SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 21-01

(Amending Super. Ct. Civ. R. 4, 5, 5-III, 10-I, 12-I, 16, 40-III, and 45)

WHEREAS, pursuant to D.C. Code § 11-946, the Board of Judges of the Superior Court approved amendments to Superior Court Rules of Civil Procedure 4, 5, 5-III, 10-I, 12-I, 16, 40-III, and 45; and

WHEREAS, pursuant to D.C. Code § 11-946, the amendments to these rules, to the extent that they modify the federal rules, have been approved by the District of Columbia Court of Appeals; it is

ORDERED, that Superior Court Rules of Civil Procedure 4, 5, 5-III, 10-I, 12-I, 16, 40-III, and 45 are hereby amended and enacted as set forth below; and it is further

ORDERED, that the amendments shall take effect April 5, 2021, and shall govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

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.

(2) *By Whom*. Any person who is at least 18 years of age and not a party may serve a summons and complaint.

(3) *By Marshal or Someone Specially Appointed*. At the plaintiff's request, the court may direct that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. This request will only be granted when:

(A) service is to be made on behalf of the United States or an officer or agency of the United States; or

(B) the court issues an order stating that service by a United States marshal or deputy marshal or by a person specially appointed by the court is required for service to be properly made in that particular action.

(4) *By Registered or Certified Mail*. Any defendant described in Rule 4(e), (f), (h), (i), (j)(1), or (j)(3) may be served by mailing 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 person to be served by registered or certified mail, return receipt requested, except as specified in Rule 4(i).

(5) *By First-Class Mail with Notice and Acknowledgment*.

(A) *Requesting an Acknowledgment of Service.* Any defendant described in Rule 4(e), (f), or (h) may be served by mailing—by first-class mail, postage prepaid, to the person to be served:

(i) 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;

(ii) 2 copies of a Notice and Acknowledgment conforming substantially to Civil Action Form 1-A; and

(iii) a return envelope, postage prepaid, addressed to the sender.

(B) *Failure to Acknowledge Service.* Unless good cause is shown for not doing so, the court must order the party served to pay:

(i) the costs incurred in securing an alternative method of service authorized by this rule if the person served does not complete and return the Notice and Acknowledgment of receipt of the summons within 21 days after mailing; and

(ii) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(6) *Manner of Conducting Service*. Service of process pursuant to Rule 4(c)(2)–(4), or acknowledgment of service pursuant to Rule 4(c)(5), may, at the plaintiff's or the court's election, be attempted either concurrently or successively.

(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.

(4) *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 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.

COMMENT TO 2017 AMENDMENTS

Rule 4 differs substantially from *Federal Rule of Civil Procedure 4*, as amended in 2007 and 2015. The differences include: 1) the addition of language referring to the "Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing" wherever the rule discusses service of the summons and complaint; 2) the substitution of "District of Columbia" for "the state where the district court is located"; 3) the substitution of "District of Columbia" for "federal" and "state"; 4) the substitution of "applicable law" and "applicable statute" for "federal law" and "federal statute"; 5) the addition of sections (a)(3), (c)(4)–(6), (j)(3), and (*l*)(1)(A)–(B); 6) revising sections (b) and (m) to reflect Superior Court practice; 7) the insertion of additional language at the end of subsection (c)(3), which limits the circumstances when a U.S. marshal or deputy marshal or specially appointed process server may be used; and 8) the deletion of section (k)(2) as inapplicable to local practice.

Subsection (c)(5) retains the language of former subsection (c)(4), which dealt with sending the defendant a request for an acknowledgment of service via first-class mail. However, the deadline to return the acknowledgment of service has been changed from 20 days to 21 days based on the time-calculation amendments to Rule 6. Additionally, a provision has been added that allows a party to recover the reasonable expenses, including attorney's fees, for filing a motion to collect the costs of service incurred after the defendant failed to acknowledge service.

The provisions governing service on the District of Columbia or a District of Columbia agency, officer, or employee were moved to subsection (j)(3) so that subsections (j)(1)-(2) would align with the federal rule. Subsection (j)(3) was also amended to specify how service should be made when an officer or employee is sued in their individual capacity for something connected to their duties. Although subsection (j)(1) was omitted in prior versions of Rule 4, it has now been adopted because there are instances where foreign states may be sued in the District of Columbia. *See 28 U.S.C. § 1608*.

Section (m) was amended to include language previously found in section (o). Accordingly, section (o) has been deleted entirely.

In order to dispose of cases within the time limits set by the Chief Judge in an administrative order, the Superior Court rule retains the 60-day service provision in section (m). That 60-day provision permits cases to proceed to an initial hearing within 90-120 days of filing the complaint. Exceptions to that 60-day service provision include the collection and subrogation cases defined in Rule 40-III, cases filed under D.C. Code § 47-1370 (2015 Repl.) (*see* section (m)(1)(B)(i)), cases where an order of publication has been issued, and any other exceptions set forth in these rules or provided by statute, treaty (*see* section (f)), or other international law.

Finally, subsection (m)(4) includes the 2015 amendment to the federal rule, which clarified that the reference to Rule 4 in Rule 71.1(d)(3)(A) did not include Rule 4(m). Dismissal of actions condemning real or personal property is governed by Rule 71.1 and is not affected by Rule 4(m).

COMMENT

Federal Rule of Civil Procedure 4 was substantially revised and reorganized effective December 1, 1993. In order to maintain uniformity with the Federal Rule to the maximum extent feasible, Superior Court Rule of Civil Procedure 4 has been similarly revised and reorganized to match the structure and substance of the new Federal Rule in large part. Although most provisions of new Superior Court Rule 4 are identical to those of new Federal Rule 4, there are a few variations. Throughout the rule reference is made to the initial order. This refers to the order setting the initial scheduling conference that is given to plaintiffs at the time of their filing the summons and complaint. Many of the other variations result from the obvious inapplicability of the federal provisions and thus require no explanation. A few of the variations merit comment.

Subdivision (a) of this rule is virtually identical to new Federal Rule 4(a) except for the final sentence, which has been added to preserve the substance of a useful provision, contained in former SCR-Civil 4(b), regarding the form of summons or notice to be used when service is made outside the District of Columbia or is based on the seizure of property within the District.

In subdivision (b), the prior Superior Court provision concerning issuance of the summons has been retained, in lieu of the new federal rule provision. The prior Superior Court provision is well known to the Clerk's Office and the Bar and has worked well.

In subdivision (c), a sentence has been added to paragraph (2) to retain the language, contained in former SCR-Civil 4(c)(2)(B), regarding the limited circumstances in which service by a U.S. marshal, deputy marshal, or specially appointed process server is permitted.

Paragraph 3 has been added to subdivision (c) to preserve the long-standing Superior Court practice of allowing service of a summons, complaint and initial order by registered or certified mail, return receipt requested. This practice has been extensively used for years in this Court with great success and little difficulty. Paragraph 4 retains the language of former SCR-Civil 4(c)(2)(C) and (D) which deal with sending the defendant, via first-class mail, a request for an acknowledgment of service.

A paragraph (5) has been added to subdivision (c) to retain the provision of former SCR-Civil 4(c) allowing the plaintiff to attempt service through alternative means, either concurrently or successively.

In subdivision (j), paragraph 1 of the Federal Rule dealing with service upon a foreign national has been deleted as inapplicable to Superior Court jurisdiction. In its place has been inserted the provisions, previously contained in SCR-Civil 4(d)(4), governing service on the District of Columbia or an officer of [or] agency thereof.

