

#### **Rule 4. Process**

##### **(a) CONTENTS; AMENDMENTS.**

(1) *Contents.* A Notice of Hearing and Order Directing Appearance or a Notice of Motion Hearing must:

(A) name the court and the parties;  
(B) specify the date and time of the hearing;  
(C) be directed to the respondent;  
(D) state the name and address of the petitioner's attorney or, if unrepresented, of the petitioner;

(E) state the time period within which the respondent must file a response to the petition or motion;

(F) notify the respondent that failure to appear after being served, may result in a default judgment against the respondent for the relief demanded in the petition or motion;

(G) notify the respondent that failure to appear may result in issuance of a bench warrant and entry of a parentage and/or support order;

(H) be signed by the clerk; and

(I) bear the court's seal.

(2) *Amendments.* The court may permit a Notice of Hearing and Order Directing Appearance or a Notice of Motion Hearing to be amended.

(3) *Service Outside the District of Columbia.* A notice or order in lieu of notice should correspond as nearly as possible to the requirements of a statute or rule whenever service is made pursuant to a statute or rule that provides for service of a notice or order in lieu of notice on a party not an inhabitant of or found within the District of Columbia.

##### **(b) ISSUANCE OF NOTICE.**

(1) *Support or Parentage Case.* In a case in which a party seeks permanent or temporary support of a child, to modify a child support order, or to establish parentage, the clerk must issue a Notice of Hearing and Order Directing Appearance or a Notice of Motion Hearing, specifying the date and time of the hearing, to each named respondent or individual whose attendance is required.

(2) *Motion for Contempt or Post-Judgment Motion.* When a judge or magistrate judge orders a hearing on a motion for contempt or a post-judgment motion, the clerk must issue a Notice of Motion Hearing for each party to be served.

(c) **SERVING A NOTICE.** A Notice of Hearing and Order Directing Appearance or a Notice of Motion Hearing must be served on the respondent or other named person, along with the petition or motion, in one of the following ways:

(1) by any person who is at least 18 years of age and not a party:

(A) delivering a copy of each to that individual personally; or

(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;

(C) leaving a copy of each at the individual's place of employment with someone of suitable age and discretion;

(2) by mailing a copy of each to the person to be served at the person's dwelling or usual place of abode or at the person's place of employment by certified mail, return receipt requested, and also by separate first-class mail—except that service by certified

mail that is unclaimed or refused and first-class mail alone is not a sufficient basis to permit the entry of a default order of parentage in a case where the respondent fails to file an answer or otherwise fails to respond appropriately;

(3) by the Metropolitan Police Department as authorized by D.C. Code § 13-302.01 (2012 Repl.);

(4) by a United States marshal or deputy marshal as authorized by D.C. Code § 13-302 (2012 Repl.); or

(5) in any manner authorized by applicable statute.

(d) TERRITORIAL LIMITS OF EFFECTIVE SERVICE. Serving a Notice of Hearing and Order Directing Appearance and the petition establishes personal jurisdiction over a respondent:

(1) who is subject to the jurisdiction of this court;

(2) who is a party joined under Domestic Relations Rule 19 and is served at a place not more than 100 miles from the place of the hearing or trial; or

(3) when authorized by a federal or District of Columbia statute.

(e) SERVING AN INDIVIDUAL IN A FOREIGN COUNTRY. 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 at a place not within the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering to the individual personally a copy of the Notice of Hearing and Order Directing Appearance and petition or the Notice of Motion Hearing and motion; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement as the court orders.

(f) PROVING SERVICE.

(1) *Affidavit Required*. Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(A) *Service by Delivery*. If service is made by personal delivery pursuant to Rule 4(c)(1), (3), or (4), the return of service must be made under oath (unless service was made by the United States marshal or deputy marshal) and must specifically state:

(i) the caption and number of the case;

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

(iii) the time and place when service was made;

(iv) the fact that a Notice of Hearing and Order Directing Appearance and petition or a Notice of Motion Hearing and motion were delivered to the person served; and

(v) if service was effected by delivery to a person other than the party named in the notice, then specific facts from which the court can determine that the person to whom was delivered meets the appropriate qualifications for receipt of process set out in Rule 4(c)(1)(B) or (C).

