

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Notice of Proposed Amendments to Rule 4, 6, 15, 84 of the Rules of Civil Procedure and to Rule 16, 45, 62 of the Rules of Criminal Procedure

The District of Columbia Superior Court Rules Committee recently completed review of proposed amendments to Rule 4, 6, 15, and 84 of the Superior Court Rules of Civil Procedure and to Rule 16, 45, and 62 of the Superior Court Rules of Criminal Procedure. The Rules Committee will recommend to the Superior Court Board of Judges that the amendments be approved and adopted unless, after consideration of comments from the Bar and the general public, the proposed amendments are withdrawn or modified.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 April 24, 2024. Comments may be emailed 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 public. New language is underlined, and deleted language is stricken through.

[Civil] Rule 4. Summons

(c) SERVICE.

(1) In General. A summons must be served with a copy of the complaint, the Initial Order setting the case for an initial scheduling and settlement conference, any addendum to that order, any order under Rule 4(e)(3) permitting an alternative method of service, and any other order directed by the court to the parties at the time of filing. The plaintiff is responsible for having the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(7) Emergency Declaration Authorizing Alternative Methods of Service.

(A) In general. To the extent authorized by emergency order of the Chief Judge pursuant to D.C. Code § 11-947, service on any defendant described in Rule 4(e), (h)(1), (i), (j)(2), and (j)(3) may be effected using a method of service that is reasonably calculated to give actual notice of the action to the party to be served.

(B) Diligent Efforts Not Required. Unless otherwise ordered by the court, the serving party is not required to make diligent efforts to accomplish service by methods prescribed by Rule 4(e)(3)(C) in the event of an emergency declaration under Rule 4(c)(7)(A).

(C) Proof of Service. The proof of service filed by the serving party must establish that the alternative method used was reasonably calculated to give actual notice of the action to the party being served.

(d) [Omitted].

(e) 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 in the state where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons, complaint, Initial Order, any addendum to that order, and any other 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.

(3) *Alternative Methods of Service.*

(A) *In General.* If the court determines that, after diligent effort, a party has been unable to accomplish service by a method prescribed in Rule 4(c) or (e)(1)-(2), the court may permit an alternative method of service that the court determines is reasonably calculated to give actual notice of the action to the party to be served.

(B) *Examples.* Alternative methods of service include:

(i) delivering a copy to the individual's employer by leaving it at the individual's place of employment with a clerk or other person in charge;

(ii) transmitting a copy to the individual by electronic mail if the serving party:

(a) shows that the party to be served used this method for successful communication within the past 6 months; and

(b) sends a copy, by first class mail, to the last-known business or residential address of the person to be served; or

(iii) any other manner that the court deems just and reasonable.

(C) *Proof of Diligent Efforts.* The party seeking to use an alternative method of service must file a motion with an affidavit specifying the diligent efforts to serve by methods prescribed in Rule 4(c) or (e)(1)-(2).

(D) *Proof of Service.* The court may specify how the party must prove that service was accomplished by the alternative method.

(g) SERVING A MINOR OR AN 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 and -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(f)(2)(A), (f)(2)(B), or (f)(3).

COMMENT TO 2024 AMENDMENTS

[New subsection \(c\)\(7\) implements the applicable provisions of new *Federal Rule of Civil Procedure 87*, which was adopted in 2023. Subsection \(g\) has been amended consistent with the general restyling of the Superior Court rules.](#)

COMMENT TO 2021 AMENDMENTS

New subsection (e)(3) permits the court to authorize an alternative means of service if the serving party is unable to accomplish service using a traditional method and if the alternative method is reasonably calculated to give actual notice to the party being served. Subsection (e)(4) permits the court to authorize posting on the court's website when a plaintiff is unable to pay the cost of publication.

[Civil] Rule 6. Computing and Extending Time; Time for Motion Papers

(a) COMPUTING TIME.

(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, District of Columbia Emancipation Day, Memorial Day, Juneteenth [National Independence 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.

(C) [Omitted]

(b) EXTENDING TIME.

(1) *In General*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if the request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions*. A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

[\(3\) *Emergency Declaration*. Notwithstanding Rule 6\(b\)\(2\), the Court may, by order, extend the time to act under Rules 50\(b\) and \(d\), 52\(b\), 59\(b\), \(d\), and \(e\), and 60\(b\), to the extent authorized by emergency order of the Chief Judge pursuant to D.C. Code § 11-947.](#)

[COMMENT TO 2024 AMENDMENTS](#)

[Subsection \(a\)\(6\)\(A\) has been amended to add the full title of the Juneteenth holiday consistent with the 2023 amendments to *Federal Rule of Civil Procedure 6\(a\)\(6\)\(A\)*. New subsection \(b\)\(3\) has been added in response to subsection \(c\)\(2\)\(A\) of new *Federal Rule of Civil Procedure 87*. The new federal rule permits an extension of no more than 30 days; this new Rule 6\(b\)\(3\), consistent with D.C. Code § 11-947, contains no such limitation.](#)

COMMENT TO 2022 AMENDMENTS

Subsection (a)(6)(A) has been amended to include District of Columbia Emancipation Day and Juneteenth in the definition of legal holiday.