In subdivision (1), there has been inserted language describing the information required in affidavits of personal service and mail service. These provisions were previously contained in SCR-Civil 4(g).

Finally, Federal Rule 4(m), which allows 120 days to effect service or obtain a waiver thereof, has been replaced entirely with the language previously contained in Superior Court Rule 4(j). That provision allowed 60 days for effecting service so that the case could proceed to an Initial Scheduling Conference within 90-120 days of filing the complaint (except in cases where an order of publication has been issued) and a

disposition within the time limits recommended by the American Bar Association (i.e., one year in 90% of cases and two years in 100% of cases). The rule has an additional paragraph (o) allowing greater time for service of the summons in cases filed under D.C. Code § 47-1370.

Rule 5. Serving and Filing Pleadings and Other Papers

*****

(d) FILING.

(1) *Required Filings*. Any paper after the complaint that is required to be served, other than those referred to in Rule 12-I(d)(2) 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, a memorandum of points and authorities, 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~~:~~

~~(i)~~ a proposed order~~; and~~

~~(ii) an addressed envelope or a mailing label for each counsel or unrepresented party to the case~~.

(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 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.

(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~~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. ~~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) *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*.

(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 the proposed order must be provided to the court in a format that can be edited.

*****

COMMENT TO THE 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-I(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-II(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.

Rule 5-III. Sealed or Confidential Documents

(a) SEALING.

(1) *In General*. Absent statutory authority, no case or document may be sealed without a written court order. Any document filed with the intention of being sealed must be accompanied by a motion to seal or an existing written order. The document will be treated as sealed, pending the ruling on the motion.

(2) *Electronically-Filed Cases*. Unless otherwise ordered by the court, ~~F~~for cases ~~that~~in which ~~are~~ electronic~~ally~~ fil~~inged~~ is required, ~~the~~a motion to seal must be electronically filed and redacted as necessary for the public record, and any documents to be filed under seal must be separately electronically filed and served with the motion. ~~If the motion to seal is granted, an unredacted motion to seal with the materials sought to be placed under seal must be delivered in paper form to the clerk's office for filing.~~ Unless otherwise ordered by the court, ~~A~~any subsequent documents allowed to be filed under seal must be labeled as under seal and filed electronically ~~in paper with the clerk's office~~.

(3) *Failure to Comply with This Rule*.

~~(A) *Failure to File Motion to Seal.*~~ Failure to file a motion to seal will result in the pleading or document being placed in the public record.

~~(B) *Failure to Redact Electronically Filed Documents*. Filing an unredacted document electronically before or after a motion to seal is granted will result in the document being placed in the public record.~~

(b) IN CAMERA INSPECTION.

(1) *Submission*. ~~Unless~~Except as otherwise ordered or provided in these rules, all documents submitted for a confidential in camera inspection by the court must be submitted to the clerk securely sealed if they are:

(A) the subject of a protective order;

(B) subject to an existing written order that they be sealed; or

(C) the subject of a motion requesting that they be sealed.

(2) *Required Notation*. The envelope or box containing documents being submitted for in camera inspection must contain a conspicuous notation such as "DOCUMENT UNDER SEAL" or "DOCUMENTS SUBJECT TO PROTECTIVE ORDER" or something equivalent.

(c) OTHER FILING REQUIREMENTS. The face of the envelope or box must also contain the case number, the title of the court, a descriptive title of the document and the case caption unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope or box must also contain the date of any written order or the reference to any statute permitting the item to be sealed.

(d) HOW TO SUBMIT SEALED MATERIALS. Sealed materials that are not electronically filed must be filed in the clerk's office during regular business hours. Filing of sealed materials at the security desk is prohibited.

COMMENT TO 2021 AMENDMENTS

This rule was amended to reflect changes to Rule 5(d)(7)(A), which now requires electronic filing and service of the documents to be filed under seal.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Provisions related to electronic filing were also added.

Rule 5-III(a)(3) does not prohibit the court, in the appropriate exercise of its discretion, from sealing documents already in the public record on motion of a party or on its own initiative.

Rule 10-I. Pleadings: Stationery and Locational Information

(a) STATIONERY; TITLE; RELIEF PRAYED. Pleadings and like papers must be on opaque white paper, approximately 11 inches long and 8 1/2 inches wide, without back or cover, fastened at the top and stating under the caption the nature of the pleading and the relief, if any, prayed.

(b) LOCATIONAL INFORMATION: PLEADINGS AND OTHER PAPERS.

The first pleading filed by or on behalf of a party must set forth in the caption the party's name, full residence address, and unless the party is represented by counsel, the party's telephone number and email address if any. All subsequent pleadings and other papers filed by or on behalf of a party must set forth the party's name, full residence address, and telephone number and email address if any ~~of the party~~, unless that party is represented by counsel. If a party is represented by counsel, all pleadings or other papers must set forth the name, office address, telephone number, email address, and Bar number of the attorney. The names, addresses, email addresses, and telephone numbers so shown will be conclusively deemed to be correct and current. It is the obligation of the attorney or unrepresented party whose address, email address, or telephone number has been changed to give immediate notice to the appropriate branch or office within the Civil Division and all other attorneys and unrepresented parties named in the case of this change. Attorneys must include their Bar number in all such notices. Should a party incur expenses, including reasonable attorney's fees, due to the failure of any other party, or that party's attorney, to give prompt notice of a change of address, email address, or telephone number, the court, upon motion or upon its own initiative, may order the party failing to give notice to reimburse the other party for expenses incurred.

(c) NONCONFORMANCE WITH ABOVE. A pleading or other paper not conforming to the requirements of this rule will not be accepted for filing.

COMMENT TO 2021 AMENDMENTS

Section (b) was amended, consistent with Rule 11(a), to require self-represented parties to provide their email addresses.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 12-I. Motions Practice

*****

(b) [Deleted].~~JUDGE IN CHAMBERS.~~

~~(1) The following matters may at any time be presented for disposition to a judge in chambers designated by the Chief Judge, either ex parte or with opposing counsel, as appropriate:~~

~~(A) approval of accounts;~~

~~(B) warrants and return of warrants;~~

~~(C) approval of subpoenas for administrative proceedings;~~

~~(D) applications for appointment of special process servers in small claims cases;~~

~~(E) applications for name change under Rule 205 or any applicable administrative order;~~

~~(F) petitions to release mechanic's liens;~~

~~(G) applications for entry of administrative agencies' final orders as judgments;~~

~~(H) petitions to take depositions pursuant to Rule 27(a);~~

~~(I) master-meter proceedings under D.C. Code §§ 42-3301 to -3307 (2012 Repl.);~~

~~(J) requests for issuance of subpoenas under Rule 28-I(d);~~

~~(K) petitions to amend birth certificates pursuant to Rule 205 or any applicable administrative order; and~~

~~(L) petitions to amend death certificates.~~

~~(2) The following matters, if presented on the day the complaint is filed, must be presented to the Judge in Chambers; thereafter, such matters must be presented to the judge assigned to the case:~~

~~(A) appointment of a special process server;~~

~~(B) motions with respect to publication of notice requirements;~~

~~(C) judicial approval of settlements involving minors;~~

~~(D) motions regarding security for costs;~~

~~(E) writs of ne exeat;~~

~~(F) applications to set bonds;~~

~~(G) applications for temporary restraining orders;~~

~~(H) writs of attachment before judgment;~~

~~(I) writs of replevin;~~

~~(J) libels of information;~~

~~(K) motions for protective orders barring access to court documents; and~~

~~(L) motions to use pseudonyms in any pleading or paper filed in a case.~~

(c) [Deleted].~~JUDGE ON EMERGENCY ASSIGNMENT. Any motion requiring immediate judicial attention at a time outside the regular business hours of the court may be presented to the judge on emergency assignment. The Chief Judge must establish a roster for such emergency assignments.~~

*****

COMMENT TO THE 2021 AMENDMENTS

Section (b) concerning judge in chambers and section (c) concerning the judge on emergency assignment were deleted. The court will make publicly available information concerning the matters that must be presented to the judge in chambers, and it will continue to maintain a roster of judges to handle matters requiring immediate judicial attention at a time outside regular business hours. It is not necessary to include these provisions in the civil rules, and deleting these provisions from Rule 12-I gives the Chief Judge more flexibility to assign judges and magistrate judges and arrange and divide the business of the court. *See* D.C. Code §§ 11-906, -908, -1732, and -1732A (2012 Repl. & 2020 Supp.).

