

## **Rule 5. Serving and Filing Pleadings and Other 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, 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, demand, or offer of judgment, or any similar paper.

(2) *If a Party Fails to Appear.* A pleading that asserts a new claim for relief against a party in default must be served on that party under Rule 4.

(3) *Seizing Property.* If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

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

(1) *Serving an Attorney.* If a party is represented by an attorney, service under this rule 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 person;
- (B) leaving it:
  - (i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or
  - (ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;
- (C) mailing it to the person's last known address—in which event service is complete upon mailing;
- (D) leaving it with the clerk's office if the person has no known address;
- (E) sending it to a registered user using the court's electronic-filing system or sending it by other electronic means that are permitted or required by administrative order or that the person consented to in writing—in which event service is complete upon sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or
- (F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) [Omitted].

### **(c) SERVING NUMEROUS DEFENDANTS.**

(1) *In General.* If an action involves an unusually large numbers of defendants, the court may, on motion or on its own, order that:

- (A) defendants' pleadings and replies to them need not be served on other defendants;
- (B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) *Notifying Parties*. A copy of every such order must be served on the parties as the court directs.

(d) FILING.

(1) *Required Filings*. Any paper after the complaint that is required to be served, other than those referred to in Rule 12-l(d) and (e), must be filed no later than 7 days after 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 Requests and Responses*.

(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) *Non-Electronic Filing*. A paper not filed electronically is filed by delivering it:

(A) to the clerk's office; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk's office.

(4) *Chambers Copy Required for Non-Electronic Filing*. When a party files, by non-electronic means, a motion, papers related to the motion (e.g., an opposition, exhibits, or a proposed order), pretrial statements, or other papers described in Rule 16(d) and (e), the party must deliver a chambers copy to a depository designated by the clerk's office for receipt of such papers by the assigned judge.

(A) *Motions*. With the chambers copy of a motion, the moving party must provide a proposed order.

(B) *Oppositions*. With the chambers copy of an opposition, the filing party must provide a proposed order.

(C) *Filing by Mail*. If the original document was mailed, the chambers copy may be mailed to chambers. But no other papers should be delivered to the judge's chambers unless the assigned judge so orders.

(5) *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. 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 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)(5)(B)(i) and (ii) apply to him or her except that no 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. 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 statute, administrative order, or other provisions of these rules.

(F) *By a Represented Person—Generally Required; Exceptions.* A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed by administrative order.

(G) *By an Unrepresented Person—When Allowed.* A person not represented by an attorney may electronically file. By using the electronic filing system, the person consents to being served electronically.

(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.

(6) *Same as a Written Paper.* A paper filed electronically is a written paper for purposes of these rules.

(7) *Special Requirements for and Exceptions to Electronic Filing.*

(A) *Documents Filed Under Seal.* Unless otherwise ordered by the court, a motion to file documents under seal must be electronically filed and served, and the documents to be filed under seal must be separately electronically filed and served with the motion.

(B) *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.

(C) *Chambers Copies*. 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.

(e) PRIVACY REQUIREMENTS. Privacy requirements are set forth in Rule 5.2.

## COMMENT TO 2022 AMENDMENTS

Consistent with the 2022 amendment to Rule 12-I, the reference to a memorandum of points and authorities was deleted from Rule 5(d)(4). Subsections (d)(5)(E)-(G) and subsection (d)(7)(C) were amended to address technical and functional changes necessary to implement the court's new case management system.

## COMMENT TO 2021 AMENDMENTS

Subsection (d)(4)(A) was amended to eliminate the requirement that the moving party provide an addressed envelope or mailing label with the chambers copy of a motion.

Subsection (d)(7)(A) was amended to require electronic filing and service not only of motions to file documents under seal but also of the documents to be filed under seal.

## COMMENT TO 2019 AMENDMENTS

This rule incorporates many of the 2018 amendments to *Federal Rule of Civil Procedure* 5. The Superior Court rule already contained specific electronic filing provisions, but these were amended and reorganized to be more consistent with the newly-added federal electronic filing provisions. For instance, the provision declaring that "a paper filed electronically is a written paper for purposes of these rules" was moved from subsection (d)(5)(A) to new subsection (d)(6). The documents excepted from electronic filing were then moved to new subsection (d)(7). The federal amendments to proof of service provisions are addressed in Rule 5-I. Finally, the reference to a judge's eService email address in subsection (d)(7)(C)(ii) was deleted as obsolete.

