COVID-19 Practice Bulletin #12

Serving Notice of Court Applications

Effective Date: May 5, 2020

What You Need to Know

As a result of the pandemic and Provincial Health Officer's guidance and recommendations, providing personal service of court documents to individuals may be impacted.

Personal service is **the best option** but needs to be done in consideration of the BC Provincial Health Officer's guidance and recommendations.

In-person service offers opportunities to continue to work with families by answering questions, having further discussion about best interests and placement options and to build relationships. Workers should continue utilizing Chapter 3 Policy 3.4 by offering Collaborative Planning and Decision Making (CPDM) to families throughout the case management continuum to achieve agreement in child protection matters involving planning or dispute resolution.

There may be circumstances where personal service cannot occur such as when it is not possible to do so in accordance with the guidance and recommendations of the Provincial Health Officer or because Indigenous communities are requiring that people do not come onto their lands to protect the health of their members and to minimize exposure and spread of COVID-19. If personal service is not possible due to health or safety concerns, consider the following options consistent with Rule 6(4)(a) of the Provincial Court (CFCSA) Rules.

1. Fax to lawyer or leaving at lawyer's office
   - If the party has a lawyer of record, service can be provided by leaving a copy at, or by fax, to that lawyer's office.
   - Prior to providing service to a lawyer, confirm with the lawyer that they are currently the lawyer of record and that they are able to access faxes from their office or that you are able to leave documents at the lawyer's office.
2. Fax to individual
   - If the party has a fax number, service can be provided by fax to the last fax number for service given.
   - To use fax to the individual as the method of service, the individual needs to have completed form 8 or provided a fax number for service on a document filed by the individual.
   - Prior to sending a fax, phone the party to confirm the fax number and make sure they can retrieve the fax.
3. Registered mail to individual
   - To use registered mail, the individual needs to have completed form 8 or provided an address for service on a document filed by the individual.
   - Effective March 15, 2020 Canada Post registered mail will continue to require a signature, but they no longer accept signatures at the door. Instead the individual will receive a notice card and will be required to visit their local post office to sign.
   - Discuss with the parties if they can visit their local post office in person to sign for the registered mail.

Note: Process servers, if available may also be used to effect personal service, in consultation with your Director of Operations/Manager and if the family is in agreement.

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British Columbia
Ministry of Children and Family Development

Applications for substituted service:

Rule 6(10) of the Provincial Court (CFCSA) Rules allows for other service methods through application to a judge. During the Covid-19 state of emergency, social workers should apply for substituted service orders by desk order, in consultation with the Team Leader and Director's counsel. Make an application for substituted service by completing Form 2 application and the supporting affidavit (Form 7) and submit it to director's counsel who will draft the order and file all of the documents with the court registry to obtain a desk order permitting the alternative method of serving notice.

In the affidavit, include the following:

- why the standard service methods (above) are not possible;
- the steps you have taken to confirm the information needed for other methods of service to be effective such as confirming:
  - the individual's personal email address and internet access;
  - the individual's home address for receiving regular mail;
  - the individual's personal cell phone number and ability to receive texts;
  - information to support another method (such as service at a place the individual frequents).

The affidavit can support potentially using more than one alternative method of service, as another approved method may need to be selected if the first method used is unsuccessful. But when determining which alternative service method to use first, always give preference to the method that provides the greatest degree of privacy – for example, encrypted documents sent by email would be more secure than an unencrypted photo of a court document via text message.

You must receive confirmation from director's counsel that the court has made an order for the substituted service prior to using an alternative method of service.

Carrying out substituted service orders:

Email

- Prior to sending an email, inform the individual that you will be sending the document(s) in an encrypted attachment that the individual can open with a password which you will send separately by telephone or text message. Provide instructions on how to unencrypt the email. If possible, include a read-receipt on the email to confirm receipt. If not possible to include a read-receipt, ask in your email message that the individual send back a reply email to confirm having received the document(s).
- If you do not receive a read-receipt or email reply, phone the individual after sending the email to confirm receipt.

Mail via Canada Post

- Prior to mailing the documents, inform the individual that you will be providing the documents via mail.
- Choose XpressPost, with the same day or two-day shipping option. When using Xpress Post, all items are tracked, delivery times are guaranteed and delivery status can be checked online.
- Make a follow-up call to confirm that the individual received the documents via mail.

Text message

- Court documents can be included as photos added to the text message.
- Include in the text message instructions that the individual send back a reply text to confirm having received the text.
- If you do not receive a text reply, phone the individual to confirm receipt including that the person is able to read the text in the photos.

When using technology including email or text messages to provide service, refer to resources.

Proof of Service:

Complete a Certificate of Service (Form 9) for substituted service. The order for substituted service will include how service is to be proved and the Certificate of Service should include this proof. For example, the exhibit included with the Certificate of Service could be the email or text message from the individual confirming receipt of the service. If you confirm service by phone, enter that information in the Certificate of Service (in the same text box that lists the copies of documents sent to the individual).

Where to Find More Information

If you have further questions, please contact your Director of Practice or if you are with a DAA your Practice Analyst.

Provincial Court (Child, Family and Community Service Act) Rules
http://www.bclaws.ca/civix/document/id/roc/roc/533_95