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule, and the rule was reorganized so related materials now appear in the same section or subsection. The deadlines were also amended to conform with the time-calculation changes made to Rule 6 as part of the 2009 amendments to the Federal Rules of Civil Procedure and to allow adequate time to resolve motions where the time for filing a response has been extended. The following provisions in section (a) were deleted as unnecessary: 1) the provision suggesting how the court would rule on a consent motion and 2) the provision stating how the court would serve an order for a consent motion. Language in subsection (d)(2) was modified to clarify that the statement of points and authorities may be included as part of the motion; there is no requirement that it be a separate document.

New section (g) permits the filing of a reply as a matter of right on all of the motions listed. However, no further filings are permitted without leave of court. Section (k) now directs parties to Rule 56 for provisions regarding summary judgment motions.

COMMENT TO 2015 AMENDMENTS

Section (m), "matters taken under advisement," was deleted; the matters previously addressed by this section are now the subject of an administrative order.

COMMENT

Rule 12-I(a) provides that a moving party must seek consent of other affected parties prior to the filing of a motion, except with respect to Rule 11 motions for imposition of sanctions. In these instances, a good faith effort to resolve the disputed issues is required. Even on dispositive motions a good faith effort to achieve consent can eliminate some issues or parties.

In respect to motions for imposition of Rule 11 sanctions, the good faith requirement may be satisfied by giving notice to the other party, whether in person, by telephone or by letter, of a potential violation before proceeding to prepare and serve a Rule 11 motion.

In respect to motions for orders to compel discovery filed pursuant to Rule 37(a), complying with the good faith efforts to obtain discovery under Rule 37(a) satisfies the requirement to obtain consent pursuant to Rule 12-I(a).

Rule 12-I(b) is amended to show which actions may be presented to the Judge in Chambers and which must be handled by the judge assigned to the case.

The last sentence in Rule 12-I(d) provides that motions which are consented to by the affected parties should indicate that fact. The purpose of this provision is to allow the Court to rule on such motions without the necessity of waiting until the end of the opposition deadline.

Prior language in Rule 12-I(f) and (h) is deleted in its entirety and the letter headings of the paragraphs of this Rule are redesigned to reflect these deletions. Accordingly, paragraph (f) now contains the provisions previously found in paragraph (i). A sentence is added to this paragraph which provides for appropriate notice to the parties when a decision is made to hold a hearing on a motion. It also allows the judge to specify the matters to be addressed at the hearing and the amount of time each side shall be given to present arguments on the motion. The last sentence of paragraph (f) re-quires that counsel immediately inform the Court by telephone if the motion has been resolved. New language has been placed in paragraph (h) to provide that all motions must be accompanied by a copy of the Scheduling Order, if any has been issued in the case.

Rule 12-I(m) is intended to have equal applicability to posttrial motions and such non-motion matters as findings of fact and conclusions of law following a nonjury trial.

Rule 12-I(n) should be read in conjunction with Rule 26(d), which imposes a time limit for the completion of discovery.

Rule 40-III. Collection and Subrogation Cases

(a) APPLICABILITY. This rule applies to a ~~all~~ civil action~~s~~ in which the complaint seeks:

(1) collection of a liquidated debt involving:

(A) a credit card or credit account;

(B) a medical bill; or

(C) a loan or other financial obligation that a commercial entity seeks to collect or enforce; or

(2) recovery as a subrogee-insurer.~~:~~

~~(1) collection of a liquidated debt of greater than the maximum amount set under D.C. Code § 11-1321 (2017 Supp.) for jurisdiction of actions in the Small Claims and Conciliation Branch; or~~

~~(2) recovery as subrogee of damages of greater than the maximum amount set under D.C. Code § 11-1321 (2017 Supp.) for jurisdiction of actions in the Small Claims and Conciliation Branch.~~

(b) PARTICULAR PLEADING REQUIREMENTS.

(1) *Original Creditor*. If the plaintiff files a complaint identified in Rule 40-III(a)(1) and is not the original creditor, the complaint must include:

(A) the identity of the original creditor; and

(B) a statement that the plaintiff is the successor in interest.

(2) *Credit Card or Account*. If the plaintiff files a complaint identified in Rule 40-III(a)(1)(A), the plaintiff must attach an account statement to the complaint, and the complaint must inform the defendant that an account statement is attached.

(3) *Prejudgment Interest*.

(A) *In General*. If the plaintiff's claim includes a claim for prejudgment interest, the complaint 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 40-III(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.

(c~~b~~) TIME ALLOWED FOR SERVICE OF PROCESS. ~~Notwithstanding the provisions of Rule 4(m), p~~Proof of service of the ~~summons and any complaint listed in Rule 40-III(a)~~materials required by Rule 4(c)(1) must be made no later than 90~~180~~ days after the filing of the complaint. Failure to comply with the requirements of this rule will result in the dismissal without prejudice of the complaint. The clerk will enter the dismissal and serve notice on the parties.

(d~~c~~) EXTENSION OF TIME FOR SERVICE OF PROCESS. Notwithstanding the provisions of Rule 6(b), the time allowed for service of process of complaints covered by this rule will not be extended unless a motion for extension of time is filed within 90~~180~~ days after the filing of the complaint. The motion must set forth in detail the efforts which have been made, and will be made in the future, to obtain service. If the plaintiff shows

exceptional circumstances requiring an extension, the court must extend the time for an appropriate period.~~An extended period for service will be granted only if exceptional circumstances, detailed in the motion, demonstrate that additional time is required in order to prevent manifest injustice.~~

~~(d) PLAINTIFF'S CONSENT TO MAGISTRATE JUDGE CALENDAR. Upon filing any complaint covered by this rule, plaintiff may file a written consent to have the complaint assigned to a magistrate judge calendar. If such consent is filed, the magistrate judge may rule on any motion, and take any other judicial action (including conducting ex parte proof of damage hearings), as to any defendant who has not answered or otherwise responded to the complaint.~~

~~(e) INITIAL SCHEDULING CONFERENCE. As soon as practicable after the filing of any defendant's response to a complaint covered by this rule, the court must notify the parties to appear for an initial scheduling conference. If all appearing parties so consent, the case, including all claims, may be assigned to the magistrate judge calendar. If the parties have consented, the magistrate judge will ascertain the status of the case, rule on any pending motions, explore the possibilities for early resolution through settlement or alternative dispute resolution techniques, and determine a reasonable time frame for bringing the case to conclusion. After consulting with the attorneys for the parties and with any unrepresented parties, the magistrate judge will schedule future events in the case.~~

~~(f) WITHDRAWAL OF CONSENT TO MAGISTRATE JUDGE CALENDAR. If a party has consented to the assignment of the case to the magistrate judge calendar, such consent may be withdrawn only for good cause upon leave of the Presiding Judge of the Civil Division or that judge's designee.~~

