



March 22, 2021

Via Electronic Mail to Laura.Wait@dccsystem.gov

Laura M.L. Wait
Associate General Counsel
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 6715
Washington, D.C. 20001

Re: Comments on Proposed Temporary Amendments to Rule 5 of the Rules Governing Proceedings in the Domestic Violence Division

Dear Ms. Wait,

The Legal Aid Society of the District of Columbia¹ (“Legal Aid”) submits these comments on the proposed temporary amendments to Rule 5 of the Superior Court Rules Governing Proceedings in the Domestic Violence Division (“DV Rules”). As a result of the COVID-19 pandemic, domestic violence survivors have faced new challenges in seeking protection, especially with respect to service of process. Legal Aid supports the Committee’s effort to provide alternatives to petitioners whose safety depends on providing actual notice to their respondents.

The Intrafamily Offenses Act, and by extension the Domestic Violence Division, was designed to protect domestic violence survivors from acts and threats of violence. *See Cruz-Foster v. Foster*, 597 A.2d 927 (D.C. 1991). The Domestic Violence Division provides resources and procedures so survivors can quickly reach safety in times of crisis. The inherent power imbalance in abusive relationships presents special access-to-justice challenges. For that reason, Legal Aid believes that the DV Rules should demonstrate awareness of these complex issues and work to eliminate these challenges for survivors.²

¹ Legal Aid is the District’s oldest and largest general civil legal services organization. Since 1932, Legal Aid lawyers have been making justice real in individual and systemic ways for persons living in poverty in the District. We have a special interest in promoting access to justice for District residents, including persons who engage the court as self-represented litigants.

² Since 2005, Legal Aid attorneys have been working at one or both of the Domestic Violence Intake Centers, providing same-day advice and long-term representation to domestic violence survivors. In the past year, we have continued this work virtually. From this vantage point working cooperatively with Superior Court, we have a unique perspective on the interplay between practice and rules in the Domestic Violence Division.

Our comments below detail our reasons for supporting the proposed temporary amendments and offer additional suggestions to help provide a fair process for self-represented parties.

Comments on the Proposed Temporary Amendments

Under the current rule, petitioners are required to show diligent effort to effect personal service pursuant to Rule 5(a)(3)(A) before the court may permit an alternative method of service. The amended rule would forego the “diligent effort” requirement. Instead, a petitioner would need only demonstrate that (a) the alternative method is reasonably calculated to give actual notice of the action to the respondent; and (b) the petitioner is unable to accomplish service by a method listed in Rule 5(a)(3)(A). Legal Aid strongly supports the proposed temporary amendments.

Petitioners in Civil Protection Order cases regularly rely on alternative service to serve respondents. Intimate partners and family members often share a residence until the respondent is vacated by a Temporary Protection Order, leaving the petitioner unaware of an address where they can effect service. But in an increasingly digital world, petitioners may have several means through which they have regular past contacts with respondents, including e-mail, text messaging, and various social media. Any of these methods of service is likely to meet the requirement of being reasonably calculated to give actual notice to the respondent, and none come with the safety risks of an in-person service attempt.

The “diligent effort” requirement presents unique challenges for survivors of domestic violence. In order to show diligent effort under the current Rule 5, the court may expect a petitioner to attempt service at any last known addresses, try to locate the respondent in person at places where they may spend time, contact friends and family of the respondent to ascertain an address or location for the respondent, and/or contact hospitals, jails, and morgues to confirm whether the respondent is there. But these efforts put domestic violence survivors at risk of harm. It is well-known that a survivor is most in danger right after leaving an abusive relationship, but diligent effort requires survivors to seek out their abusers at the height of that dangerous period. If respondents learn of these efforts, they may retaliate by committing new acts of domestic violence. Asking friends or family to help is also difficult as they, too, put themselves in danger when they attempt to personally serve someone who has assaulted or threatened to harm their loved one.

These safety concerns are compounded with health and safety concerns about the spread of COVID-19. Searching for respondents in public places and around neighborhoods now puts petitioners and their family and friends at risk of contracting a highly communicable and potentially deadly virus. Diligent effort could require them to disregard public health guidance around social distancing. Petitioners should not have to choose between being safe from domestic violence or from COVID-19.

Allowing alternative service without first making diligent effort to effect service provides a safe and fast option for petitioners to serve court documents and provide actual notice to respondents. Whereas diligent effort would have caused some delay in making a motion for alternative service, the proposed temporary amendments will allow petitioners to request

alternative service early in a case and swiftly provide notice to respondents of relief granted in any Temporary Protection Order. The delay caused by the “diligent effort” requirement is uniquely harmful to petitioners seeking a Temporary Protective Order because their physical safety is at stake. The proposed changes will protect petitioners from being left vulnerable with Temporary Protection Orders unserved for extended periods of time.

One concern we have is how the proposed temporary amendments can be implemented in a way that best serves *pro se* petitioners who may not know that this option is available or how to file a motion in advance of a hearing. The temporary amendments should include language that a motion for alternative service may be written or oral. This would allow flexibility for petitioners who appear for their hearings and request continuances for service but express to the court that they can only serve by electronic means. This would also be consistent with several provisions of Rule 7 which allow oral motions. Additionally, we recommend that the Domestic Violence Division add a form to probono.net/dccourts that would allow petitioners to file such a request electronically.

Conclusion

Legal Aid appreciates the Committee’s consideration of these comments and recommendations. We would welcome an opportunity to discuss our comments further with the Committee on these matters, especially as to the access-to-justice objectives that inform these comments.

Sincerely,

Trisha Monroe
Supervising Attorney

Jamie Sparano
Senior Staff Attorney