



Tip of the Month April 2019

Service of Process Changes for Family and Civil Cases

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The Minnesota Judicial Branch (MJB) publishes Help Topics, instructions and over 500 forms on its website: www.mncourts.gov. These materials are primarily designed to assist self-represented litigants in common legal matters. Effective November 1, 2018, the Judicial Branch changed the service of process section in the instructions that accompany many civil and family court forms. **As a result, self-represented litigants are now being instructed that they do not need to have a third party serve most motions or responsive pleadings in civil and family cases.** This is a significant change, as it was a long-standing expectation that self-represented parties should not serve their own motions and other forms. It is important to note that the revisions to the instructions only apply to non-case-initiating forms (motions and answers) in civil and family cases in District Court. Service of case-initiating pleadings should still be done by a non-party.

Our goal with this month's tip is to clarify what changed, what did not change, and why. For additional information, please visit the new "Service of Process" Help Topic on the MJB website: <http://www.mncourts.gov/Help-Topics/Service-of-Process.aspx>.

Many attorneys may not be aware of this change to the instructions. We know there are questions and some confusion, especially in cases where one side is self-represented. You do not want to find yourself giving a self-represented litigant information or legal advice that contradicts the revised instructions, or claiming that service of process was done incorrectly when facing an opposing self-represented party who did not use a third party to serve.

What changed?

Prior to November 1, 2018, the statewide instructions for most family and civil motions clearly told self-represented parties: **"You cannot serve the forms yourself.** You must have someone else at least 18 years old who is not a party to the case hand deliver or mail the forms for you."

The revised instructions now include language such as this:

Who Can Serve

The forms you have prepared can be served by any of the following:

- The sheriff;
- Another adult; or
- You.

The change allowing parties to serve themselves applies to both personal service and service by mail.

Which forms/instructions changed?

The amendments to instructions impacted civil and family answers and most motions and responsive motions. There are some exceptions, primarily for matters in the expedited child support process, which are discussed in the next section. (Note, if you are having trouble accessing the updated versions of any instructions or forms, you may need to clear your internet cache.) This chart shows the instructions that were revised on November 1, 2018.

Form #	Instructions for ...
CIV301	Civil Answer
CIV601	Generic Motion
CIV701	Generic Responsive Motion
CHC201	Response to Request to Establish Custody and Parenting Time
CHC301	Motion to Change Custody
CHC401	Response to Change Custody
PAR101	Motion for Parenting Time Assistance
PAR201	Response to Request for Parenting Time Assistance
CSD1001	Response - Modify Medical Support Only
CSD201	Motion to Modify Child Support and/or Spousal Maintenance
CSD301	Response - Modify Child Support and/or Spousal Maintenance
CSD401	Motion to Stop COLA
CSD801	Response - Stop COLA
CSD901	Motion to Modify Medical Support Only
DIV501	Answer and Counterpetition for Dissolution without Children
DIV601	Motion for Temporary Relief without Children
DIV701	Response - Temporary Relief without Children
DIV811	Notice to Proceed to Judgment
DIV901	Answer and Counterpetition for Dissolution with Children
DIV1001	Motion for Temporary Relief with Children
DIV1101	Response - Temporary Relief with Children
DIV1501	Response - Motion for Contempt
FAM405	Contest Request for Payment of Unreimbursed/Uninsured Healthcare Expenses
EXP101	Expungement (Sealing) of a Criminal Record

What did not change?

Initial pleadings, such as a Summons and Petition, still require service by a neutral third party adult per Rule 4.02 of the Rules of Civil Procedure. Rules for some specific case types or actions also limit who may serve. In expedited child support cases, Rule 355.02 of the General Rules of Practice for District Court requires service of motions by the sheriff or by “any other person who is at least 18 years of age who is not a party to the

proceeding.” Therefore, the instructions for forms meant for use in the Expedited Process have not been revised as part of this change. Likewise, the instructions for motions for contempt of court have not been revised due to specific statutory requirements related to serving an Order to Show Cause and Appear. Service by alternate means when granted to initiate an action should also be done by a non-party.

Why was the change made?

You may ask, “Did I miss a change in the rules?” No; these revisions were not a result of a change in the rules. Rather, the change was the result of an in-depth examination of the rules, law, and court practices by the Court Operations Advisory Workgroup (COAW)¹, which resulted in a recommendation to revise certain instructions for civil and family forms.

In the unpublished case Haage v. Gronland, 1996 WL 509712 (Minn. Sept. 10, 1996), the Court of Appeals stated that, while the original service of process to commence a case requires service by a nonparty under Minn. R. Civ. P. 4.02, there is no such requirement for motions under Minn. R. Civ. P. 5.02. Rule 302.01 (b) of the General Rules of Practice provides that service of motions in family court cases “may be accomplished in accordance with Minn. R. Civ. P. 5.” As it turns out, there is no requirement in this rule that a non-party serve a pleading subsequent to the initiating complaint or petition. Therefore, the rules do not support the requirement of service by a third party (mail or personal) across the board. Who can serve depends upon what is being served.

¹ Recommendations regarding the approval of new or revised court forms and instructions is the responsibility of the Court Operations Advisory Workgroup (COAW). The COAW committee and subcommittees are made up of experienced court staff, including judicial officers, from all ten MN judicial districts, who review and respond to operational requests submitted by judges, staff, and workgroups.