



## Proof of Service

After a petition is submitted to probate, the court shall cause the interested parties to be served (**MCL 330.1453**). This means that the court will ensure that parties are served either by doing it themselves or directing the petitioner to do it. It is important for all the interested parties to be aware that the petition was filed and of the set court hearing date and information to attend.

The Michigan Court Rules for civil procedures provides guidance on serving individuals in Chapters 1, 2, and 5.

### Michigan Court Rules

#### Rule 5.103

Any adult may serve the documents, except when the individual is in a governmental institution, hospital or home. In those instances, the person in charge of the institution or their designee must complete the personal service (Rule 5.103).

#### Rule 5.734 A

For Initial petitions, the individual must be personally served and the attorney must also be served (Rule 5.734 A). Service includes providing a copy of the petition, clinical certificate (if applicable), and Notice of Hearing.

#### Rule 5.734 B

For Second or Continuing Petitions, the court must serve a copy of the petition for second or continuing mental health treatment or petition for discharge along with the notice of hearing to all interested parties who were listed on the initial petition (Rule 5.734 B).

#### Rule 5.734 C

Each interested party shall be served within the following timelines (Rule 5.734 C):

- The individual petitioned and the individual's attorney shall be served at least 2 days before the hearing date if the hearing is scheduled to be held within 7 days or less. For hearings scheduled further out than 7 days, the individual and attorney shall be served at least 5 days before the scheduled hearing.
- All other interested parties shall be served by personal service least 2 days before the hearing date if the hearing is scheduled to be held within 7 days or less. For hearings scheduled further out than 7 days, the interested parties shall be served either by personal service or via mail at least 5 days before the scheduled hearing.
  - The court may allow service within a shorter period of time than above with the consent of the individual and their attorney.



## Rule 5.105: Methods of Service

Personal service of a document on an individual other than an attorney must be made by:

- handing it to the individual personally;
- leaving it at the person's usual residence with some person of suitable age and discretion residing there;
- or sending the document by registered mail or certified mail, return receipt requested, and delivery restricted to the addressee; but service is not made for purpose of this subrule until the individual receives the document.

**NOTE:** Court of Appeals further clarifies that the individual can still be considered personally served even if they do not physically take the papers from you. In *Barclay v Crown Building and Development, Inc.*, Barclay hired a process server who found the defendant outside and followed him to the door in which the defendant went in and locked the door. The process server put the paperwork on the door handle and informed the defendant through the door that he had been served. “informing the defendant of the nature of the papers, offering them to the defendant, and leaving them within the defendant's physical control ought to (and does) suffice to constitute ‘delivery.’” This ruling has been upheld by the Court in *American Axle*, which states that the act of announcing service and handing it to the individual (that ended up being inadvertently jammed in the defendant's closed door) satisfied the requirements of offering them to the individual and then leaving them within the individual's control.

Other interested parties may be served through:

- Mailing. Mailing of a copy under this rule means enclosing it in a sealed envelope with first-class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.
- Publication. Service by publication must be made in the manner provided in **MCR 5.106**.
- Email. Unless otherwise limited or provided by this court rule or **MCR 1.109(G)(6)(a)(ii)**, parties to a civil action or interested persons to a proceeding may agree to service by email in the manner provided in and governed by **MCR 2.107(C)(4)**.
- Electronic Service. Electronic service of a document shall be made in accordance with **MCR 1.109(G)(6)(a)** when required.



## Proof of Service (*Found here: [pc564.pmd](#)*)

After interested parties are served, the individual who served them must fill out a proof of service and file it with probate court. The proof of service shall include a list of the documents served, the date of service, the manner and method of service, and the individuals who were served.

There are some additional rules and nuances that can apply to this process:

- **Per Rule 2.105 (J)** the court is allowed discretion to allow other manners of reasonable service to occur to give the defendant notice of the hearing and an opportunity to be heard. However, this request must be made to the court via a verified motion dated not more than 14 days before it is filed. In the motion, it shall describe facts to show why the normal methods of service cannot be met, and the defendant's address or last known address. If the address information is unknown, then facts must show due diligence to ascertain it. Once the court approves the request for an alternative method of service, then the individual can be served in that manner.
- **Per Rule 2.105 (K) (3)**, “An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.” If you fail to properly serve the defendant, but your service still provided the defendant with the fact that the hearing was occurring that the hearing information, the Prosecutor may ask the Judge to proceed with the hearing or may ask for an adjournment to give you a chance to properly notify the defendant, depending on the specific circumstances.