Rule 1. Scope

These Rules govern all proceedings before the Family Court of the Superior Court of the District of Columbia described in D.C. Code § 11-1101(13) in which a child (as defined in D.C. Code § 16-2301) is alleged to be delinquent or in need of supervision, but do not govern those proceedings described in D.C. Code § 11-1101(13) in which a child is alleged to be neglected.

COMMENT

Like the Superior Court Rules of Criminal Procedure, SCR-Juvenile Rules 1 through 60 are modeled on the structure and substance of the corresponding Federal Rules of Criminal Procedure. Rules 101 through 118 are local Rules unique to the juvenile practice. Where appropriate, each federally-derived Rule is substantially similar to the corresponding Federal Rule. Where the Federal Rule is wholly inapplicable, it is left vacant.

Proceedings regarding delinquency and need of supervision are treated together in the Rules (except where otherwise indicated in a particular Rule) since they are but different parts of the same spectrum of antisocial behavior.

Rule 2. Purpose and Construction

These Rules are intended to provide for the just determination of every proceeding in which a child is alleged to be delinquent or in need of supervision. They embrace the principle that each child is an individual entitled, in his own right, to appropriate elements of due process of law, and also adopt the principle that, when a child is removed from his own home, the Family Court will secure for him custody, care and discipline as nearly as possible equivalent to that which should have been provided for him by his parents. These Rules shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. If practicable, feasible, and lawful, all cases concerning the same or immediate family or household members and any subsequent case(s) shall be processed consistent with the one family, one judge provision of the District of Columbia Family Court Act of 2001.

If no procedure is specifically prescribed by these Rules, the Family Court may proceed in any lawful manner not inconsistent with these Rules or with any applicable statute.

COMMENT

The first and third sentences of this Rule are taken from *FRCrP 2*. The second and fourth sentences of the Rule (1) make clear that our Rules retain the obligation to give proper care to a child removed from his own home, and (2) implement the one family, one judge provision of the District of Columbia Family Court Act of 2001, Public Law 107-114 (January 8, 2002).

The last paragraph of the Rule is taken from *FRCrP 57(b)*.

Rule 3. The Complaint

The complaint alleging that a child is delinquent or in need of supervision is a written statement of the essential facts constituting the offense or offenses charged. It shall be transmitted to the Director of Social Services for intake screening in accordance with D.C. Code § 16-2305.

COMMENT

In delinquency proceedings, Metropolitan Police Department Form (P.D.) 379 and Park Police Form (U.S.P.P.) 4403 A serve as the complaint referred to in this Rule. In Persons in Need of Supervision cases, Superior Court Social Service Form (F.D.) 104 serves as the complaint.

Rule 4. Order for Custody

(a) Issuance.

(1) Prior to filing of petition. If, prior to the filing of a petition, a law enforcement officer has probable cause to believe that a child has committed a delinquent act, such officer may apply to a judicial officer of the Family Court for an order for custody for the child. The application shall be approved by the Office of the Attorney General before submission to the judicial officer and shall be supported by sworn testimony or affidavit. If the judicial officer finds that there is probable cause to believe that a delinquent act has been committed and that the child named in the application has committed it, the judicial officer may issue an order for custody for the child.

(2) During the pendency of the proceedings. The judicial officer, upon motion of a party or sua sponte, may issue a custody order for a respondent who, after receiving proper notice, fails to appear for a hearing.

(3) For runaway, absconder or escapee. Upon application of a law enforcement officer, parent, guardian, or custodian, the judicial officer may issue a custody order for a respondent where there are reasonable grounds to believe that the respondent has run away, escaped or absconded from the respondent's parent, guardian, or custodian.

(b) Form. The order for custody shall be signed by a judicial officer of the Family Court. It shall be issued under the title of the Superior Court of the District of Columbia Family Court and shall contain the name of the judicial officer to whom the case is assigned, if known; the date of issuance of the custody order; the name of the respondent or, if the respondent's name is unknown, any name or description by which the respondent can be identified with reasonable certainty; and the respondent's age and address. It shall describe the offense charged. It shall command that the respondent be taken into custody and shall state whether the respondent should be brought before the Family Court for detention pending the next regularly scheduled session of Court or brought before a representative of the Director of Social Services for a determination of placement pending appearance.

(c) Execution and return.

(1) By whom. An order for custody shall be executed by a law enforcement officer.