[Civil] Rule 15. Amended and Supplemental Pleadings

(a) AMENDMENTS BEFORE TRIAL.

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course ~~within~~no later than:

(A) 21 days after serving it; or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

COMMENT TO 2024 AMENDMENT

Subsection (a)(1) has been amended to incorporate the 2023 amendments to *Federal Rule of Civil Procedure 15* to clarify that the right to amend a pleading continues without interruption until 21 days after the earlier of the events described in subsection (a)(1)(B).

[Civil] Rule 84. Forms

The forms in the Appendix of Forms suffice under these rules and illustrate the simplicity and brevity that these rules contemplate. [Any form contained within the Appendix of Forms or referred to in any court rule governing proceedings in any branch of the Civil Division of the Superior Court may be modified in the discretion of the Chief Judge, the Clerk of the Court, or a designee of either.](#)

COMMENT TO 2024 AMENDMENTS

[This rule has been amended to clarify that any form used in the Civil Division may be modified in the discretion of the Chief Judge, the Clerk of the Court, or a designee of either.](#)

COMMENT TO 2017 AMENDMENTS

In 2015, *Federal Rule of Civil Procedure 84* was abrogated because there were other sources for forms—including court websites and law libraries. Any necessary forms were directly incorporated into the relevant rule (for example, former federal Forms 5 and 6 were incorporated into Federal Rule 4). This approach was rejected as inconsistent with the needs and processes of the Superior Court.

COMMENT

Identical to Federal Rule of Civil Procedure 84

[Civil] Rule 87. [\[Omitted\]](#)

COMMENT

Federal Rule of Civil Procedure 87, which addresses civil rules emergencies, is not incorporated. Instead, the applicable provisions of subsection (c)(1) of the federal rule dealing with emergency alternative service have been incorporated into Rule 4, and the applicable provisions of subsection (c)(2)(A) of the federal rule dealing with emergency extension of time to file certain motions have been incorporated into Rule 6.

[Criminal] Rule 16. Discovery and Inspection

(b) DEFENDANT'S DISCLOSURE.

(1) *Information Subject to Disclosure.*

(A) *Documents and Objects.* If a defendant requests disclosure under Rule 16(a)(1)(E) and the government complies, then the defendant must permit the government, upon request, to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items if:

- (i) the item is within the defendant's possession, custody, or control; and
- (ii) the defendant intends to use the item in the defendant's case-in-chief at trial.

(B) *Reports of Examinations and Tests.* If a defendant requests disclosure under Rule 16(a)(1)(F) and the government complies, the defendant must permit the government, upon request, to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if:

- (i) the item is within the defendant's possession, custody, or control; and
- (ii) the defendant intends to use the item in the defendant's case-in-chief at trial, or intends to call the witness who prepared the report and the report relates to the witness's testimony.

(C) *Expert Witnesses.*

(i) *Duty to Disclose.* At the government's request, the defendant must disclose to the government, in writing, the information required by Rule 16(b)(1)(C)(iii) for any expert testimony that the defendant intends to use as evidence during the defendant's case-in-chief at trial, if—

- the defendant requests disclosure under Rule 16(a)(1)(G) and the government complies; or
- the defendant has given notice under Rule 12.2(b) of an intent to present expert testimony on the defendant's mental condition.

(ii) *Time to Disclose.* The court must set a time for the defendant to make the defendant's disclosures. The time must be sufficiently before trial to provide a fair opportunity for the government to meet the defendant's evidence.

(iii) *Contents of the Disclosure.* The disclosure for each expert witness must contain:

- a complete statement of all opinions that the defendant will elicit from the witness in its case-in-chief;
- the bases and reasons for them;
- the witness's qualifications, including a list of all publications authored in the previous 10 years; and
- a list of all other cases in which, during the previous 4 years, the witness has testified as an expert at trial or by deposition.

(iv) *Information Previously Disclosed.* If the defendant previously provided a report under Rule 16(b)(1)(B) that contained information required by Rule 16(b)(1)(C)(iii), that information may be referred to, rather than repeated, in the expert-witness disclosure.

