

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 21-02

(Temporarily amending Super. Ct. Dom. Vio. R. 5)

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the Board of Judges of the Superior Court approved temporary amendments to Rule 5 of the Rules Governing Proceedings in the Domestic Violence Division; and

WHEREAS, the temporary amendments do not modify a federal criminal or civil rule; it is

ORDERED, that Rule 5 of the Rules Governing Proceedings in the Domestic Violence Division is hereby temporarily enacted and amended as set forth below; and it is further

ORDERED, that the temporary amendments shall take effect immediately, shall govern all proceedings hereafter commenced and insofar as just and practicable all pending proceedings, and shall remain in effect until December 31, 2021.

Rule 5. Serving a Petition or Other Filing

(a) SERVING A PETITION.

(1) *In General.* A petition for civil protection order must be served with a copy of the notice of hearing and order to appear and any temporary protection order issued by the court. The petitioner is responsible for arranging service on the respondent.

(2) *By Whom.* Any person who is at least 18 years of age and not a party or witness may serve the petition, notice of hearing and order to appear, and any temporary protection order issued by the court. The petitioner may request that the clerk provide the documents to a law enforcement officer for service.

(3) *Manner of Service.*

(A) *In General.* An individual—other than a minor or an incompetent person—may be served by:

(i) personally delivering to the individual a copy of the petition, notice of hearing and order to appear, and any temporary protection order issued by the court; 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) *Serving a Minor.* A minor must be served by following District of Columbia law (D.C. Code § 13-332 (2012 Repl.)) or the state law for serving like process on such a respondent in an action brought in the courts of general jurisdiction of the state where service is made. A minor respondent's custodial parent, guardian, or custodian must also be served with a copy of the petition, notice of hearing and order to appear, and any temporary protection order issued by the court.

(C) *Serving an Incompetent Person.* An incompetent person must be served by following District of Columbia law (D.C. Code § 13-333 (2012 Repl.)) or the state law for serving like process on such a respondent in an action brought in the courts of general jurisdiction of the state where service is made.

(D) *Alternative Service.* ~~If at the time of the hearing, the court determines that, after diligent effort, a petitioner has been unable to accomplish service by a method listed in Rule 5(a)(3)(A)~~

(i) *In General.* Upon motion, the court may permit an alternative method of service if the petitioner demonstrates that:

(a) the alternative method is reasonably calculated to give actual notice of the action to the respondent; and

(b) the petitioner is unable to accomplish service by a method listed in Rule 5(a)(3)(A).

(ii) *Examples.* 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) mailing a copy to the individual by registered or certified mail, return receipt requested;

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

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

(4) *Sending Notice When Petitioner Is a Minor.*

(A) *In General.* Unless the court determines that sending notice would be contrary to the best interests of the minor, the court must send a copy of any temporary protection

order issued, along with the notice of the hearing and order to appear, to the parent, guardian, or custodian with whom the minor resides if the minor:

- (i) files a petition for civil protection without a parent, guardian, or custodian; and
- (ii) is residing with a parent, guardian, or custodian.

(B) *Notice to Other Person.* If the court does not send notice to the parent, guardian, or custodian with whom the minor resides, the court may send notice to any other parent, guardian, custodian, or other appropriate adult.

(b) SERVING OTHER FILINGS.

(1) *In General.* Any motion or other document filed after the original petition must be served, on the other party, along with any notice of hearing and order to appear issued by the clerk at the time of filing. Except as provided in Rule 5(b)(4), the motion or other document and any notice of hearing and order to appear may be served:

- (A) by first class mail;
- (B) in the manner provided in Rule 5(a)(3) for service of a petition; or
- (C) by e-mail in accordance with Rule 5(b)(3).

(2) *Serving an Attorney.* If a party is represented by an attorney, service under Rule 5(b) must be made on the attorney unless the court orders service on the party.

(3) *E-mail Service.*

(A) *Attorney.* An attorney may consent to accepting service by e-mail by sending an e-mail indicating consent to the other party or the other party's attorney from the e-mail address to be used for service. An attorney may revoke consent through written or e-mail notice to the other party or the other party's attorney.

(B) *Self-Represented Party.* If a self-represented party consents to receive service by e-mail, the party must file a notice with the clerk's office stating the e-mail address to be used for service. The consent is effective only for the case in which the notice of consent is filed. A self-represented party may revoke consent to e-mail service by filing a notice with the clerk's office and sending notice to the other party.

(4) *Personal Service Required.* The following motions and other documents filed after the original petition must be served in the manner provided in Rule 5(a)(3) for service of a petition:

- (A) a written amended or supplemental petition;
- (B) a reinstated petition;
- (C) a motion to set aside default order; and
- (D) a motion for contempt.