(2) Territorial and time limits. An order for custody may be executed at any place in the District of Columbia, but not more than 1 year after the date of issuance or reissuance; except that, pursuant to the provisions of the Interstate Compact on Juveniles, D.C. Code § 32-1101 et seq., an order for custody may be executed anywhere within the jurisdiction of the United States.

(3) Manner. The order for custody shall be executed by the taking into custody of the respondent named therein. The officer need not have the order in his or her possession at the time of the taking into custody, but upon request the officer shall show the order to the respondent as soon as possible. If the officer does not have the order in his possession at the time of the taking into custody, the officer shall then inform the respondent of the offense charged and of the fact that an order for custody has been issued.

(4) Unexecuted custody orders. Any unexecuted order for custody may be returned by the Office of the Attorney General and cancelled by the judicial officer. The judicial officer may, sua sponte or upon request of the Office of the Attorney General, reissue an unexecuted order for custody within one year of its issue or reissuance.

COMMENT

Paragraph (a) of this Rule provides for the issuance of custody orders at all stages of the juvenile process. Subparagraph (a)(1) requires the order for custody for a juvenile suspected of having committed a delinquent act to be based on probable cause. *See Schall v. Martin, 467 U.S. 253 (1984).* Absent exigent circumstances, a custody order must be obtained when the juvenile is to be taken into custody in his or her home. *Payton v. New York, 445 U.S. 574 (1980).*

Rule 5. Use of Summons When Repetitioning Offense

If a petition is dismissed without prejudice and if the Office of the Attorney General elects to reinstitute the charges against the same respondent arising out of the same fact situation as the charge which was dismissed, the Office of the Attorney General shall file a petition with the Family Court pursuant to D.C. Code § 16-2306. The Family Court shall set a time for initial appearance and direct the issuance of summonses pursuant to SCR-Juvenile 9. The Office of the Attorney General shall notify in writing the respondent's former counsel of its intent to reinstitute the charges and of the date of the initial appearance, and the respondent's former counsel shall be reappointed to represent the respondent unless otherwise ordered by the judicial officer.

Rule 6. The Grand Jury

[Vacant].

COMMENT

FRCrP 6 has been left vacant since there is no grand jury in juvenile proceedings. D.C. Code (1967 Edition, Supplement IV) § 16-2305 provides that the Director of Social Services and the Corporation Counsel decide whether formal charges should be brought by filing a petition against the juvenile.

Rule 7. The Petition

(a) [Vacant].

(b) [Vacant].

(c) Nature and contents. The petition shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by any person specified in D.C. Code § 16-2305(b), and shall be verified upon information and belief. It shall contain a statement that the respondent appears to be in need of care and rehabilitation. The petition need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the respondent committed the offense are unknown or that the respondent committed it by one or more specified means. The petition in a delinquency case shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the respondent is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the petition or for reversal of a judgment if the error or omission did not mislead the respondent to the respondent's prejudice. The petition in a need for supervision case shall state (1) the dates and number of times a respondent is alleged to have been truant from school, in the case of a child charged with habitual truancy; (2) the statute, rule, regulation or other provision of law alleged to have been violated, in the case of an offense committable only by children; and (3) the specific acts and dates thereof giving rise to a charge of ungovernability, in the case of a respondent charged with habitual disobedience of the reasonable and lawful commands of the respondent's parents. Petitions in both delinquency and need for supervision cases shall state (1) the name, birth date and residence address of the respondent, (2) the names and residence addresses of the respondent's parents, or legal guardian, if there be one, or the person or persons having custody and control of the respondent, or the nearest known relative, if no parent or guardian can be found.

(d) Surplusage. The Family Court on motion of the respondent may strike surplusage from the petition.

(e) Amendment of the petition. The Family Court may permit a petition to be amended at any time prior to the conclusion of a fact-finding hearing if no additional or different offense is charged and if substantial rights of the respondent are not prejudiced. The Family Court shall grant the Office of the Attorney General, the respondent, and the respondent's parent, guardian or custodian notice of the amendment and, upon request of any party for good cause shown, a reasonable time to prepare.

(f) Bill of particulars. The Family Court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before the initial hearing or within 10 days after the initial hearing or at such later time as the Family Court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires.

Rule 8. Joinder of Offenses and of Respondents

(a) Joinder of offenses. Two or more offenses may be charged in the same petition in a separate count for each offense if the offenses charged, whether they would be felonies or misdemeanors or both if committed by adults, are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of respondents. Two or more respondents may be charged in substantially similar individual petitions if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such respondents may be charged in one or more counts and all of the respondents need not be charged in each count. Substantially similar petitions shall be tried together unless severed under SCR-Juvenile 14.