(v) *Signing the Disclosure.* The witness must approve and sign the disclosure, unless the defendant:

- states in the disclosure why it could not obtain the witness's signature through reasonable efforts; or

• has previously provided under Rule 16(b)(1)(B)(a)(1)(F) a report, signed by the witness, that contains all the opinions and the bases and reasons for them required by Rule 16(b)(1)(C)(iii).

(vi) Supplementing and Correcting a Disclosure. The defendant must supplement or correct its disclosures in accordance with Rule 16(c).

(2) *Information Not Subject to Disclosure*. Except for scientific or medical reports, Rule 16(b)(1) does not authorize discovery or inspection of:

(A) reports, memoranda, or other documents made by the defendant, or the defendant's attorney or agent, during the case's investigation or defense; or

(B) a statement made to the defendant, or the defendant's attorney or agent, by:

(i) the defendant;

(ii) a government or defense witness; or

(iii) a prospective government or defense witness.

COMMENT TO 2024 AMENDMENTS

Subsection (b)(1)(C)(v) has been amended to incorporate the 2023 amendments to Federal Rule of Criminal Procedure 16 which corrected the reference in subsection (b)(1)(C)(v) to expert reports previously provided by the defense under subsection (b)(1)(B).

COMMENT TO 2023 AMENDMENTS

Subsections (a)(1)(G) and (b)(1)(C) of this rule have been amended to incorporate the 2022 amendments to Federal Rule of Criminal Procedure 16 regarding the parties' obligations to disclose information about expert testimony.

[Criminal] 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.

(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, [District of Columbia Emancipation Day](#), Memorial Day, [Juneteenth National Independence 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.

COMMENT TO 2024 AMENDMENTS

Subsection (a)(6)(A) has been amended to include [District of Columbia Emancipation Day](#) and [Juneteenth National Independence Day](#) in the definition of legal holiday.

[Criminal] Rule 62. Criminal Rules Emergency

(a) CONDITIONS FOR AN RULES EMERGENCY.

(1) *In General.* The Chief Judge may declare or extend a ~~rules-~~Criminal Rules emergency for a period that totals 14 days or less when the Chief Judge ~~finds-~~determines that:

(A) extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to the court, substantially impair the court's ability to perform its functions in compliance with the other criminal rules; and

(B) no feasible alternative measures would ~~eliminate-~~sufficiently address the impairment within a reasonable time.

(2) *Extended Time Period.* The Chief Judge may declare a rules emergency for a period of more than 14 days, or an extension of a rules emergency past the 14th day after the start of the rules emergency, if:

(A) the Chief Judge makes the findings required by Rule 62(a)(1)(A) and (B); and

(B) the Joint Committee consents.

(b) DECLARING AN RULES EMERGENCY.

(1) *Content.* The declaration of a rules emergency or an extension of that rules emergency must ~~state:~~

(A) state which provisions in Rule 62(~~ed~~) and (~~de~~) are effective during the particular rules emergency; and

(B) be limited to a date stated period of; no ~~later-~~more than 90 days ~~from the date of the declaration, on which the declaration will terminate.~~

(2) ~~*Additional Declarations; Early Termination.*~~ The Chief Judge ~~:~~

~~—(A) may issue additional declarations, consistent with Rule 62(a), if emergency conditions change or persist; and~~

~~—(B) must terminate a declaration before its stated the termination date when the Chief Judge finds that a rules emergency no longer exists.~~

(3) Additional Declarations. The Chief Judge may issue additional declarations consistent with Rule 62(a).

(c) CONTINUING A PROCEEDING AFTER A TERMINATION. Termination of a declaration ends the court's authority under Rule 62(d) and (e). But if a particular proceeding is already underway and resuming compliance with these rules for the rest of the proceeding would not be feasible or work an injustice, it may be completed with the defendant's consent as if the declaration had not terminated.

(d) AUTHORITY TO AUTHORIZED DEPARTURES FROM THESE RULES AFTER A DECLARATION.

(1) *Public Access to a Proceedings.* If emergency conditions ~~preclude~~substantially impair the public's in-person attendance ~~by the public~~ at a public proceeding, the court must provide reasonable alternative access ~~to that proceeding~~contemporaneous if feasible.

(2) *Signing or Consenting for a Defendant.* If ~~these any~~ rules, including this rule, requires a defendant's signature, written consent, or written waiver ~~—,~~ and emergency conditions limit a defendant's ability to sign ~~—,~~ the court may sign for the defendant if the defendant, after consultation with counsel, consents on the record. ~~—~~ If the defendant is pro se, the court may sign for the defendant if the defendant consents on the record.

