

RULE CHANGE 2020(13)
COLORADO RULES OF CIVIL PROCEDURE
Rules 4, 106.5, and 304

Rule 4. Process

(a) - (g) [NO CHANGE]

(h) Manner of Proof. Proof of service shall be made as follows:

- (1) If served personally, by a statement, certified by the sheriff, marshal or similar governmental official, or ~~statement duly acknowledged under oath~~ [a sworn or unsworn declaration](#) by any other person completing the service as to date, place, and manner of service;
- (2) Repealed eff. March 23, 2006.
- (3) If served by mail, by an ~~affidavit~~ [sworn or unsworn declaration](#) showing the date of the mailing with the return receipt attached, where required;
- (4) If served by publication, by ~~the affidavit of publication, together with an affidavit as to a~~ [sworn or unsworn declaration that includes](#) the mailing of a copy of the process where required;
- (5) If served by waiver, by ~~the a sworn or unsworn declaration admitting or waiving service written admission or waiver of service~~ by the person or persons served, ~~duly acknowledged~~, or by their attorney;
- (6) If served by substituted service, by a ~~duly acknowledged statement~~ [sworn or unsworn declaration](#) as to the date, place, and manner of service, ~~accompanied by an affidavit that~~ [and that](#) the process was also mailed to the party to be served by substituted service, setting forth the address(es) where the process was mailed.

(i) - (m) [NO CHANGE]

COMMENT

2020

[Rule 4\(h\) on the manner of proving service was amended following the adoption in 2018 of the Uniform Unsworn Declarations Act. C.R.S. § 13-27-101 et seq. This Act defines a “sworn declaration,” which includes an affidavit, and an “unsworn declaration,” which “means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.” § 13-27-102 \(6\) and \(7\). An unsworn declaration which complies with the Act is sufficient to prove service under Rule 4\(h\).](#)

Rule 106.5. Correctional Facility Quasi-Judicial Hearing Review

(a) - (c) [NO CHANGE]

(d) Service of Process.

- (1) [NO CHANGE]
- (2) If the inmate files a motion to proceed *in forma pauperis* status and that motion is granted, service of process shall be accomplished in the following manner: The clerk of the District Court shall scan the complaint and serve it by electronic means on the Attorney General, the Executive Director of the Department of Corrections, and the Warden of the Facility (or the designee of each of these officials), along with a notice indicating the fact of the inmate's filing and the date received by the Court.

Each person notified shall send ~~an acknowledgment~~ confirmation by electronic means indicating that the specified official has received the electronic notice and the scanned copy of the complaint.

(e) - (k) [NO CHANGE]

Rule 304. Service of Process

(a) - (f)

(g) Manner of Proof. Proof of service shall be made as follows:

(1) If served personally, by a statement, certified by the sheriff, marshal or similar governmental official, or ~~statement duly acknowledged under oath~~ a sworn or unsworn declaration by any other person completing the service as to date, place, and manner of service.

(2) Repealed eff. March 23, 2006.

(3) If served by mail, ~~an affidavit~~ sworn or unsworn declaration showing the date of the mailing, with the return receipt attached, where applicable.

(4) If served by publication, by ~~the affidavit of publication, together with an affidavit as to the~~ a sworn or unsworn declaration that includes the mailing of a copy of the summons, complaint and answer form where required.

(5) If served by waiver, by ~~the written admission or waiver of service by~~ a sworn or unsworn declaration admitting or waiving service by the person or persons ~~to be served,~~ duly acknowledged, or by their attorney.

(6) If served by substituted service, by a ~~duly acknowledged statement~~ sworn or unsworn declaration as to the date, place, and manner of service, ~~accompanied by an affidavit and~~ that the process was also mailed to the party to be served by substituted service, setting forth the address(es) where the process was mailed.

(h) - (j) [NO CHANGE]

COMMENT

2020

Rule 304(g) on the manner of proving service was amended following the adoption in 2018 of the Uniform Unsworn Declarations Act. C.R.S. § 13-27-101 et seq. This Act defines a “sworn declaration,” which includes an affidavit, and an “unsworn declaration,” which “means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.” § 13-27-102 (6) and (7). An unsworn declaration which complies with the Act is sufficient to prove service under Rule 304(g).

Rule 4. Process

(a) - (g) [NO CHANGE]

(h) Manner of Proof. Proof of service shall be made as follows:

- (1) If served personally, by a statement, certified by the sheriff, marshal or similar governmental official, or a sworn or unsworn declaration by any other person completing the service as to date, place, and manner of service;
- (2) Repealed eff. March 23, 2006.
- (3) If served by mail, by a sworn or unsworn declaration showing the date of the mailing with the return receipt attached, where required;
- (4) If served by publication, by a sworn or unsworn declaration that includes the mailing of a copy of the process where required;
- (5) If served by waiver, by a sworn or unsworn declaration admitting or waiving service by the person or persons served, or by their attorney;
- (6) If served by substituted service, by a sworn or unsworn declaration as to the date, place, and manner of service, and that the process was also mailed to the party to be served by substituted service, setting forth the address(es) where the process was mailed.

(i) - (m) [NO CHANGE]

COMMENT

2020

Rule 4(h) on the manner of proving service was amended following the adoption in 2018 of the Uniform Unsworn Declarations Act. C.R.S. § 13-27-101 et seq. This Act defines a “sworn declaration,” which includes an affidavit, and an “unsworn declaration,” which “means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.” § 13-27-102 (6) and (7). An unsworn declaration which complies with the Act is sufficient to prove service under Rule 4(h).

Rule 106.5. Correctional Facility Quasi-Judicial Hearing Review

(a) - (c) [NO CHANGE]

(d) Service of Process.

(1) [NO CHANGE]

(2) If the inmate files a motion to proceed *in forma pauperis* status and that motion is granted, service of process shall be accomplished in the following manner: The clerk of the District Court shall scan the complaint and serve it by electronic means on the Attorney General, the Executive Director of the Department of Corrections, and the Warden of the Facility (or the designee of each of these officials), along with a notice indicating the fact of the inmate's filing and the date received by the Court.

Each person notified shall send a confirmation by electronic means indicating that the specified official has received the electronic notice and the scanned copy of the complaint.

(e) - (k) [NO CHANGE]

Rule 304. Service of Process

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- (1) If served personally, by a statement, certified by the sheriff, marshal or similar governmental official, or a sworn or unsworn declaration by any other person completing the service as to date, place, and manner of service.
- (2) Repealed eff. March 23, 2006.
- (3) If served by mail, a sworn or unsworn declaration showing the date of the mailing, with the return receipt attached, where applicable.
- (4) If served by publication, by a sworn or unsworn declaration that includes the mailing of a copy of the summons, complaint and answer form where required.
- (5) If served by waiver, by a sworn or unsworn declaration admitting or waiving service by the person or persons served, or by their attorney.
- (6) If served by substituted service, by a sworn or unsworn declaration as to the date, place, and manner of service, and that the process was also mailed to the party to be served by substituted service, setting forth the address(es) where the process was mailed.

(h) - (j) [NO CHANGE]

COMMENT

2020

Rule 304(g) on the manner of proving service was amended following the adoption in 2018 of the Uniform Unsworn Declarations Act. C.R.S. § 13-27-101 et seq. This Act defines a “sworn declaration,” which includes an affidavit, and an “unsworn declaration,” which “means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.” § 13-27-102 (6) and (7). An unsworn declaration which complies with the Act is sufficient to prove service under Rule 304(g).

Amended and Adopted by the Court, En Banc, April 17, 2020, effective immediately.

By the Court:

**Richard L. Gabriel
Justice, Colorado Supreme Court**