Rule 9. Summonses and Other Notices of Hearing

(a) Issuance. When an initial appearance is scheduled in the case of a respondent released upon arrest, a summons or notice shall issue directing the respondent to appear before the Family Court for an initial appearance pursuant to D.C. Code § 16-2308. Summonses or notices also may be issued to a respondent named in a petition commanding the respondent to appear before the Family Court for any other hearing in connection with the petition. If the respondent fails to appear in response to a summons or notice served on the respondent either personally or by substitute service as provided in subparagraph (c)(3) of this rule, then an order for custody may be issued.

(b) Form. The summons or notice of the initial appearance shall be signed by the Clerk and shall specify a return date. It shall describe the offense or offenses charged in the petition and shall command the respondent or other parties named therein to appear before the Family Court at a stated date, time and place.

(c) Service and return.

(1) By whom. A summons or notice of the initial appearance may be served by a United States Marshal, by an officer of any police department of the District of Columbia, by a representative of the Superior Court Social Services Division, by a representative of any other public or private organization providing supervision or treatment of the respondent or the respondent's family, by a representative of any public or private organization having custody of the respondent, or by any other person so authorized by the Court.

(2) Territorial limits. A summons or notice of the initial appearance may be served at any place in the District of Columbia and, pursuant to the Interstate Compact on Juveniles, D.C. Code § 32-1101 et seq., at any place within the jurisdiction of the United States.

(3) Manner. Upon the respondent's release from custody, a representative of the Superior Court Social Services Division shall personally serve the respondent and the respondent's parent, guardian, or custodian with a summons or notice of the initial appearance. The summons or notice of the initial appearance shall be served upon the respondent and the respondent's parent, guardian, or custodian by delivering a copy to them personally, or by leaving it at their dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons or notice to their last known address. Service of the summons or notice of the initial appearance shall be completed sufficiently in advance of the hearing (not less than 48 hours before) so that reasonable opportunity to prepare to plead is afforded.

(4) Alternative Methods of Service. If the court determines, upon motion, that after diligent effort, service cannot be accomplished by a method prescribed in Rule 9(c)(3), the court may permit an alternative method of service reasonably calculated to give actual notice of the action to the respondent and the respondent’s parent, guardian, or custodian. The court may specify how service must be proved if accomplished by an alternative method. Alternative methods of service include, but are not limited to:

(A) delivering a copy to the individual’s employer by leaving it at the individual’s place of employment with a clerk or person in charge;

(B) mailing a copy to the individual by registered or certified mail, return receipt requested;

(C) transmitting a copy to the individual by electronic means; or

(D) any other manner that the court deems just and reasonable.

(5) Return. On or before the return day, if service has been effected, the person to whom a summons or notice of the initial appearance was delivered for service shall make a return thereof to the Family Court. At the request of the Office of the Attorney General made at any time while the petition is pending, a summons or notice of the initial appearance returned unserved or a duplicate thereof may be delivered to an authorized person for service. At the request of the Office of the Attorney General any unserved summons or notice of the initial appearance may be returned and cancelled by the Family Court.

(d) Notice to institution. If the respondent is in shelter care or detention, the Clerk shall promptly notify the Department of Human Services to bring the respondent to the scheduled hearing.

(e) Notification by the Family Court. Oral or written notification to the respondent by the judicial officer during a judicial hearing shall constitute legal notice. A copy of any written notice given pursuant to this paragraph shall be placed in the appropriate juvenile case record promptly.

COMMENT TO 2022 AMENDMENTS

Rule 9 has been amended to authorize alternative methods of service if, upon motion, the court makes the appropriate determination. New subsection (c)(4) also provides a non-exhaustive list of methods of alternative service. Prior subsection (c)(4) was redesignated as (c)(5) accordingly.

Rule 10. Initial Hearings

(a) Generally. At the initial hearing the respondent shall be informed of the respondent's right to counsel, that the judicial officer will appoint counsel if the respondent is unable to obtain counsel, that the respondent is not required to make a statement and that any statement made by the respondent may be used against the respondent. The petition shall be read to the respondent or the substance of the charges stated to the respondent. The respondent shall be given a copy of the petition before being called upon to plead. If the respondent refuses or is unable to plead, the judicial officer shall enter a plea of not guilty. If a plea of not guilty is entered, the judicial officer shall set a date for a status hearing. If the respondent enters a plea of guilty in the manner set forth in SCR-Juvenile 11, the judicial officer shall set a date for a disposition hearing unless both parties consent to an immediate disposition.

