

Rule 12. Requirement for Comparable Means of Service

Except where e-filing and e-service is required by court order or rule, the parties may file and serve by any available method, but must select comparable means of service and filing so that the documents are delivered substantially contemporaneously. This rule does not apply to service of a summons or a subpoena. Pleadings and other documents need not be filed until required by Minn. R. Civ. P. 5.05 and motions for sanctions may not be filed before the time allowed by Minn. R. Civ. P. 11.03(a).

In emergency situations, where compliance with this rule is not possible, the facts of attempted compliance must be provided by affidavit.

(Added effective March 1, 2009; amended effective January 1, 2010; amended effective July 1, 2015.)

Advisory Committee Comment - 2008 Amendment

Rule 12 is a new rule, recommended to codify a longstanding practice of professional courtesy: that papers served both to the court and to the other party be served and filed by comparable means. The rule does not require that the same means be used; but if hand delivery to the court is chosen for filing, then either hand delivery, overnight courier sent the day before, or facsimile transmission to other party must be used. The measure of compliance is approximate simultaneity; the purpose of the rule is to discourage gameplaying over service. Fairness requires that service and filing occur at about the same time; delivering papers immediately to the court and then serving them leisurely upon counsel is not justified and in some cases is not fair.

Advisory Committee Comment - 2009 Amendment

Rule 12 is amended to add the last sentence of the first paragraph. The amendment is intended to clarify that the rule does not modify two facets of practice established before its adoption. It does not require that pleadings be filed before the time allowed under Rule 5.05, which generally makes it unnecessary to file pleadings until after a party files a pleading, thereby opening a court file. This rule is a part of Minnesota's "hip-pocket" service regime as established by Minn. R. Civ. P. 3 and 11 contains a 21-day "safe harbor" provision, requiring service of a motion for sanctions but prohibiting filing of the motion for 21 days. The amendment to Rule 12 of the general rules was not intended to modify that important provision.

Advisory Committee Comment - 2015 Amendments

The amendment to Rule 12 is intended to retain the existing rule requiring that parties serve and file documents by comparable means, but adapts it to specify that if e-filing or e-service are required, then those methods must be used. This rule is intended to eliminate strategic maneuvering with service, and attorneys and self-represented litigants should expect that this rule will be interpreted to penalize attempts to gain some perceived advantage over other parties by serving and filing by different means.

A self-represented litigant who elects not to use the E-Filing System may expect that an opposing attorney may e-file a document with the court and serve it by U.S. mail on the self-represented litigant on the same day. In this circumstance, the filing will precede the service, which is permitted under the rule as the attorney is required to use the E-Filing System to file the document.