~~(g) COPIES OF PAPERS TO MAGISTRATE JUDGE.~~

~~(1) *Motions*. When a party files, by non-electronic means, a motion or paper relating to a motion (i.e., an opposition to a motion, memorandum of points and authorities, related exhibits, or a proposed order) in a case assigned to the magistrate judge calendar, the party must deliver a copy to the magistrate judge as follows:~~

~~(A) if the motion or paper is filed in person at the clerk's office, the party, on the date the original is filed, must hand-deliver a copy addressed to the magistrate judge to the court mail depository; or~~

~~(B) if the motion or paper is mailed, the party, on the date the original is mailed, must mail a copy to the magistrate judge.~~

~~(2) *Other Pleadings and Papers*. No other pleading or paper should be delivered to the magistrate judge unless so ordered.~~

(e~~h~~) ASSIGNMENT TO A JUDGE'S CALENDAR. ~~In any case covered by Rule 40-III(a), i~~If the plaintiff does not file a consent as provided in Rule ~~40-III(d)~~73(a)(1) or if any party makes a jury demand, the case must be assigned to a judge's individual calendar ~~pursuant to~~in accordance with Rule 40-I. ~~A complaint covered by this rule must also be promptly assigned to a judge's individual calendar in accordance with Rule 40-I if any party makes a jury demand.~~

COMMENT TO 2021 AMENDMENTS

Section (a) was amended to more clearly define which cases are covered by this rule. 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.

Former sections (d) and (f) concerning magistrate judges were deleted because Rule 73 addresses consent and withdrawal of consent.

Former section (e) was deleted as unnecessary in light of the 2021 amendments to Rule 16, which clarify that the only provisions of Rule 16 that do not apply to cases to which Rule 40-III applies are the provisions of Rule 16(b)(2) concerning praecipes in lieu of appearance. Under Rule 16, a magistrate judge handling a collection or subrogation case will ascertain the status of the case at the outset and exercise the discretion granted by Rule 16 to enter a scheduling order appropriate to the specific case.

Former section (g) was deleted because other rules address the provisions of copies of papers to judges.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 16. Pretrial Conferences; Pretrial Status Conferences; Scheduling; Management

(a) APPLICABILITY. ~~With the exception of cases assigned to a magistrate judge under Rule 40-III, or u~~Unless otherwise ordered by the judge to whom the case is assigned, the provisions of this rule apply to all civil actions and to both small claims and landlord and tenant actions certified to the Civil Actions Branch for jury trial.

(b) INITIAL SCHEDULING AND SETTLEMENT CONFERENCE.

(1) *In General*. In every case assigned to a specific calendar or a specific judge, the court must hold an initial scheduling and settlement conference as soon as practicable after the complaint is filed.

(2) *Praecipe in Lieu of Appearance*. Except in cases to which Rule 40-III applies, ~~N~~no attorney need appear in person for the scheduling conference if a praecipe conforming to the format of Civil Action Form 113 (Praecipe Requesting Scheduling Order) signed by all attorneys is filed no later than 7 calendar days prior to the scheduling conference date consenting to the entry by the court of a track I or track II scheduling order outside their presence.

(A) *Praecipe Requirements*. The praecipe must certify that:

(i) the case is at issue;

(ii) all parties are represented by counsel;

(iii) there are no pending motions; and

(iv) all counsel have discussed the provisions of Rule 16(b)(4)(B) and (C) and do not foresee any issue requiring court intervention.

(B) *Filing the Praecipe; Courtesy Copy*. The praecipe must be accompanied by an addressed envelope or mailing label for each attorney and a courtesy copy must be delivered to the assigned judge's chambers. Neither addressed envelopes nor mailing labels need be provided for documents filed under the court's electronic filing program.

*****

COMMENT TO 2021 AMENDMENTS

The amendments complement the 2021 amendments to Rule 40-III. The changes to both rules clarify and simplify them. Rule 16 gives judges and magistrate judges discretion to enter a scheduling order appropriate to any collection or subrogation case, but no other change in substance with respect to Rule 16 was intended.

COMMENT TO 2017 AMENDMENTS

The 2015 amendments to *Federal Rule of Civil Procedure 16*(b)(1)(B) and (b)(2) are inconsistent with Superior Court practice and have not been incorporated into this rule. However, the Superior Court rule incorporates the 2015 federal amendments related to the content of the scheduling order with one alteration—the reference to *Federal Rule of Evidence 502* was replaced with a reference to new Superior Court Rule 26(b)(5)(C). Rule 26(b)(5)(C) contains the relevant language from *Federal Rule of Evidence 502(d) and (e)*. Thus, this provision is intended to operate in the same manner as its federal counterpart.

Section (k) has been amended to address the continuance of a trial. The provisions related to trial continuances were formerly found in Rule 40-I.

COMMENT

This rule differs substantially from *Federal Rule of Civil Procedure 16*, and reflects procedures instituted by the Superior Court to reduce delay in civil litigation.

Section (b) requires that all unrepresented parties and counsel must attend a conference early in the case at which the judge will explore the possibilities of settlement or alternative dispute resolution and will then establish a firm schedule for completion of the litigation. The scheduling order thus set may be modified with court approval and for good cause or the parties may, under certain circumstances, agree to a modification in the order without first obtaining approval from the court.

Section (c) provides for a meeting four weeks before the pretrial conference at which counsel and any unrepresented parties must endeavor to settle the case and to simplify and shorten the trial. The meeting may be held at any location agreed to by the participants; failing agreement, it will be held in the judge’s courtroom or another location designated by the judge. This section also provides for the exchange of exhibits.

Section (d) provides that pretrial motions will be made three weeks before the pretrial conference, and section (e) requires that pretrial statements, suggested voir dire questions, suggested jury instructions and a suggested verdict form be submitted jointly along with responses to these suggestions and to the exhibits one week before pretrial. Note that section (a) permits the court to exempt appropriate cases, such as pro se prisoner cases, from any or all of the provisions contained in this rule.

Subsection (e)(3) provides that, except by leave of court, the only witnesses allowed to testify at a trial whose names were not listed in the pretrial statement of the parties will be those called as rebuttal or impeachment witnesses. See *R. & G. Orthopedic Appliances and Prosthetics, Inc. v. Curtin*, 596 A.2d 530 (D.C. 1991), and *Cooper v. Safeway Stores*, Inc., 629 A.2d 31 (D.C. 1993).

Section (f) governs the conduct of the pretrial and settlement conference.

This rule does not preclude the judge to whom a case is assigned from modifying particular requirements of sections (d), (e) and (f), either by a standing order made available at the Initial Scheduling and Settlement Conference or otherwise as the judge finds appropriate and efficient in any particular case.

Section (g) retains the requirement for the entry of a pretrial order which controls the subsequent course of the action.

Section (h) provides that parties and counsel must be prepared to commence trial on any trial date set by the court or on any of the two succeeding court days if the case must "trail" completion of an earlier trial. If a case is thus trailed, the court will generally permit greater flexibility in the order in which witnesses may be called in each party's case in order to accommodate any rescheduling of witnesses that may be necessary.

Section (i), like *Federal Rule of Civil Procedure 16(b)*, provides that the court may schedule other conferences beyond those called for by sections (b) and (f). It is expected that additional conferences will generally be reserved for more complex cases.

Section (j) requires that, at any conference prior to trial, counsel must have authority to participate fully in discussion of settlement and other matters. Unless excused by the judge for good cause, parties and any person whose authority may be needed to settle the case must attend any pretrial and settlement conference and any alternative dispute resolution session.

