

## **Rule 5. Serving and Filing of Other Pleadings and Papers**

### **(a) SERVICE: WHEN REQUIRED.**

(1) *In General.* Unless these rules provide otherwise, each of the following papers must be served on every party:

- (A) an order stating that service is required;
- (B) a pleading filed after the original complaint or petition, unless the court orders otherwise;
- (C) a discovery paper required to be served on a party, unless the court orders otherwise;
- (D) a written motion, except one that may be heard *ex parte*; and
- (E) a written notice, appearance, or similar paper.

(2) *If a Party Fails to Appear.* A pleading or motion that asserts a new claim for relief against a party in default must be served on that party in the manner provided for service of summons in Rule 4.

(3) *Post-Judgment Motion Requiring Service Under Rule 4.* If a post-judgment motion is filed 60 days or more after judgment has been entered, the motion must be served in the manner provided for service of summons in Rule 4. If a post-judgment motion has been served and the motion is pending, any subsequent filings may be served in the manner provided in Rule 5(b).

### **(b) SERVICE: HOW MADE.**

(1) *Serving an Attorney.* If a party is represented by an attorney, whose appearance is not deemed to be terminated under Rule 101(f), service under Rule 5 must be made on the attorney unless the court orders service on the party.

- (2) *Service in General.* A paper is served under this rule by:
- (A) handing it to the party or attorney;
  - (B) leaving it at the party's dwelling or usual place of abode with someone of suitable age and discretion who resides there;
  - (C) leaving it at the attorney's office with a clerk or other person in charge;
  - (D) mailing it by first-class mail to the party's or attorney's last known address—in which event service is complete upon mailing;
  - (E) sending it by electronic means as permitted or required by administrative order or as consented to in writing by the party or attorney—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
  - (F) delivering it by any other means that the party or attorney consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

### **(c) PROVING SERVICE.**

(1) *In General.* Proof of service of filings required or permitted to be served (other than those for which a method of proof is prescribed elsewhere in these rules or by statute) must be filed before any other action is taken on that filing. The proof must show the date and manner of service on the parties and may be made by:

- (A) written acknowledgment or waiver of service signed by the person to be served;
- (B) affidavit of the person making service or delivery;
- (C) certificate of a member of the Bar of this court; or
- (D) other proof satisfactory to the court.

(2) *Rule 4 Service.* When a party is required to serve the other party in the manner provided for service of summons in Rule 4, proof of service must be made in accordance with Rule 4.

(3) *Amending Proof.* The court may at any time allow the proof of service to be amended or supplied, unless to do so would result in material prejudice to a party.

(4) *Failure to Make Proof of Service.* Failure to make proof of service will not affect the validity of service.

(d) FILING.

(1) *Required Filings.* Any paper after the complaint or petition that is required to be served and for which the proof of service is a certificate of service must be filed with the court within 7 days after service. When proof of service is by acknowledgment or waiver of service or by affidavit of the person making service, the paper may be filed with the court prior to the filing of the proof of service. The following discovery requests and responses must not be filed except as provided in Rule 5(d)(2) or until they are used in the proceeding: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(2) *Discovery Papers and Deposition Transcripts.*

(A) *Without Leave of Court.* Discovery requests and responses may be filed, without leave of court, if they are appended to a motion or opposition to which they are relevant.

(B) *By Court Order.* If not appended to a motion or opposition under Rule 5(d)(2)(A), a party may only file discovery requests and responses by court order.

(C) *Retaining Discovery Papers.* The requesting party must retain the original discovery paper, and must also retain personally, or make arrangements for the reporter to retain, in their original and unaltered form, any deposition transcripts until the case is concluded in this court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any appeal or petition has been decided.

(D) *Certificate Regarding Discovery.* A "CERTIFICATE REGARDING DISCOVERY," setting forth all discovery that has occurred, must be filed with the court as an attachment to:

(i) any motion regarding discovery;

(ii) any opposition to a dispositive motion based on the need for discovery; and

(iii) any motion to extend scheduling order dates.

(3) *How Non-Electronic Filing Is Made.* A paper is filed by delivering it to the clerk's office.

(4) *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. A paper filed electronically is a written paper for the purposes of these rules. 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 District of Columbia 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)(4)(B)(i) and (ii) apply to him or her except that no District of Columbia 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. Except as provided in Rule 5(d)(5)(B), 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 the provisions of these rules, statutes, or administrative order.

(F) *Who Must Electronically File*. By statute, rule, or administrative order, all attorneys representing parties may be required to electronically file.

(G) *Who May Electronically File*. By statute, rule, or administrative order, any self-represented party, who has consented in writing, may electronically file and serve documents and may be electronically served, if such activities are provided for by the court's eFiling program.

(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.

(5) *Exceptions to Electronic Filing*.

(A) *Documents Filed Under Seal*. A motion to file documents under seal must be electronically filed and served. But the documents to be filed under seal must be filed in paper form, unless a different procedure is required by statute, rule, the court, or administrative order. Documents filed under seal should be clearly marked as such by the filing party.

(B) *Affidavits of Service of Process*. Affidavits of service of process must be filed in paper form, unless a different procedure is required by statute, rule, the court, or administrative order.

(C) *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.

(D) *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 any proposed order must be emailed to the judge's eService email address in a format that can be edited (i.e., a non-write protected format).

## COMMENT TO 2018 AMENDMENTS

This rule was amended to make it more consistent with Civil Rule 5. A provision for electronic service was added, and the provision for service by facsimile was deleted. Consistent with current practice in the domestic relations branch, the provision for filing with a judge or magistrate judge, who would then transmit the papers to the clerk, was deleted, but it does not affect the court's discretion to regulate the delivery of papers, letters, or emails to chambers.

Filing and service of reports by guardians ad litem are generally left to orders in individual cases. These reports are also subject to the *Practice Standards for Guardians ad Litem In Custody and Related Consolidated Cases*, D.C. Super. Ct. Admin. Order No. 14-01 (January 24, 2014).

## COMMENT

Pursuant to paragraph (a), if a new or additional claim is asserted against a party in default, that party must be served in the manner provided for service of summons in SCR-Dom. Rel. 4. Paragraph (b)(2) requires that service of post-judgment motions also be made by summons pursuant to SCR-Dom. Rel. 4 where the appearance of counsel of the party to be served has been terminated, or where the party was not represented by counsel and 60 days has elapsed since the judgment. 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, or any paper related to a motion, hand-deliver a copy of such motion or paper to the chambers of the judicial officer assigned to the case unless the original paper has been mailed, in which instance the courtesy copy can likewise be mailed. Note, however, that original papers shall not be filed with a judicial officer, unless expressly permitted by a Court order, oral or written.