(c) PROVING SERVICE.

(1) ~~Personal Service~~ Under Rule 5(a)(3).

(A) *In General.* Except as provided in Rule 5(c)(1)(C) and (c)(2), proof of service for documents served in accordance with Rule 5(a)(3) must be by the server's affidavit.

(B) *Form and Content.* Proof of service may be provided on a return of service form maintained by the clerk. The return of service must be made under oath and must include:

- (i) the court;
- (ii) the caption and number of the case;
- (iii) the server's name, residential or business address, and the fact that he or she is 18 years of age or older;
- (iv) the documents served;

(v) the date, time, and place of service; and
(vi) if service was made by delivery to a person other than the party, then specific facts from which the court can determine that the person to whom the documents were delivered meets the appropriate qualifications for receipt of service under Rule 5(a)(3)(A)(ii) ~~or (a)(3)(D)(i)~~.

(C) *Law Enforcement Officer*. If a law enforcement officer serves the documents, the return of service need not be under oath and may be transmitted by facsimile copy.

(2) *Alternative Service*. For service under Rule 5(a)(3)(D), the court must specify how the petitioner must prove that service was accomplished by the alternative method.

~~(3) *Other Methods of Service Under Rule 5(b)*~~. Proof of service for motions and other documents served in accordance with Rule 5(b) must be by:

- (A) written acknowledgment;
- (B) the server's affidavit;
- (C) certificate of a member of the District of Columbia Bar; or
- (D) other proof satisfactory to the court.

(d) FAILURE TO MAKE PROOF; AMENDING PROOF. Failure to make proof will not affect the validity of service. The court may at any time allow the proof to be amended or supplied, unless it would result in material prejudice to a party.

COMMENT TO 2021 TEMPORARY AMENDMENTS

The alternative service provisions in subsection (a)(3)(D) have been modified to address issues raised by the COVID-19 pandemic. The temporary amendments permit a petitioner to file an alternative service motion prior to the hearing. The petitioner must show that the alternative method of service is reasonably calculated to give actual notice and that the petitioner is unable to accomplish service by a traditional method listed in subsection (a)(3)(A). Although the language requiring a petitioner to make diligent efforts at service by a traditional method has been temporarily replaced due to the pandemic, a petitioner generally must attempt service by a traditional method unless a pandemic-related reason makes doing so impossible or impracticable in the circumstances.

COMMENT TO 2017 AMENDMENTS

Formerly Rule 3, this rule has been renumbered as Rule 5. The rule, which has been amended consistent with the stylistic changes to the civil rules, now includes procedures for service of filings after the original petition.

Rule 5. Serving a Petition or Other Filing

(a) SERVING A PETITION.

(1) *In General.* A petition for civil protection order must be served with a copy of the notice of hearing and order to appear and any temporary protection order issued by the court. The petitioner is responsible for arranging service on the respondent.

(2) *By Whom.* Any person who is at least 18 years of age and not a party or witness may serve the petition, notice of hearing and order to appear, and any temporary protection order issued by the court. The petitioner may request that the clerk provide the documents to a law enforcement officer for service.

(3) Manner of Service.

(A) *In General.* An individual—other than a minor or an incompetent person—may be served by:

(i) personally delivering to the individual a copy of the petition, notice of hearing and order to appear, and any temporary protection order issued by the court; 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) *Serving a Minor.* A minor must be served by following District of Columbia law (D.C. Code § 13-332 (2012 Repl.)) or the state law for serving like process on such a respondent in an action brought in the courts of general jurisdiction of the state where service is made. A minor respondent's custodial parent, guardian, or custodian must also be served with a copy of the petition, notice of hearing and order to appear, and any temporary protection order issued by the court.

(C) *Serving an Incompetent Person.* An incompetent person must be served by following District of Columbia law (D.C. Code § 13-333 (2012 Repl.)) or the state law for serving like process on such a respondent in an action brought in the courts of general jurisdiction of the state where service is made.

(D) Alternative Service.

(i) *In General.* Upon motion, the court may permit an alternative method of service if the petitioner demonstrates that:

(a) the alternative method is reasonably calculated to give actual notice of the action to the respondent; and

(b) the petitioner is unable to accomplish service by a method listed in Rule 5(a)(3)(A).

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

(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) mailing a copy to the individual by registered or certified mail, return receipt requested;

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

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

(4) Sending Notice When Petitioner Is a Minor.