Section (k) establishes a strict continuance policy and provides that, except for circumstances arising later, any application for continuance of a conference must be made at least 30 days before the scheduled conference and must set forth specific and sufficient reasons why the applicant cannot attend the conference or cannot provide the information required by the rule by the date of the conference.

Section (*l*), providing for sanctions, is identical to *Federal Rule of Civil Procedure 16(f).*

Rule 45. Subpoena

(a) IN GENERAL.

(1) *Form and Contents*.

(A) *Requirements—In General*. Every subpoena must:

(i) state the name of the court;

(ii) state the title of the action and~~,~~ its civil action number~~, the calendar number, when known, and if assigned to a specific judge or magistrate judge, the name of that judge or magistrate judge~~;

(iii) command each person to whom it is directed to do the following at a specified time and place within the District of Columbia, unless the parties and person subpoenaed otherwise agree or the court, upon application, fixes another convenient location: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(c) and (d).

*****

COMMENT TO THE 2021 AMENDMENTS

Subsection (a)(1)(A)(ii) was amended to eliminate the requirement that a subpoena include the calendar number and the name of the assigned judge or magistrate judge.

COMMENT TO 2017 AMENDMENTS

This rule conforms to the 2013 amendments to *Federal Rule of Civil Procedure 45* with the following exceptions: 1) subsection (a)(2) of the federal rule, which states that "[a] subpoena must issue from the court where the action is pending," has been omitted as inconsistent with language in the Uniform Interstate Depositions and Discovery Act (D.C. Code §§ 13-441 to -448 (2012 Repl.)) that instructs the Superior Court clerk to "issue a subpoena for service upon the person to which the foreign subpoena is directed"; 2) the amendment to permit service throughout the United States has been omitted as inconsistent with D.C. Code § 11-942 (2012 Repl.); 3) new section (c) of the federal rule has been rejected in order to maintain the Superior Court rule's focus on place of service, which is also the focus of D.C. Code § 11-942 (2012 Repl.); 4) language in new section (e) (section (f) in the federal rule) has been modified to reflect omission of federal subsection (a)(2); and 5) the second sentence in section (f) of the federal rule, which authorizes an attorney to file papers and appear in a district court where s/he may not be barred, has been rejected as locally inapplicable.

COMMENT

Identical to *Federal Rule of Civil Procedure 45*, as amended in 2007, except for: (1) references to 100 mile limits in the federal rule have been changed to 25 miles, which preserves the geographic proportionality originally expressed by Congress in D.C. Code § 11-942; (2) the omission of the inapplicable subsection (a)(2); (3) the addition of

language in subsection (a)(1)(A)(iii) providing that the deposition, production, or inspection of documents must be in the District of Columbia, unless otherwise agreed or ordered by the court; and (4) the substitution of specific local language for inapplicable federal language in subsections (a)(1)(A)(i)–(ii), (a)(3), (b)(2), and (c)(3)(A)(ii).

This rule provides a means for issuing deposition subpoenas for nonresidents of the District of Columbia in cases which qualify, but does not preclude the alternatives of filing with the court a motion for appointment of an examiner under Rule 28-I or resorting directly to the courts of another jurisdiction under its rules and statutes.

Subpoenas issued by attorneys under subsection (a)(3) must be substantially in the format of Civil Action Form 14.

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.

(2) *By Whom*. Any person who is at least 18 years of age and not a party may serve a summons and complaint.

(3) *By Marshal or Someone Specially Appointed*. At the plaintiff's request, the court may direct that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. This request will only be granted when:

(A) service is to be made on behalf of the United States or an officer or agency of the United States; or

(B) the court issues an order stating that service by a United States marshal or deputy marshal or by a person specially appointed by the court is required for service to be properly made in that particular action.

(4) *By Registered or Certified Mail*. Any defendant described in Rule 4(e), (f), (h), (i), (j)(1), or (j)(3) may be served by mailing 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 person to be served by registered or certified mail, return receipt requested, except as specified in Rule 4(i).

(5) *By First-Class Mail with Notice and Acknowledgment*.

(A) *Requesting an Acknowledgment of Service.* Any defendant described in Rule 4(e), (f), or (h) may be served by mailing—by first-class mail, postage prepaid, to the person to be served:

(i) 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;

(ii) 2 copies of a Notice and Acknowledgment conforming substantially to Civil Action Form 1-A; and

(iii) a return envelope, postage prepaid, addressed to the sender.

(B) *Failure to Acknowledge Service.* Unless good cause is shown for not doing so, the court must order the party served to pay:

(i) the costs incurred in securing an alternative method of service authorized by this rule if the person served does not complete and return the Notice and Acknowledgment of receipt of the summons within 21 days after mailing; and

(ii) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(6) *Manner of Conducting Service*. Service of process pursuant to Rule 4(c)(2)–(4), or acknowledgment of service pursuant to Rule 4(c)(5), may, at the plaintiff's or the court's election, be attempted either concurrently or successively.

(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.

(4) *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 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.

COMMENT TO 2017 AMENDMENTS

Rule 4 differs substantially from *Federal Rule of Civil Procedure 4*, as amended in 2007 and 2015. The differences include: 1) the addition of language referring to the "Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing" wherever the rule discusses service of the summons and complaint; 2) the substitution of "District of Columbia" for "the state where the district court is located"; 3) the substitution of "District of Columbia" for "federal" and "state"; 4) the substitution of "applicable law" and "applicable statute" for "federal law" and "federal statute"; 5) the addition of sections (a)(3), (c)(4)–(6), (j)(3), and (*l*)(1)(A)–(B); 6) revising sections (b) and (m) to reflect Superior Court practice; 7) the insertion of additional language at the end of subsection (c)(3), which limits the circumstances when a U.S. marshal or deputy marshal or specially appointed process server may be used; and 8) the deletion of section (k)(2) as inapplicable to local practice.

Subsection (c)(5) retains the language of former subsection (c)(4), which dealt with sending the defendant a request for an acknowledgment of service via first-class mail. However, the deadline to return the acknowledgment of service has been changed from 20 days to 21 days based on the time-calculation amendments to Rule 6. Additionally, a provision has been added that allows a party to recover the reasonable expenses, including attorney's fees, for filing a motion to collect the costs of service incurred after the defendant failed to acknowledge service.

The provisions governing service on the District of Columbia or a District of Columbia agency, officer, or employee were moved to subsection (j)(3) so that subsections (j)(1)-(2) would align with the federal rule. Subsection (j)(3) was also amended to specify how service should be made when an officer or employee is sued in their individual capacity for something connected to their duties. Although subsection (j)(1) was omitted in prior versions of Rule 4, it has now been adopted because there are instances where foreign states may be sued in the District of Columbia. *See 28 U.S.C. § 1608*.

Section (m) was amended to include language previously found in section (o). Accordingly, section (o) has been deleted entirely.

In order to dispose of cases within the time limits set by the Chief Judge in an administrative order, the Superior Court rule retains the 60-day service provision in section (m). That 60-day provision permits cases to proceed to an initial hearing within 90-120 days of filing the complaint. Exceptions to that 60-day service provision include the collection and subrogation cases defined in Rule 40-III, cases filed under D.C. Code § 47-1370 (2015 Repl.) (*see* section (m)(1)(B)(i)), cases where an order of publication has been issued, and any other exceptions set forth in these rules or provided by statute, treaty (*see* section (f)), or other international law.