(b) Pursuant to D.C. Code § 16-2308. Upon entry of a plea of not guilty in a case where the respondent was released prior to the filing of the petition, the judicial officer shall set conditions, if any, of release.

(c) Pursuant to D.C. Code § 16-2312. Upon entry of a plea of not guilty in a case where the respondent was not released prior to the filing of a petition, the judicial officer shall evaluate the need for continued detention or shelter care in accordance with D.C. Code § 16-2312 and SCR-Juvenile 106.

Rule 11. Guilty Pleas

(a) Alternatives.

(1) In general. A respondent may plead guilty or change a previously entered not guilty plea to guilty.

(2) Conditional pleas. With the approval of the Court and the consent of the government, a respondent may enter a plea of guilty reserving in writing the right to appeal the adverse determination of any specified pretrial motion. If the respondent prevails on appeal, the respondent shall be allowed to withdraw the plea.

(b) Advice to respondent before accepting a plea of guilty. Before accepting a plea of guilty, the judicial officer must address the respondent personally in open court and inform the respondent of, and determine that the respondent understands, the following:

(1) The nature of the charge to which the plea is offered and the maximum period of supervision permissible;

(2) That the respondent has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a judicial officer and at that factfinding hearing the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, and the right against compelled self-incrimination;

(3) That if a plea of guilty is accepted by the Court there will not be a further factfinding hearing, so that by pleading guilty the respondent waives the right to a factfinding hearing;

(4) That if the respondent pleads guilty, the judicial officer may ask the respondent questions about the offense to which the respondent has pleaded, and if the respondent answers these questions under oath, on the record, and in the presence of the counsel, the respondent's answers may later be used against the respondent in a criminal or juvenile proceeding for perjury or false statement; and

(5) That if the respondent pleads guilty, the respondent will waive the right to appeal unless the plea agreement preserves that right in accordance with subparagraph (a)(2) of this Rule or unless the disposition imposed is not in accordance with the law.

(c) Insuring that the plea is voluntary. The judicial officer shall not accept a plea of guilty without first, by addressing the respondent personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from the plea agreement. The judicial officer shall also inquire as to whether the respondent's willingness to plead guilty results from prior discussions between the Office of the Attorney General and the respondent or the respondent's attorney.

(d) Plea agreement procedure.

(1) In general. The Office of the Attorney General and the attorney for the respondent may engage in discussions with a view towards reaching a plea agreement.

Any agreement regarding a recommendation for or opposition to any predispositional or dispositional alternatives shall not be binding upon the judicial officer.

The judicial officer shall not participate in any such discussions.

(2) Notice of plea agreement. If a plea agreement has been reached by the parties, the judicial officer shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered.

(3) Inadmissibility of pleas, offers of pleas, and related statements. Except as otherwise provided in this paragraph, evidence of a plea of guilty, later withdrawn, or of an offer to plead guilty to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in

any civil, criminal or juvenile proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, or an offer to plead guilty to the crime charged or any other crime, is admissible in a criminal or juvenile proceeding for perjury or false statement if the statement was made by the respondent under oath, on the record, and in the presence of counsel.

(e) Determining the accuracy of plea. Notwithstanding the acceptance of a plea of guilty, the judicial officer shall not enter a judgment upon such plea without making such inquiry as shall satisfy the judicial officer that there is a factual basis for the plea.

(f) Record of proceedings. A verbatim record of the proceedings at which the respondent enters a plea shall be made and, if there is a plea of guilty, the record shall include, without limitation, the judicial officer's advice to the respondent, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

COMMENT

This Rule is substantially similar to SCR Criminal 11 except that references to pleas of nolo contendere have been eliminated as inappropriate for juvenile court and references to proceeding without the respondent being represented by counsel have been eliminated as inconsistent with SCR-Juv 44(a). Subparagraph (b)(4) encompasses both juvenile and criminal prosecutions for perjury, to allow for cases of perjury by an adult respondent pleading to an offense committed while a juvenile.

Rule 12. Pleadings, Motions, and Defenses Before the Factfinding Hearing

(a) Pleadings and motions. Pleadings in delinquency and need for supervision cases shall be the petition and the pleas of not guilty and guilty. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before the factfinding hearing shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these Rules.