(A) *In General.* Unless the court determines that sending notice would be contrary to the best interests of the minor, the court must send a copy of any temporary protection order issued, along with the notice of the hearing and order to appear, to the parent, guardian, or custodian with whom the minor resides if the minor:

(i) files a petition for civil protection without a parent, guardian, or custodian; and

(ii) is residing with a parent, guardian, or custodian.

(B) *Notice to Other Person.* If the court does not send notice to the parent, guardian, or custodian with whom the minor resides, the court may send notice to any other parent, guardian, custodian, or other appropriate adult.

(b) SERVING OTHER FILINGS.

(1) *In General.* Any motion or other document filed after the original petition must be served, on the other party, along with any notice of hearing and order to appear issued by the clerk at the time of filing. Except as provided in Rule 5(b)(4), the motion or other document and any notice of hearing and order to appear may be served:

(A) by first class mail;

(B) in the manner provided in Rule 5(a)(3) for service of a petition; or

(C) by e-mail in accordance with Rule 5(b)(3).

(2) *Serving an Attorney.* If a party is represented by an attorney, service under Rule 5(b) must be made on the attorney unless the court orders service on the party.

(3) *E-mail Service.*

(A) *Attorney.* An attorney may consent to accepting service by e-mail by sending an e-mail indicating consent to the other party or the other party's attorney from the e-mail address to be used for service. An attorney may revoke consent through written or e-mail notice to the other party or the other party's attorney.

(B) *Self-Represented Party.* If a self-represented party consents to receive service by e-mail, the party must file a notice with the clerk's office stating the e-mail address to be used for service. The consent is effective only for the case in which the notice of consent is filed. A self-represented party may revoke consent to e-mail service by filing a notice with the clerk's office and sending notice to the other party.

(4) *Personal Service Required.* The following motions and other documents filed after the original petition must be served in the manner provided in Rule 5(a)(3) for service of a petition:

(A) a written amended or supplemental petition;

(B) a reinstated petition;

(C) a motion to set aside default order; and

(D) a motion for contempt.

(c) PROVING SERVICE.

(1) *Service Under Rule 5(a)(3).*

(A) *In General.* Except as provided in Rule 5(c)(1)(C) and (c)(2), proof of service for documents served in accordance with Rule 5(a)(3) must be by the server's affidavit.

(B) *Form and Content.* Proof of service may be provided on a return of service form maintained by the clerk. The return of service must be made under oath and must include:

(i) the court;

(ii) the caption and number of the case;

(iii) the server's name, residential or business address, and the fact that he or she is 18 years of age or older;

(iv) the documents served;

(v) the date, time, and place of service; and

(vi) if service was made by delivery to a person other than the party, then specific facts from which the court can determine that the person to whom the documents were

delivered meets the appropriate qualifications for receipt of service under Rule 5(a)(3)(A)(ii).

(C) *Law Enforcement Officer*. If a law enforcement officer serves the documents, the return of service need not be under oath and may be transmitted by facsimile copy.

(2) *Alternative Service*. For service under Rule 5(a)(3)(D), the court must specify how the petitioner must prove that service was accomplished by the alternative method.

(3) *Service Under Rule 5(b)*. Proof of service for motions and other documents served in accordance with Rule 5(b) must be by:

- (A) written acknowledgment;
- (B) the server's affidavit;
- (C) certificate of a member of the District of Columbia Bar; or
- (D) other proof satisfactory to the court.

(d) **FAILURE TO MAKE PROOF; AMENDING PROOF**. Failure to make proof will not affect the validity of service. The court may at any time allow the proof to be amended or supplied, unless it would result in material prejudice to a party.

COMMENT TO 2021 TEMPORARY AMENDMENTS

The alternative service provisions in subsection (a)(3)(D) have been modified to address issues raised by the COVID-19 pandemic. The temporary amendments permit a petitioner to file an alternative service motion prior to the hearing. The petitioner must show that the alternative method of service is reasonably calculated to give actual notice and that the petitioner is unable to accomplish service by a traditional method listed in subsection (a)(3)(A). Although the language requiring a petitioner to make diligent efforts at service by a traditional method has been temporarily replaced due to the pandemic, a petitioner generally must attempt service by a traditional method unless a pandemic-related reason makes doing so impossible or impracticable in the circumstances.

COMMENT TO 2017 AMENDMENTS

Formerly Rule 3, this rule has been renumbered as Rule 5. The rule, which has been amended consistent with the stylistic changes to the civil rules, now includes procedures for service of filings after the original petition.

* * *

By the Court:

Date: April 22, 2021



Anita M. Josey-Herring
Chief Judge

Copies to:

All Judges
All Magistrate Judges
All Senior Judges
Rita Blandino, Director, Domestic Violence Division
Library
Daily Washington Law Reporter
Laura Wait, Associate General Counsel