

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 22-04

(Amending Super. Ct. Sm. Cl. R. 3, 4, 18, and 19)

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the Board of Judges of the Superior Court approved amendments to Rules 3, 4, 18, and 19 of the Superior Court Rules of Procedure for the Small Claims and Conciliation Branch; and

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

ORDERED, that Rules 3, 4, 18, and 19 of the Superior Court Rules of Procedure for the Small Claims and Conciliation Branch are hereby enacted and amended as set forth below; and it is further

ORDERED, that the amendments shall take effect immediately and shall govern all proceedings hereafter commenced and insofar is just and practicable all pending proceedings.

Rule 3. Commencement of Actions

(a) IN GENERAL.

(1) *Filing the Statement of Claim.* Actions are commenced by filing a statement of claim, verification, and notice (together with an exact copy for each defendant), printed on plain white paper approximately 8 1/2 inches wide by 11 inches long.

(2) *Form of Pleading; Requirements.* The pleading must be in a form prescribed by the court. The statement of claim must contain a simple but complete statement of the plaintiff's claim and be accompanied by a copy of any contract, promissory note, or other instrument on which the claim is based.

(3) *Consumer Debt.* In an action initiated by a debt collector to collect a consumer debt as defined in D.C. Code § 28-3814, the statement of claim must include any information required by D.C. Code § 28-3814.

COMMENT TO 2022 AMENDMENTS

This rule has been amended to highlight the new pleading requirements included in emergency, temporary, and permanent legislation amending D.C. Code § 28-3814.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. Former section (b), which described the numbering and letter designation for cases, has been eliminated because it addressed internal administrative processes of the court.

Rule 4. Service of Process

(e) SERVING AN INDIVIDUAL WITHIN THE UNITED STATES.

(1) *In General.* Unless applicable law provides otherwise, an individual—other than a minor or an incompetent person—may be served anywhere in the United States by:

~~(A)~~ following District of Columbia law, or the state law for serving process in an action brought in courts of general jurisdiction in the state where service is made; or

~~(B)~~ doing any of the following:

~~(i)~~ delivering a copy of the materials required by Rule 4(a) to the individual personally;

~~(ii)~~ leaving a copy of the materials required by Rule 4(a) at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

~~(iii)~~ delivering a copy of the materials required by Rule 4(a) to an agent authorized by appointment or by law to receive service of process.

(2) *Alternative Methods of Service.*

(A) *In General.* If the court determines that, after diligent efforts, a party has been unable to accomplish service by a method prescribed in Rule 4(c) or (e)(1), the court may permit an alternative method of service, by a person who meets the requirement of Rule 4(b), 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).

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

(3) *Posting Order of Publication on the Court's Website.* In a case where the court has authorized service by publication, and on a finding that the plaintiff is unable to pay the cost of publishing without substantial financial hardship, the court may permit publication to be made by posting the order of publication on the court's website.

COMMENT TO 2022 AMENDMENTS

New subsection (e)(2) 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)(3) permits the court to authorize posting on the court's website when a plaintiff is unable to pay the cost of publication.

COMMENT TO 2019 AMENDMENTS

Subsection (m)(1) was updated to include a reference to new Rule 19, which identifies debt collection and subrogation cases subject to the 90-day time limit for proof of service.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. The rule has also been reorganized to more closely mirror Civil Rule 4, including the addition of specific provisions for serving an individual within the United States; serving a minor or incompetent person within the United States; serving a corporation, partnership, or association within the United States; serving the District of Columbia, an agency or officer of the District of Columbia, or other government entities subject to suit; and serving required materials after the court grants a motion for extension of time to serve. Finally, the time limit for filing proof of service in collections cases has been reduced from 180 to 90 days.

Rule 18. Attorney's Fees

(a) IN GENERAL. Attorney's fees are not awarded in an action in this branch unless the plaintiff's attorney:

(1) provides to the court the instrument or agreement on which the claim for attorney's fees is based;

(2) certifies in writing that the fee claimed is payable only and entirely to him or her;
~~and~~

(3) certifies in writing that he or she has no agreement with the plaintiff and will not enter one that will make any part of the attorney's fees payable to anyone other than the attorney; ~~and~~

(4) in an action initiated by a debt collector to collect a consumer debt as defined in D.C. Code § 28-3814, provides any information required by D.C. Code § 28-3814.

(b) LIMITATION ON ATTORNEY'S FEES. Attorney's fees awarded under this rule may not exceed:

(1) 15 percent of the plaintiff's recovery unless the plaintiff establishes exceptional circumstances; or

(2) in an action initiated by a debt collector to collect a consumer debt as defined in D.C. Code § 28-3814, any limit in D.C. Code § 28-3814.

COMMENTS TO 2022 AMENDMENTS

The rule was amended to reflect the provisions concerning attorney's fees included in emergency, temporary, and permanent legislation amending D.C. Code § 28-3814.

COMMENT TO 2018 AMENDMENTS

Formerly Rule 19, this rule has been renumbered as Rule 18. This rule has also been amended consistent with the stylistic changes to the civil rules.

Rule 19. Collection and Subrogation Cases

(b) PARTICULAR PLEADING REQUIREMENTS.

(3) *Prejudgment Interest.*

(A) *In General.* If the plaintiff's claim includes a claim for prejudgment interest, the statement of claim must include:

- (i) the prejudgment interest rate;
- (ii) the date from which the interest has run;
- (iii) the total dollar amount of prejudgment interest already accrued as of a date specified by the plaintiff and not more than 30 days prior to the filing of the action; and
- (iv) if applicable, a statement that the amount of prejudgment interest is only good through the stated date and that the amount will increase after that date as interest continues to accrue.

(B) *Closed or Charged-Off Account.* In actions based on accounts described in Rule 19(a)(1) that have been closed or charged off, the term "prejudgment interest" refers only to interest added or charged to the account after the account closing or charge-off.

(4) *Consumer Debt.* In an action initiated by a debt collector to collect a consumer debt as defined in D.C. Code § 28-3814, the statement of claim must include any information required by D.C. Code § 28-3814.

COMMENT TO 2022 AMENDMENTS

This rule has been amended to highlight the new pleading requirements included in emergency, temporary, and permanent legislation amending D.C. Code § 28-3814.

COMMENT TO 2019 AMENDMENTS

This rule is new; it establishes specific processes and procedures for small claims actions identified in section (a). As used in this rule, "charge off" means the act of a creditor that treats an account receivable or other debt as a loss or expense because payment is unlikely.

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

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COMMENT TO 2018 AMENDMENTS

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- (iv) if applicable, a statement that the amount of prejudgment interest is only good through the stated date and that the amount will increase after that date as interest continues to accrue.

(B) *Closed or Charged-Off Account.* In actions based on accounts described in Rule 19(a)(1) that have been closed or charged off, the term "prejudgment interest" refers only to interest added or charged to the account after the account closing or charge-off.

(4) *Consumer Debt.* In an action initiated by a debt collector to collect a consumer debt as defined in D.C. Code § 28-3814, the statement of claim must include any information required by D.C. Code § 28-3814.

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* * *

By the Court:

Date: March 17, 2022



Anita M. Josey-Herring
Chief Judge

Copies to:

All Judges
All Magistrate Judges
All Senior Judges
Lynn Magee, Director, Civil Division
Library
Daily Washington Law Reporter
Laura Wait, Associate General Counsel
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