(b) Pretrial motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion and in accordance with Rule 47-I. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the petition (other than that it fails to show jurisdiction in the Family Court or to charge an offense, which objections shall be noticed by the Family Court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Requests for discovery under Rule 16; or

(5) Requests for a severance of charges or respondents under Rule 14.

(c) Notice by the government of the intention to use evidence.

(1) At the discretion of the government. At the detention or shelter care hearing or the initial appearance or as soon thereafter as is practicable, the government may give notice to the respondent of its intention to use specified evidence at trial in order to afford the respondent an opportunity to raise objections to such evidence prior to trial under subdivision (b)(3) of this Rule.

(2) At the request of the respondent. At the detention or shelter care hearing or the initial appearance or as soon thereafter as is practicable, the respondent may, in order to afford an opportunity to move to suppress evidence under subdivision (b)(3) of this Rule, request notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

(d) Effect of failure to raise defenses or objections. Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time required by Rule 47-I or prior to any extension thereof made by the Family Court, shall constitute waiver thereof, but the Family Court for cause shown may grant relief from the waiver.

(e) Production of statements at suppression hearing. SCR-Juvenile 26.2 applies at a hearing on a motion to suppress evidence under subparagraph (b)(3) of this Rule. If the respondent has called a law enforcement officer as a witness, both the government and the respondent are required to produce statements of the officer in their possession under the terms of SCR-Juvenile 26.2.

Rule 12.1. Notice of Alibi

(a) Notice by respondent. Upon written demand of the prosecutor stating the time, date, and place at which the alleged offense was committed, the respondent shall serve within 10 days, or at such different time as the Family Court may direct, upon the prosecutor a written notice of his intention to offer a defense of alibi. Such notice by the respondent shall state the specific place or places at which the respondent claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

(b) Disclosure of information and witness. Within 10 days thereafter, but in no event less than 10 days before trial, unless the court otherwise directs, the prosecutor shall serve upon the respondent or his attorney a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the respondent's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the respondent's alibi witnesses.

(c) Continuing duty to disclose. If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under paragraph (a) or (b), the party shall promptly notify the other party or his attorney of the existence and identity of such additional witness.

(d) Failure to comply. Upon the failure of either party to comply with the requirements of this Rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the respondent's absence from or presence at, the scene of the alleged offense. This Rule shall not limit the right of the respondent to testify in his own behalf.

(e) Exceptions. For good cause shown, the court may grant an exception to any of the requirements of paragraphs (a) through (d) of this Rule.

(f) Inadmissibility of withdrawn alibi. Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention.

COMMENT

This Rule is identical to SCR Crim 12.1.

Rule 13. Trial Together of Petitions

The Family Court may order 2 or more petitions against the same respondent to be tried together if the offenses could have been charged in a single petition under SCR-Juvenile 8(a). The Family Court may also order 2 or more petitions against more than 1 respondent to be tried together if the respondents could have been charged in substantially similar petitions under SCR-Juvenile 8(b).

COMMENT

This Rule allows the Division to order consolidations under the SCR-Juvenile 8 criteria for joinder by the Corporation Counsel.

Rule 14. Relief from Prejudicial Joinder

If it appears that a respondent or the Office of the Attorney General is prejudiced by a joinder of offenses or of respondents in a petition or by such joinder for a factfinding hearing together, the Family Court may order an election or separate factfinding hearings of counts, grant a severance of respondents or provide whatever other relief justice requires. In ruling on a motion by a respondent for severance the Family Court may order the Office of the Attorney General to deliver to the Family Court for inspection in camera any statements made by the respondents which the Office of the Attorney General intends to introduce in evidence at the factfinding hearing.

COMMENT

Substantially similar to *FRCrP 14*.

Rule 15. Depositions

(a) When taken. Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the Family Court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated books, papers, documents, record, recording, or other material, not privileged, be produced at the same time and place. If a witness is detained for inability to comply with any condition of release imposed to assure his appearance to testify at a trial or hearing, the Family Court on written motion of the witness and upon notice to the parties may direct that his deposition be taken within a reasonable period of time. After the deposition has been subscribed the Family Court may discharge the witness.