Finally, subsection (m)(4) includes the 2015 amendment to the federal rule, which clarified that the reference to Rule 4 in Rule 71.1(d)(3)(A) did not include Rule 4(m). Dismissal of actions condemning real or personal property is governed by Rule 71.1 and is not affected by Rule 4(m).

COMMENT

Federal Rule of Civil Procedure 4 was substantially revised and reorganized effective December 1, 1993. In order to maintain uniformity with the Federal Rule to the maximum extent feasible, Superior Court Rule of Civil Procedure 4 has been similarly revised and reorganized to match the structure and substance of the new Federal Rule in large part. Although most provisions of new Superior Court Rule 4 are identical to those of new Federal Rule 4, there are a few variations. Throughout the rule reference is made to the initial order. This refers to the order setting the initial scheduling conference that is given to plaintiffs at the time of their filing the summons and complaint. Many of the other variations result from the obvious inapplicability of the federal provisions and thus require no explanation. A few of the variations merit comment.

Subdivision (a) of this rule is virtually identical to new Federal Rule 4(a) except for the final sentence, which has been added to preserve the substance of a useful provision, contained in former SCR-Civil 4(b), regarding the form of summons or notice to be used when service is made outside the District of Columbia or is based on the seizure of property within the District.

In subdivision (b), the prior Superior Court provision concerning issuance of the summons has been retained, in lieu of the new federal rule provision. The prior Superior Court provision is well known to the Clerk's Office and the Bar and has worked well.

In subdivision (c), a sentence has been added to paragraph (2) to retain the language, contained in former SCR-Civil 4(c)(2)(B), regarding the limited circumstances in which service by a U.S. marshal, deputy marshal, or specially appointed process server is permitted.

Paragraph 3 has been added to subdivision (c) to preserve the long-standing Superior Court practice of allowing service of a summons, complaint and initial order by registered or certified mail, return receipt requested. This practice has been extensively used for years in this Court with great success and little difficulty. Paragraph 4 retains the language of former SCR-Civil 4(c)(2)(C) and (D) which deal with sending the defendant, via first-class mail, a request for an acknowledgment of service.

A paragraph (5) has been added to subdivision (c) to retain the provision of former SCR-Civil 4(c) allowing the plaintiff to attempt service through alternative means, either concurrently or successively.

In subdivision (j), paragraph 1 of the Federal Rule dealing with service upon a foreign national has been deleted as inapplicable to Superior Court jurisdiction. In its place has been inserted the provisions, previously contained in SCR-Civil 4(d)(4), governing service on the District of Columbia or an officer of [or] agency thereof.

In subdivision (1), there has been inserted language describing the information required in affidavits of personal service and mail service. These provisions were previously contained in SCR-Civil 4(g).

Finally, Federal Rule 4(m), which allows 120 days to effect service or obtain a waiver thereof, has been replaced entirely with the language previously contained in Superior Court Rule 4(j). That provision allowed 60 days for effecting service so that the case could proceed to an Initial Scheduling Conference within 90-120 days of filing the complaint (except in cases where an order of publication has been issued) and a

disposition within the time limits recommended by the American Bar Association (i.e., one year in 90% of cases and two years in 100% of cases). The rule has an additional paragraph (o) allowing greater time for service of the summons in cases filed under D.C. Code § 47-1370.

Rule 5. Serving and Filing Pleadings and Other Papers

*****

(d) FILING.

(1) *Required Filings*. Any paper after the complaint that is required to be served, other than those referred to in Rule 12-I(d)(2) 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, a memorandum of points and authorities, 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 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.

(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*.

(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 the proposed order must be provided to the court in a format that can be edited.

*****

COMMENT TO THE 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-I(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-II(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.

Rule 5-III. Sealed or Confidential Documents

(a) SEALING.

(1) *In General*. Absent statutory authority, no case or document may be sealed without a written court order. Any document filed with the intention of being sealed must be accompanied by a motion to seal or an existing written order. The document will be treated as sealed, pending the ruling on the motion.

(2) *Electronically-Filed Cases*. Unless otherwise ordered by the court, for cases in which electronic filing is required, a motion to seal must be electronically filed and redacted as necessary for the public record, and any documents to be filed under seal must be separately electronically filed and served with the motion. Unless otherwise ordered by the court, any subsequent documents allowed to be filed under seal must be labeled as under seal and filed electronically.

(3) *Failure to Comply with This Rule*. Failure to file a motion to seal will result in the pleading or document being placed in the public record.

(b) IN CAMERA INSPECTION.

(1) *Submission*. Except as otherwise ordered or provided in these rules, all documents submitted for a confidential in camera inspection by the court must be submitted to the clerk securely sealed if they are:

(A) the subject of a protective order;

(B) subject to an existing written order that they be sealed; or

(C) the subject of a motion requesting that they be sealed.

(2) *Required Notation*. The envelope or box containing documents being submitted for in camera inspection must contain a conspicuous notation such as "DOCUMENT UNDER SEAL" or "DOCUMENTS SUBJECT TO PROTECTIVE ORDER" or something equivalent.

(c) OTHER FILING REQUIREMENTS. The face of the envelope or box must also contain the case number, the title of the court, a descriptive title of the document and the case caption unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope or box must also contain the date of any written order or the reference to any statute permitting the item to be sealed.

(d) HOW TO SUBMIT SEALED MATERIALS. Sealed materials that are not electronically filed must be filed in the clerk's office during regular business hours. Filing of sealed materials at the security desk is prohibited.

COMMENT TO 2021 AMENDMENTS

This rule was amended to reflect changes to Rule 5(d)(7)(A), which now requires electronic filing and service of the documents to be filed under seal.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Provisions related to electronic filing were also added.

Rule 5-III(a)(3) does not prohibit the court, in the appropriate exercise of its discretion, from sealing documents already in the public record on motion of a party or on its own initiative.

Rule 10-I. Pleadings: Stationery and Locational Information

(a) STATIONERY; TITLE; RELIEF PRAYED. Pleadings and like papers must be on opaque white paper, approximately 11 inches long and 8 1/2 inches wide, without back or cover, fastened at the top and stating under the caption the nature of the pleading and the relief, if any, prayed.

(b) LOCATIONAL INFORMATION: PLEADINGS AND OTHER PAPERS.

The first pleading filed by or on behalf of a party must set forth in the caption the party's name, full residence address, and unless the party is represented by counsel, the party's telephone number and email address if any. All subsequent pleadings and other papers filed by or on behalf of a party must set forth the party's name, full residence address, and telephone number and email address if any, unless that party is represented by counsel. If a party is represented by counsel, all pleadings or other papers must set forth the name, office address, telephone number, email address, and Bar number of the attorney. The names, addresses, email addresses, and telephone numbers so shown will be conclusively deemed to be correct and current. It is the obligation of the attorney or unrepresented party whose address, email address, or telephone number has been changed to give immediate notice to the appropriate branch or office within the Civil Division and all other attorneys and unrepresented parties named in the case of this change. Attorneys must include their Bar number in all such notices. Should a party incur expenses, including reasonable attorney's fees, due to the failure of any other party, or that party's attorney, to give prompt notice of a change of address, email address, or telephone number, the court, upon motion or upon its own initiative, may order the party failing to give notice to reimburse the other party for expenses incurred.

(c) NONCONFORMANCE WITH ABOVE. A pleading or other paper not conforming to the requirements of this rule will not be accepted for filing.

COMMENT TO 2021 AMENDMENTS

Section (b) was amended, consistent with Rule 11(a), to require self-represented parties to provide their email addresses.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 12-I. Motions Practice

*****

(b) [Deleted].
(c) [Deleted].