(3) *Issuing a summons.* When these rules require the court to issue an arrest warrant on misdemeanor charges only, the court may issue a summons instead if it finds that:

(A) because of the emergency conditions, the use of a warrant would create a significant risk to health or safety that outweighs the risk of dangerousness to any other person or the community; and

(B) the government has not demonstrated good cause for issuing a warrant instead of the summons.

(4) *Alternate Jurors*. The court may impanel more than 6 alternate jurors and, consistent with Rule 24(c)(4), may allow additional preemptory challenges proportionate to the number of additional alternates.

~~(ed)~~ **AUTHORITY TO AUTHORIZED USE OF VIDEOCONFERENCING AND TELECONFERENCING AFTER A DECLARATION.**

(1) *Videoconferencing for Plea, Trial, and Sentencing Proceedings Under Rule 43(b)(2)*. This rule does not modify the court's authority to use videoconferencing for a proceeding under Rule 43(b)(2). ~~But, except that~~ if emergency conditions ~~significantly substantially~~ impair the defendant's opportunity to consult with counsel, the court must ensure that the defendant will have an adequate opportunity to do so confidentially immediately before, during, and at the conclusion of that proceeding.

(2) *Videoconferencing for Certain Proceedings at Which the Defendant Has a Right to Be Present*. Except for felony trials and as otherwise provided under Rule 62~~(de)~~(1) and (3), for a proceeding at which a defendant has a right to be present, the court may use videoconferencing if:

(A) the Chief Judge finds that emergency conditions substantially impair the court's ability to hold ~~an~~ in-person proceedings within a reasonable time;

(B) the court finds that the defendant will have an adequate opportunity to consult confidentially with counsel immediately before, during, and at the conclusion of the proceeding; and

(C) the defendant consents on the record after consulting with counsel.

(3) *Videoconferencing for Felony Pleas and Sentencings*. For a felony proceeding under Rule 11 or 32, the court may use videoconferencing only if, in addition to the requirements in Rule 62~~(de)~~(2)(A) and (B):

(A) the Chief Judge finds that emergency conditions substantially impair the court's ability to hold in-person felony pleas and sentencings in person; and

(B) the defendant consents on the record after consulting with counsel.

(4) *Teleconferencing by One or More Participants*. ~~When videoconferencing is authorized under Rule 5 or 10, or when the requirements for videoconferencing in this rule have been met, the~~ The court may conduct the proceeding, in whole or in part, by teleconferencing if:

(A) the requirements under any applicable rule, including this rule, for conducting the proceeding by videoconferencing have been met;

(B) the court finds that videoconferencing is not reasonably available for any person who would participate by teleconference ~~cannot be provided for the proceeding within a reasonable time;~~ and

(BC) the defendant consents on the record after consulting with counsel.

~~(e) EFFECT OF A TERMINATION. Terminating a declaration ends the court's authority under Rule 62(c) and (d) to depart from the criminal rules. But if a particular proceeding is already underway and complying with these rules for the rest of the proceeding would be infeasible or work an injustice, it may be completed as if the declaration had not terminated.~~

COMMENT TO 2024 AMENDMENTS

This rule has been amended to incorporate provisions of new *Federal Rule of Criminal Procedure 62*, an earlier draft of which the Superior Court adopted in relevant part in 2021 during the COVID-19 pandemic. The changes between the draft federal rule adopted by the

Superior Court in 2021 and the final FRCRP 62 were largely technical and semantic. For example, former subsection (b)(2)(A) dealing with both Additional Declarations and Early Termination was split into separate subsections (b)(2) and (b)(3), consistent with the final federal rule. Likewise, former section (e) pertaining to the effect of termination now appears at section (c) and adopts the new requirement in the final federal rule that the defendant consent to continuing a proceeding under the emergency provisions after a declaration ends. However, this amendment did not remove the summons provision (formerly in subsection (c)(3), now in subsection (d)(3)) which was stricken from the final federal rule, because it is appropriate to Superior Court practice in emergency circumstances.

COMMENT TO 2021 AMENDMENTS

This new rule gives the Chief Judge the ability to declare a rules emergency and authorize the court to depart from certain provisions in other criminal rules. The Joint Committee must consent if the Chief Judge declares a rules emergency for a period of more than 14 days or an extension of a rules emergency past the 14th day after the start of the rules emergency. The Chief Judge's declaration must specify which provisions in sections (c) and (d) are effective during the rules emergency. The provisions in section (d), if included in the declaration, are not intended to modify the court's authority to use videoconferencing for a proceeding under Rules 5 and 10.