(b) Notice of taking. The party at whose instance a deposition is to be taken shall give to every other party written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, or upon motion of the person to be examined, the Family Court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a respondent shall be notified of the time and place set for the examination and shall, unless the respondent waives in writing the right to be present, produce him at the examination and keep him in the presence of the witness during the examination, unless, after being warned by the Family Court that disruptive conduct will cause him to be removed from the place of the taking of the deposition, he persists in conduct which is such as to justify his being excluded from that place. A respondent not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the Family Court, but his failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this Rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) Payment of expenses. Whenever a deposition is taken at the instance of the government, or whenever a deposition is taken at the instance of a respondent who is unable to bear the expenses of the taking of the deposition the Family Court may direct that the expenses of travel and subsistence of the respondent and his attorney for attendance at the examination and the cost of the transcript of the deposition shall be paid by the government.

(d) How taken.

(1) Generally. Subject to such additional conditions as the Family Court shall provide, the deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in this Rule, provided that (1) in no event shall a deposition be taken of a party respondent without his consent, and (2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. When the examination is on written interrogatories, at or before the time fixed in the notice, any other party may file cross interrogatories. Any subsequent interrogatories may be filed with leave of court. If a party fails to file written interrogatories or fails to attend an oral examination, the person before whom the deposition is taken shall propound the interrogatories listed in D.C. Code 1981, § 23-108.

(2) Depositions at the instance of the government. When a deposition is taken at the instance of the government, the government shall make available to the respondent or his

counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the government and to which the respondent would be entitled at the trial.

(3) Depositions at the instance of the defense. When a witness is being deposed at the instance of the respondent, the respondent or his counsel shall likewise make available to the government for examination and use at the deposition any statement of the witness being deposed in the possession of the respondent which relates to the subject matter to which the witness has testified, in the same manner as provided for depositions at the instance of the government. The term "statement" as used in this subparagraph means a written statement made by the witness and signed or otherwise adopted or approved by him, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to the respondent, his counsel or his agent and recorded contemporaneously with the making of such oral statement. If the respondent elects not to comply with an order of the Family Court to deliver such a statement, or portions thereof, to the government as the Family Court may direct, the Family Court shall strike from the record the testimony of the witness.

(e) Use.

(1) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable. "Unavailability as a witness" includes situations in which the declarant:

(A) Is exempted by ruling of the Family Court on the ground of privilege from testifying concerning the subject matter of his statement; or

(B) Persists in refusing to testify concerning the subject matter of his statement despite an order of the Family Court to do so; or

(C) Testifies to a lack of memory of the subject matter of his statement; or

(D) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(E) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongoing [wrongdoing] of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(2) At the factfinding hearing or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness gives testimony at the hearing inconsistent with his deposition. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to deposition testimony. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) Deposition by agreement not precluded. Nothing in this Rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the Court.

COMMENT

Substantially identical to SCR Crim 15.

Rule 16. Discovery and Inspection

(a) Governmental disclosure of evidence.

(1) Information subject to disclosure.

(A) Statement of respondent. Upon request of a respondent the Office of the Attorney General shall disclose to the respondent and make available for inspection, copying or photographing: any relevant written or recorded statements made by the respondent, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the Office of the Attorney General; that portion of any written recording containing the substance of any relevant oral statement made by the respondent whether before or after arrest in response to interrogation by any person then known to the respondent to be a government agent; and recorded testimony of the respondent before a grand jury which relates to the offense charged. The government shall also disclose to the respondent the substance of any other relevant oral statement made by the respondent whether before or after arrest in response to interrogation by any person then known by the respondent to be a government agent if the government intends to use that statement at the factfinding hearing.

(B) Prior record. Upon request of the respondent the government shall furnish to the respondent such copy of the respondent's prior juvenile record, it [if] any, as is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the Office of the Attorney General.

(C) Documents and tangible objects. Upon request of the respondent, the Office of the Attorney General shall permit the respondent to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of the respondent's defense, or are intended for use by the government as evidence in chief at the factfinding hearing, or were obtained from or belong to the respondent.

(D) Reports of examinations and tests. Upon request of the respondent, the prosecutor shall permit the respondent to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the prosecutor, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

(E) Expert witnesses. At the respondent's request, the Office of the Attorney General shall disclose to the respondent a written summary of expert testimony the Office of the Attorney General intends to use during its case in chief at trial. This summary must describe the expert witnesses' opinions, the bases and the reasons therefor, and the witnesses' qualifications.

(2) Information not subject to disclosure. Except as provided in paragraphs (A), (B) and (D) of subdivision (a)(1), this Rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by the prosecutor or other government agents in connection with the investigation or prosecution of the case, or of statements made by government witnesses or prospective government witnesses except as provided in *18 U.S.C. § 3500.*

(3) Grand jury transcripts. Except as provided in Rule 6 and paragraph (a)(1)(A) of this Rule, these Rules do not relate to discovery or inspection of recorded proceedings of a grand jury.