## COMMENT TO OCTOBER 2017 AMENDMENTS

Consistent with the Federal Rules of Civil Procedure, the provisions regarding privacy requirements appear in new Rule 5.2.

## COMMENT TO MARCH 2017 AMENDMENTS

Rule 5 differs substantially from *Federal Rule of Civil Procedure* 5, as amended in 2007.

Subsection (a)(1)(B) excludes language from the federal rule that permits courts to make exceptions to the requirement that every pleading subsequent to the original complaint be served on each of the parties when there is a large number of defendants. This omission allows the court to make such exceptions in all cases.

Subsection (a)(1)(E) omits the former reference to a designation of record on appeal. District of Columbia Court of Appeals Rule 10 is a self-contained provision for the record on appeal, and it provides for service. This provision has also been deleted from the federal rule. Deleted from subsection (a)(2) is the provision that no service need be made upon parties in default for failure to appear. It is required, for example, that a copy of a Rule 55-II(a) motion and affidavit be sent to a defendant who is in default. If new or additional claims are asserted against parties in default, then such parties must be served in the manner provided in Rule 4.

Subsection (b)(3) is omitted from this rule because it is inapplicable. The Superior Court does not supply parties with facilities to transmit electronically filed documents.

Section (d) differs substantially from its federal counterpart. It includes a significant amount of Superior Court specific material. Subsection (d)(1) is different in the following ways: 1) the substitution of language that specifies the 7-day period within which papers must be filed with the court; 2) the omission of language requiring a certificate of service; 3) the addition of a provision excluding papers filed under Rule 12-I(d)(2) and (e) from the filing requirements of section (d); and 4) the modification of language, which states that the specified discovery requests and responses must not be filed except as provided in subsection (d)(2) or until they are used in the proceeding.

Subsection (d)(2) is unique to the Superior Court rule. It provides exceptions for filing discovery papers. Additionally, it provides rules for retaining discovery papers and submitting certificates regarding discovery.

Subsection (d)(3) is the same as subsection (d)(2) of the federal rule except that the title has been modified and the phrase “clerk’s office” is substituted for “clerk” throughout.

Subsection (d)(4) is unique to the Superior Court rule. It provides the rules for submitting chambers copies. Specifically, it requires that any party filing a motion, any paper related to a motion or a pretrial statement and other papers described in Rule 16(d) and (e), deliver a chambers copy of the motion or papers to judge assigned to the case via a designated depository at the courthouse. If the original paper has been mailed, the copy can likewise be mailed. Note, as to this matter, original papers should never, unless ordered otherwise, be filed with a judge.

Subsection (d)(5) replaces subsection (d)(3) of the federal rule. This subsection provides the specific rules for electronically filing documents in the Superior Court.

Subsection (d)(6) is unique to the Superior Court rule. It provides exceptions to the mandatory electronic filing rules in subsection (d)(5). Certain documents may be filed conventionally if they meet the requirements in this subsection.

Subsection (d)(4) of the federal rule is omitted in its entirety from Superior Court Rule 5.

## COMMENT TO 2006 AMENDMENTS

This Rule expresses the Court's concern about access to, and dissemination of, private information in the Court's public records to the detriment of individuals whose

privacy is compromised simply because their otherwise private information is contained in court filings. The risk of invasion of privacy is heightened where the court's public records are made available through the internet. Although the Rule does not expressly prohibit all use of personal identifiers and other private information, such as home addresses, it is the policy of the Court that parties not include home addresses and other private information in any court filings unless it is necessary to the matter being litigated or is otherwise expressly required by statute or other Rules of the Court, such as, for example, Rules 16(a)(2), 10-1(b), and 4(l)(2).

## COMMENT

Several changes are made to Federal Rule of Civil Procedure 5. Deleted from paragraph (a) is the provision that no service need be made upon parties in default for failure to appear. It is required, for example, that a copy of a Rule 55-11(a)(3) affidavit be sent to a defendant who is in default. If new or additional claims are asserted against parties in default, then such parties must be served in the manner provided in Rule 4. Unlike the federal rule which permits courts to make exceptions to the requirement that every pleading subsequent to the original complaint be served upon each of the parties because of the large number of defendants, the local rule would allow the Court to make such exceptions in all cases. 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, any paper related to a motion or a pretrial statement and other papers described in SCR Civil 16(d) and (e), deliver a chambers copy of such motion or papers to judge assigned to the case via a designated depository at the Courthouse. If the original paper has been mailed, the copy can likewise be mailed. Note, as to this matter, original papers should never, unless ordered otherwise, be filed with a judge.