue a summons for each defendant named in the complaint and must provide to the plaintiff or the plaintiff's agent a copy of each summons for service of process in accordance with Rule 4(c).
- (2) *Notice of Hearing and Order Directing Appearance*.
  - (A) *Support or Parentage Case*. In a case in which a party seeks permanent or temporary support of a child, to modify a child support order, or to establish parentage, the clerk must issue a Notice of Hearing and Order Directing Appearance to each named defendant or individual whose attendance is required and must provide to the plaintiff, petitioner, or movant, a copy of the notice for service of process in accordance with Rule 4(d).
  - (B) *Motion for Contempt or Post-Judgment Motion*. When a judge or magistrate judge orders a hearing on a motion for contempt or a post-judgment motion, the clerk must issue and mail a Notice of Hearing and Order Directing Appearance to each

named defendant or individual whose attendance is required.

(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 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.

(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) 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) transmitting a copy to the individual by electronic means;

(C) 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.* 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 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)-(H) may, at the plaintiff’s or the court’s election, be attempted either concurrently or successively.

(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.

(e) TERRITORIAL LIMITS OF EFFECTIVE SERVICE. Serving a summons, complaint, and any order or a Notice of Hearing and Order Directing Appearance establishes personal jurisdiction over a defendant:

(1) who is subject to the jurisdiction of this court;

(2) who is a party joined under Rule 19 and is served at a place not more than 100 miles from the place of the hearing or trial; or

(3) when authorized by a federal or District of Columbia statute.

(f) SERVING AN INDIVIDUAL WITHIN THE UNITED STATES. Unless applicable law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose acknowledgment has been filed—may be served anywhere in the United States by:

(1) following District of Columbia law, or the state law for serving a summons in an action brought in courts of general jurisdiction or, if applicable, in courts with jurisdiction over domestic relations proceedings, in the state where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons, complaint, and any order directed by the court to the parties at the time of filing to the 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) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(g) SERVING AN INDIVIDUAL IN A FOREIGN COUNTRY. Unless applicable law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose acknowledgment has been filed—may be served at a place not within the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering to the individual personally a copy of the summons, complaint, and any order directed by the court to the parties at the time of filing; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(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), (d)(1)(B), or (d)(1)(C).

(B) *Service by Registered or Certified Mail.* If service is made by registered or certified mail under Rule 4(c)(2)(B), the return must be accompanied by the signed receipt attached to an affidavit which must specifically state:

- (i) the caption and number of the case;
- (ii) the name and address of the person who posted the registered or certified letter;
- (iii) the fact that the letter contained 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; and
- (iv) if the return receipt does not purport to be signed by the party named in the summons, then specific facts from which the court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in Rule 4(c)(2)(A)(ii).

(C) *Service by Publication.* Proof of service by publication must be made by affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the document as published.

(D) *Service of a Notice of Hearing and Order Directing Appearance Under Rule 4(d)(2).* Proof of service of a Notice of Hearing and Order Directing Appearance by certified mail and first-class mail under Rule 4(d)(2) must be made by filing, with the clerk, the signed return receipt, when available, and an affidavit, which must state:

- (i) the caption and number of the case;
- (ii) the name and address of the person who posted the certified and first-class mail;
- (iii) the fact that the mailing contained a Notice of Hearing and Order Directing Appearance and the complaint, petition, or motion;
- (iv) if the return receipt does not purport to be signed by the party named in the notice, then specific facts from which the court can determine that the person who

signed the receipt meets the appropriate qualifications for receipt of process set out in Rule 4(d);

(v) if the return receipt is not available, whether the certified mail was unclaimed or refused; and

(vi) whether the first-class mail was returned.

(2) *Proving Service by Acknowledgement.* Proof of service by acknowledgment must be made by notice to the clerk filed by the serving party or the person to be served.

(3) *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.

(i) TIME LIMIT FOR SERVICE.

(1) *In General.* Within 60 days of the filing of the complaint, the plaintiff must file proof of service of the summons, the complaint, and any order directed by the court to the parties at the time of filing. A separate proof must be filed as to each defendant who has not responded to the complaint.

(2) *Motion for Extension of Time.* Prior to the expiration of the 60-day time period, the party may file a motion to extend the time for service.

(3) *Dismissal.* The plaintiff's failure to comply with the requirements of this rule may result in the dismissal without prejudice of the complaint. The clerk may enter the dismissal and serve notice on all the parties.

## COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the general restyling of the civil rules. The rule was also reorganized and expanded. While the rule is modeled after Civil Rule 4, the provisions concerning the method and proof of service reflect the statutes governing service in domestic relations cases, including cases involving child support and parentage.

Consistent with Civil Rule 4, subsection (a)(1)(D) now requires the summons to include the date and time of the initial hearing in a new case. Unlike Civil Rule 4, subsection (a)(1)(D) also requires the summons to state the time by which the defendant must file a response to a complaint so that self-represented defendants are aware of their obligation to file a written response to a complaint as well as to appear at the initial hearing.

Subsection (a)(1)(E) was added to require the summons to specify that not only a failure to answer on a timely basis but also a failure to appear at the initial or other scheduled hearing may result in entry of a default judgment against a defendant.

Subsection (b)(2)(B) was added to provide for issuance of a Notice of Hearing and order Directing Appearance ("NOHODA") if the court orders a hearing on a motion for contempt or a post-disposition motion. This provision was moved from Rule 7 and amended to reflect the fact that the court would schedule the hearing.

Subsection (d)(2) provides for service of a NOHODA by certified mail, return receipt requested, and first-class mail. However, D.C. Code § 46-206 (b)(2) (2012 Repl.) provides that "[s]ervice by certified mail that is unclaimed or refused and first-class mail

alone shall not be a sufficient basis to permit the entry of a default order of paternity in a case where the respondent fails to file an answer or otherwise fails to respond appropriately.” See *also* Rule 55(b)(2)(B)(i) (requiring compliance with D.C. Code § 46-206 (b) for entry of default parentage order).

Subsection (c)(2)(C) was added consistent with Civil Rule 4(c)(5) to authorize service by first-class mail with notice and acknowledgement and to include a related cost-shifting provision if the defendant does not appear or respond.

New subsection (c)(2)(H) permits the parties to agree to other methods of service. New subsection (c)(3) authorizes alternative methods of service if the court makes the appropriate determination. Among the alternative methods listed are service by electronic means or posting on the court’s website.

Finally, subsection (i)(2) now requires a party to file a motion if the party wants more time to serve. The provision allowing the clerk to grant one 60-day extension was deleted because it is unnecessary and created practical problems.

## COMMENT

Subparagraph (a)(2) of this Rule provides for the use of a Notice of Hearing and Order Directing Appearance (NOHODA) in cases initiated by petition. Pursuant to SCR-General Family H, this process is signed by the Clerk of the Division and has the same force and effect as a civil subpoena. In cases seeking to establish paternity, D.C. Code § 46-206(b) permits personal service of the NOHODA by a combination of first class and certified mail. Such service is not, however, a sufficient basis for issuance of a bench warrant for failure of the defendant to appear.

Paragraph (i) incorporates the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, and other applicable international agreements on service of process. The applicability of an international agreement on service of process in a foreign country should be checked before other methods of service are attempted.

Where a party has been granted leave to proceed in forma pauperis, the 60-day time period in which proof of service of process must be filed under paragraph (l) will start to run at the time the summons is issued by the Clerk. See SCR-Dom. Rel.54(f). For waiver of prepayment of costs, including filing fees, see SCR-Dom. Rel. 54(f).