(b) The respondent's disclosure of evidence.

(1) Information subject to disclosure.

(A) Documents and tangible objects. If the respondent requests disclosure under paragraph (a)(1)(C) or (D) of this Rule, upon compliance with such request by the government, the respondent, on request of the government, shall permit the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the respondent and which the respondent intends to introduce as evidence in chief at the trial.

(B) Reports of examinations and tests. If the respondent requests disclosure under paragraph (a)(1)(C) or (D) of this Rule, upon compliance with such request by the government, the respondent, on request of the government, shall permit the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the respondent, which the respondent intends to introduce as evidence in chief at the factfinding hearing or which were prepared by a witness whom the respondent intends to call at the factfinding hearing when the results or reports relate to the witness's testimony.

(C) Expert Witnesses. If the respondent requests disclosure under subparagraph (a)(1)(E) of this Rule and the Office of the Attorney General complies, the respondent, at the Office of the Attorney General's request, must disclose to the Office of the Attorney General a written summary of expert testimony the respondent intends to use as evidence at trial. This summary must describe the opinions of the witnesses, the bases and reasons therefor, and the witnesses' qualifications.

(2) Information not subject to disclosure. Except as to scientific or medical reports, this paragraph does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the respondent, or the respondent's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the respondent, or by government or defense witnesses, or by prospective government or defense witnesses, to the respondent, the respondent's agents or attorneys.

(c) Continuing duty to disclose. If, prior to or during the factfinding hearing, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this Rule, the party shall promptly notify the other party or the other party's attorney or the judicial officer of the existence of the additional evidence or material.

(d) Regulation of discovery.

(1) Protection and modifying orders. Upon a sufficient showing the Family Court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party, the Family Court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the Family Court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the Family Court to be made available to the appellate court in the event of an appeal.

(2) Failure to comply with a request. If at any time during the course of the proceedings it is brought to the attention of the Family Court that a party has failed to comply with this Rule, the Family Court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The Family Court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

(e) Alibi witness. Discovery of alibi witnesses is governed by Rule 12.1 of the Rules of this Family Court.

Rule 16-I. Informal Discovery

It shall be the duty of every defense counsel, whether appointed or retained, to consult with the prosecutor assigned to the case in order to seek informal discovery. Such consultation shall take place prior to the time for the filing of pretrial motions as required in Juvenile Rule 47-I(c). The Clerk shall not accept motions for bills of particulars and for discovery under Rule 7(f) and 16 respectively of these Rules unless defense counsel certifies in writing that he has made a bona fide attempt to secure the necessary relief from the prosecutor on a voluntary basis and that the prosecutor has not complied with such request.

COMMENT

Substantially identical to SCR Crim 16-II.

Rule 17. Subpoena

(a) For attendance of witnesses; form; issuance. A subpoena shall be issued by the Clerk under the seal of the Court. It shall state the name of the Court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The Clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) Respondents unable to pay.

(1) For respondents represented either by counsel appointed under the District of Columbia Criminal Justice Act, by staff attorneys of the Public Defender Service, or by law students admitted to the limited practice of law under SCR-General Family M, an application may be made to the Clerk for witness subpoenas where the witness involved will be served within 25 miles of the place of the factfinding or other hearing specified in the subpoena. The Clerk shall issue such subpoenas to said defense counsel in blank, signed and sealed and designated in forma pauperis, but not otherwise filled in. No subpoena so issued in blank may be served outside a radius of 25 miles from the place of the factfinding or other hearing specified in the subpoena. The filling in by such defense counsel of a subpoena issued in blank shall constitute a certificate by said defense counsel that, in the defense counsel's opinion, the presence of the witness is necessary to an adequate defense. In the case of a respondent represented by a law student, the application shall be signed by the law student's supervising lawyer. Where the witness to be subpoenaed will be served outside a radius of 25 miles from the place of the factfinding or other hearing specified in the subpoena, an application for the issuance of such subpoena shall be made to the Judge-in-Chambers and shall follow the procedure required by subsection (b)(2) of this Rule.

(2) For respondents represented by counsel other than those counsel listed in subsection (b)(1) of this Rule, the Court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a respondent upon a satisfactory showing that the respondent is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense.