(B) *Service Under Rule 4(c)(2)*. If service is made by certified mail and first-class mail in accordance with Rule 4(c)(2), the return of service must be accompanied by the signed receipt, when available, and an affidavit, which must state:

(i) the caption and number of the case;

(ii) the name and address of the person who posted the certified and first-class mail;

(iii) the fact that the mailing contained a Notice of Hearing and Order Directing Appearance and petition or a Notice of Motion Hearing and motion;

(iv) if the return receipt does not purport to be signed by the party named in the notice, then specific facts from which the court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in Rule 4(c)(1)(B) or (C);

(v) if the return receipt is not available, whether the certified mail was unclaimed or refused; and

(vi) whether the first-class mail was returned.

(2) *Validity of Service*. Failure to prove service does not affect the validity of service.

(3) *Amending Proof*. The court may permit proof of service to be amended.

(g) TIME LIMIT FOR SERVICE.

(1) *In General*. Except where service is waived or made in open court, service must be accomplished before the time for commencement of the hearing specified on the Notice of Hearing and Order Directing Appearance or Notice of Motion Hearing. A separate proof must be filed as to each respondent who has not responded to the petition.

(2) *Extensions of Time*.

(A) *Application to Clerk*. Prior to the commencement of the hearing specified in the Notice of Hearing and Order Directing Appearance or Notice of Motion Hearing, the petitioner may file an application requesting the clerk to extend the time for service. The application must include a certificate of good faith efforts to complete service by the petitioner or by the petitioner's attorney.

(B) *Reissuance*. On receipt of an application that meets the requirements of Rule 4(g)(2)(A), the clerk must reissue a Notice of Hearing and Order Directing Appearance or Notice of Motion Hearing that specifies a new date and time for the initial hearing.

(3) *Dismissal*. The petitioner's failure to comply with the requirements of this rule will result in the dismissal without prejudice of the petition. The clerk will enter the dismissal and serve notice on all the parties.

(h) BENCH WARRANT.

(1) *When Personally Served*. Service of Notice of Hearing and Order Directing Appearance or Notice of Motion Hearing in accordance with D.C. Code § 46-206

(b)(1)(A)-(C) (2012 Repl.) provides a sufficient basis for issuance of a bench warrant for failure of the respondent to appear.

(2) *When Served by Mail*. Service executed in accordance with D.C. Code § 46-206 (b)(2) (2012 Repl.) does not provide a sufficient basis for issuance of a bench warrant for failure of the respondent to appear.

(i) NOTICE GIVEN IN OPEN COURT. Oral or written notice given by a judge, magistrate judge, or any authorized court representative, to any person during a hearing may constitute notice in lieu of service. If notice is provided in this matter, the clerk must promptly place proof of this notice in the appropriate court record.

## COMMENT

The summons in parentage & support cases is called a Notice of Hearing and Order Directing Appearance (“NOHODA”). Specifically, the NOHODA serves the summons and notice function prescribed by D.C. Code § 46-206 (2012 Repl.). The content and service of a NOHODA must comply with the provisions of the statute which requires in parentage & support cases, that the petition be attached to the notice of an already scheduled hearing. While the statute refers only to “notice” and not specifically to a NOHODA, P&S Rule 4 tracks the statute in all other respects.

Rule 4(i) authorizes judges, magistrate judges, clerks, and other court employees to provide oral or written notice in lieu of service. *In re B.J.*, 917 A.2d 86, 90 (D.C. 2007), states that Superior Court rules of procedure are “broad enough to permit service of process by a courtroom clerk within a courtroom . . . .” *In re B.J.* also recognizes that, while non-resident litigants attending court are immune from service of process in other cases, there is an exception when the subject matter of the court proceeding is closely related by subject matter to the action in which service of process is being made. *Id.* However, under D.C. Code § 46-353.14 (2018 Supp.), a petitioner “is not amenable to service of civil process while physically present in the District to participate in a proceeding” under the Uniform Interstate Family Support Act.