*****

COMMENT TO THE 2021 AMENDMENTS

Section (b) concerning judge in chambers and section (c) concerning the judge on emergency assignment were deleted. The court will make publicly available information concerning the matters that must be presented to the judge in chambers, and it will continue to maintain a roster of judges to handle matters requiring immediate judicial attention at a time outside regular business hours. It is not necessary to include these provisions in the civil rules, and deleting these provisions from Rule 12-I gives the Chief Judge more flexibility to assign judges and magistrate judges and arrange and divide the business of the court. *See* D.C. Code §§ 11-906, -908, -1732, and -1732A (2012 Repl. & 2020 Supp.).

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule, and the rule was reorganized so related materials now appear in the same section or subsection. The deadlines were also amended to conform with the time-calculation changes made to Rule 6 as part of the 2009 amendments to the Federal Rules of Civil Procedure and to allow adequate time to resolve motions where the time for filing a response has been extended. The following provisions in section (a) were deleted as unnecessary: 1) the provision suggesting how the court would rule on a consent motion and 2) the provision stating how the court would serve an order for a consent motion. Language in subsection (d)(2) was modified to clarify that the statement of points and authorities may be included as part of the motion; there is no requirement that it be a separate document.

New section (g) permits the filing of a reply as a matter of right on all of the motions listed. However, no further filings are permitted without leave of court. Section (k) now directs parties to Rule 56 for provisions regarding summary judgment motions.

COMMENT TO 2015 AMENDMENTS

Section (m), “matters taken under advisement,” was deleted; the matters previously addressed by this section are now the subject of an administrative order.

COMMENT

Rule 12-I(a) provides that a moving party must seek consent of other affected parties prior to the filing of a motion, except with respect to Rule 11 motions for

imposition of sanctions. In these instances, a good faith effort to resolve the disputed issues is required. Even on dispositive motions a good faith effort to achieve consent can eliminate some issues or parties.

In respect to motions for imposition of Rule 11 sanctions, the good faith requirement may be satisfied by giving notice to the other party, whether in person, by telephone or by letter, of a potential violation before proceeding to prepare and serve a Rule 11 motion.

In respect to motions for orders to compel discovery filed pursuant to Rule 37(a), complying with the good faith efforts to obtain discovery under Rule 37(a) satisfies the requirement to obtain consent pursuant to Rule 12-I(a).

Rule 12-I(b) is amended to show which actions may be presented to the Judge in Chambers and which must be handled by the judge assigned to the case.

The last sentence in Rule 12-I(d) provides that motions which are consented to by the affected parties should indicate that fact. The purpose of this provision is to allow the Court to rule on such motions without the necessity of waiting until the end of the opposition deadline.

Prior language in Rule 12-I(f) and (h) is deleted in its entirety and the letter headings of the paragraphs of this Rule are redesigned to reflect these deletions. Accordingly, paragraph (f) now contains the provisions previously found in paragraph (i). A sentence is added to this paragraph which provides for appropriate notice to the parties when a decision is made to hold a hearing on a motion. It also allows the judge to specify the matters to be addressed at the hearing and the amount of time each side shall be given to present arguments on the motion. The last sentence of paragraph (f) re-quires that counsel immediately inform the Court by telephone if the motion has been resolved. New language has been placed in paragraph (h) to provide that all motions must be accompanied by a copy of the Scheduling Order, if any has been issued in the case.

Rule 12-I(m) is intended to have equal applicability to posttrial motions and such non-motion matters as findings of fact and conclusions of law following a nonjury trial.

Rule 12-I(n) should be read in conjunction with Rule 26(d), which imposes a time limit for the completion of discovery.

Rule 40-III. Collection and Subrogation Cases

(a) APPLICABILITY. This rule applies to a civil action in which the complaint seeks:

(1) collection of a liquidated debt involving:

(A) a credit card or credit account;

(B) a medical bill; or

(C) a loan or other financial obligation that a commercial entity seeks to collect or enforce; or

(2) recovery as a subrogee-insurer.

(b) PARTICULAR PLEADING REQUIREMENTS.

(1) *Original Creditor*. If the plaintiff files a complaint identified in Rule 40-III(a)(1) and is not the original creditor, the complaint must include:

(A) the identity of the original creditor; and

(B) a statement that the plaintiff is the successor in interest.

(2) *Credit Card or Account*. If the plaintiff files a complaint identified in Rule 40-III(a)(1)(A), the plaintiff must attach an account statement to the complaint, and the complaint must inform the defendant that an account statement is attached.

(3) *Prejudgment Interest*.

(A) *In General*. If the plaintiff's claim includes a claim for prejudgment interest, the complaint 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 40-III(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.

(c) TIME ALLOWED FOR SERVICE OF PROCESS. Proof of service of the materials required by Rule 4(c)(1) must be made no later than 90 days after the filing of the complaint. Failure to comply with the requirements of this rule will result in the dismissal without prejudice of the complaint. The clerk will enter the dismissal and serve notice on the parties.

(d) EXTENSION OF TIME FOR SERVICE OF PROCESS. Notwithstanding the provisions of Rule 6(b), the time allowed for service of process of complaints covered by this rule will not be extended unless a motion for extension of time is filed within 90 days after the filing of the complaint. The motion must set forth in detail the efforts which have been made, and will be made in the future, to obtain service. If the plaintiff shows exceptional circumstances requiring an extension, the court must extend the time for an appropriate period.

(e) ASSIGNMENT TO A JUDGE'S CALENDAR. If the plaintiff does not file a consent as provided in Rule 73(a)(1) or if any party makes a jury demand, the case must be assigned to a judge's individual calendar in accordance with Rule 40-I.

COMMENT TO 2021 AMENDMENTS

Section (a) was amended to more clearly define which cases are covered by this rule. 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.

Former sections (d) and (f) concerning magistrate judges were deleted because Rule 73 addresses consent and withdrawal of consent.

Former section (e) was deleted as unnecessary in light of the 2021 amendments to Rule 16, which clarify that the only provisions of Rule 16 that do not apply to cases to which Rule 40-III applies are the provisions of Rule 16(b)(2) concerning praecipes in lieu of appearance. Under Rule 16, a magistrate judge handling a collection or subrogation case will ascertain the status of the case at the outset and exercise the discretion granted by Rule 16 to enter a scheduling order appropriate to the specific case.

Former section (g) was deleted because other rules address the provisions of copies of papers to judges.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 16. Pretrial Conferences; Pretrial Status Conferences; Scheduling; Management

(a) APPLICABILITY. Unless otherwise ordered by the judge to whom the case is assigned, the provisions of this rule apply to all civil actions and to both small claims and landlord and tenant actions certified to the Civil Actions Branch for jury trial.

(b) INITIAL SCHEDULING AND SETTLEMENT CONFERENCE.

(1) *In General*. In every case assigned to a specific calendar or a specific judge, the court must hold an initial scheduling and settlement conference as soon as practicable after the complaint is filed.

(2) *Praecipe in Lieu of Appearance*. Except in cases to which Rule 40-III applies, no attorney need appear in person for the scheduling conference if a praecipe conforming to the format of Civil Action Form 113 (Praecipe Requesting Scheduling Order) signed by all attorneys is filed no later than 7 calendar days prior to the scheduling conference date consenting to the entry by the court of a track I or track II scheduling order outside their presence.

(A) *Praecipe Requirements*. The praecipe must certify that:

(i) the case is at issue;

(ii) all parties are represented by counsel;

(iii) there are no pending motions; and

(iv) all counsel have discussed the provisions of Rule 16(b)(4)(B) and (C) and do not foresee any issue requiring court intervention.

(B) *Filing the Praecipe; Courtesy Copy*. The praecipe must be accompanied by an addressed envelope or mailing label for each attorney and a courtesy copy must be delivered to the assigned judge's chambers. Neither addressed envelopes nor mailing labels need be provided for documents filed under the court's electronic filing program.

*****

COMMENT TO 2021 AMENDMENTS

The amendments complement the 2021 amendments to Rule 40-III. The changes to both rules clarify and simplify them. Rule 16 gives judges and magistrate judges discretion to enter a scheduling order appropriate to any collection or subrogation case, but no other change in substance with respect to Rule 16 was intended.

COMMENT TO 2017 AMENDMENTS

The 2015 amendments to *Federal Rule of Civil Procedure 16*(b)(1)(B) and (b)(2) are inconsistent with Superior Court practice and have not been incorporated into this rule. However, the Superior Court rule incorporates the 2015 federal amendments related to the content of the scheduling order with one alteration—the reference to *Federal Rule of Evidence 502* was replaced with a reference to new Superior Court Rule 26(b)(5)(C). Rule 26(b)(5)(C) contains the relevant language from *Federal Rule of Evidence 502(d) and (e)*. Thus, this provision is intended to operate in the same manner as its federal counterpart.

Section (k) has been amended to address the continuance of a trial. The provisions related to trial continuances were formerly found in Rule 40-I.

COMMENT

This rule differs substantially from *Federal Rule of Civil Procedure 16*, and reflects procedures instituted by the Superior Court to reduce delay in civil litigation.

Section (b) requires that all unrepresented parties and counsel must attend a conference early in the case at which the judge will explore the possibilities of settlement or alternative dispute resolution and will then establish a firm schedule for completion of the litigation. The scheduling order thus set may be modified with court approval and for good cause or the parties may, under certain circumstances, agree to a modification in the order without first obtaining approval from the court.

Section (c) provides for a meeting four weeks before the pretrial conference at which counsel and any unrepresented parties must endeavor to settle the case and to simplify and shorten the trial. The meeting may be held at any location agreed to by the participants; failing agreement, it will be held in the judge's courtroom or another location designated by the judge. This section also provides for the exchange of exhibits.

Section (d) provides that pretrial motions will be made three weeks before the pretrial conference, and section (e) requires that pretrial statements, suggested voir dire questions, suggested jury instructions and a suggested verdict form be submitted jointly along with responses to these suggestions and to the exhibits one week before pretrial. Note that section (a) permits the court to exempt appropriate cases, such as pro se prisoner cases, from any or all of the provisions contained in this rule.

Subsection (e)(3) provides that, except by leave of court, the only witnesses allowed to testify at a trial whose names were not listed in the pretrial statement of the parties will be those called as rebuttal or impeachment witnesses. See *R. & G. Orthopedic Appliances and Prosthetics, Inc. v. Curtin*, 596 A.2d 530 (D.C. 1991), and *Cooper v. Safeway Stores*, Inc., 629 A.2d 31 (D.C. 1993).

Section (f) governs the conduct of the pretrial and settlement conference.

This rule does not preclude the judge to whom a case is assigned from modifying particular requirements of sections (d), (e) and (f), either by a standing order made available at the Initial Scheduling and Settlement Conference or otherwise as the judge finds appropriate and efficient in any particular case.

Section (g) retains the requirement for the entry of a pretrial order which controls the subsequent course of the action.

Section (h) provides that parties and counsel must be prepared to commence trial on any trial date set by the court or on any of the two succeeding court days if the case must "trail" completion of an earlier trial. If a case is thus trailed, the court will generally permit greater flexibility in the order in which witnesses may be called in each party's case in order to accommodate any rescheduling of witnesses that may be necessary.

Section (i), like *Federal Rule of Civil Procedure 16(b)*, provides that the court may schedule other conferences beyond those called for by sections (b) and (f). It is expected that additional conferences will generally be reserved for more complex cases.

Section (j) requires that, at any conference prior to trial, counsel must have authority to participate fully in discussion of settlement and other matters. Unless excused by the judge for good cause, parties and any person whose authority may be needed to settle the case must attend any pretrial and settlement conference and any alternative dispute resolution session.

Section (k) establishes a strict continuance policy and provides that, except for circumstances arising later, any application for continuance of a conference must be made at least 30 days before the scheduled conference and must set forth specific and sufficient reasons why the applicant cannot attend the conference or cannot provide the information required by the rule by the date of the conference.

Section (*l*), providing for sanctions, is identical to *Federal Rule of Civil Procedure 16(f).*

Rule 45. Subpoena

(a) IN GENERAL.

(1) *Form and Contents*.

(A) *Requirements—In General*. Every subpoena must:

(i) state the name of the court;

(ii) state the title of the action and its civil action number;

(iii) command each person to whom it is directed to do the following at a specified time and place within the District of Columbia, unless the parties and person subpoenaed otherwise agree or the court, upon application, fixes another convenient location: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(c) and (d).

*****

COMMENT TO THE 2021 AMENDMENTS

Subsection (a)(1)(A)(ii) was amended to eliminate the requirement that a subpoena include the calendar number and the name of the assigned judge or magistrate judge.

COMMENT TO 2017 AMENDMENTS

This rule conforms to the 2013 amendments to *Federal Rule of Civil Procedure 45* with the following exceptions: 1) subsection (a)(2) of the federal rule, which states that "[a] subpoena must issue from the court where the action is pending," has been omitted as inconsistent with language in the Uniform Interstate Depositions and Discovery Act (D.C. Code §§ 13-441 to -448 (2012 Repl.)) that instructs the Superior Court clerk to "issue a subpoena for service upon the person to which the foreign subpoena is directed"; 2) the amendment to permit service throughout the United States has been omitted as inconsistent with D.C. Code § 11-942 (2012 Repl.); 3) new section (c) of the federal rule has been rejected in order to maintain the Superior Court rule's focus on place of service, which is also the focus of D.C. Code § 11-942 (2012 Repl.); 4) language in new section (e) (section (f) in the federal rule) has been modified to reflect omission of federal subsection (a)(2); and 5) the second sentence in section (f) of the federal rule, which authorizes an attorney to file papers and appear in a district court where s/he may not be barred, has been rejected as locally inapplicable.

COMMENT

Identical to *Federal Rule of Civil Procedure 45*, as amended in 2007, except for: (1) references to 100 mile limits in the federal rule have been changed to 25 miles, which preserves the geographic proportionality originally expressed by Congress in D.C. Code § 11-942; (2) the omission of the inapplicable subsection (a)(2); (3) the addition of language in subsection (a)(1)(A)(iii) providing that the deposition, production, or inspection of documents must be in the District of Columbia, unless otherwise agreed or

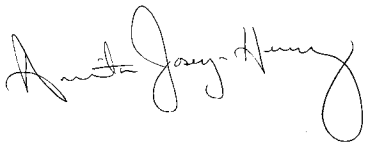
ordered by the court; and (4) the substitution of specific local language for inapplicable federal language in subsections (a)(1)(A)(i)–(ii), (a)(3), (b)(2), and (c)(3)(A)(ii).

This rule provides a means for issuing deposition subpoenas for nonresidents of the District of Columbia in cases which qualify, but does not preclude the alternatives of filing with the court a motion for appointment of an examiner under Rule 28-I or resorting directly to the courts of another jurisdiction under its rules and statutes.

Subpoenas issued by attorneys under subsection (a)(3) must be substantially in the format of Civil Action Form 14.

* * *

By the Court:



Date: March 9, 2021

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