(3) If the Court orders the subpoena to be issued pursuant to subsection (b)(2) of this Rule or if the Clerk issues a subpoena pursuant to subsection (b)(1) of this Rule, the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the prosecuting authority.

(c) For production of documentary evidence and of objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The Family Court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The Court may direct that books, papers, documents or objects designated in the subpoena be produced before the Court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) Service. A subpoena may be served by the Marshal, by a deputy marshal or by any other person who is not a party and who is not less than 18 years old. Service of a subpoena shall be made by delivering a copy thereof to the person named and by

tendering to that person the fee for one day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the prosecuting authority or in behalf of defendants unable to pay.

(e) Place of service.

(1) In general. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the District of Columbia or at any place outside the District of Columbia that is within 25 miles of the place of the hearing or trial specified in the subpoena.

(2) Exception. A subpoena directed to a witness in a case in which a felony is charged may be served at any place within the United States upon order of a judge of the Court.

(f) For taking deposition; place of examination.

(1) Issuance. A commission to take a deposition authorizes the issuance by the Clerk of the Superior Court of subpoenas for the persons named or described therein.

(2) Place. The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, taking into account the convenience of the witness and the parties.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the Court.

COMMENT

This Rule is substantially similar to *FRCrP 17* except as indicated in this Comment. The reference to a commissioner is deleted from the last sentence of section (a); the language substituted therefor assures the right to subpoena witnesses for all judicial hearings. (This new language must be read in conjunction with section (b) to determine entitlement to subpoenas at government expense.) In the last sentence of section (d), "Corporation Counsel [now Attorney General for the District of Columbia] or in behalf of respondents unable to pay" is substituted for "United States or an officer or agency thereof". The new language makes the timing of payment of fees by the government the same regardless of whether the witness will appear for the Corporation Counsel [now Attorney General for the District of Columbia] or for the respondent. Subsection (e)(1) is pursuant to the statutory range for subpoenas set out in *D.C. Code § 11-942(a)*. *FRCrP 17(e)(2)* (subpoenas abroad) was omitted. The language substituted therefor makes the juvenile subpoena range coextensive with that of the Criminal Division under *D.C. Code § 11-942(b)*. References to federal districts have been deleted from section (f). "Personally" has been added to section (g), and references to different courts have been deleted since all subpoenas under these Rules will be issued by the Superior Court.

Rule 17.1. Pretrial Conference

At any time after the filing of the petition the Family Court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious processing of the case or will result in consolidation consistent with the one family, one judge provision or disposition of cases before the Family Court relating to members of the same family or household. At the conclusion of a conference the Family Court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the respondent or his or her attorney at the conference shall be used against the respondent unless the admissions are reduced to writing and signed by the respondent and his or her attorney. This Rule shall not be invoked in the case of a respondent who is not represented by counsel.

COMMENT

This Rule is substantially similar to *FRCrP 17.1*, except that the last part of the first sentence was added to implement the one family, one judge provision of the District of Columbia Family Court Act of 2001, Public Law 107-114 (January 8, 2002). *See* Comment to SCR-Juvenile 2.

Rule 18. Place of Prosecution and Trial

[Excluded].

COMMENT

FRCrP 18 "Venue" provisions has been excluded since all juvenile offenses in the jurisdiction of the Superior Court will be tried in that Court.

Rule 19. [Vacant].

Rule 20. Transfer from the District for Plea and Sentence

[Excluded].

COMMENT

FRCrP 20 "Venue" provisions has been excluded since all juvenile offenses in the jurisdiction of the Superior Court will be tried in that Court.

Rule 21. Transfer from the District for Trial

[Excluded].

COMMENT

FRCrP 21 "Venue" provisions has been excluded since all juvenile offenses in the jurisdiction of the Superior Court will be tried in that Court.

Rule 22. Time of Motion to Transfer

[Excluded].

COMMENT

FRCrP 22 "Venue" provisions has been excluded since all juvenile offenses in the jurisdiction of the Superior Court will be tried in that Court.

Rule 23. Trial by Jury or by the Court

[Excluded and moved].

COMMENT

FRCrP 23(a) "Trial by Jury" and *FRCrP 23(b)* "Jury of Less than Twelve" have been excluded since all juvenile cases are to be heard without a jury. See D.C. Code § 16-2316(a). *FRCrP 23(c)* "Trial without a Jury" has been moved to become SCR-Juvenile 31(a).

Rule 24. Trial Jurors

[Excluded].

COMMENT

FRCrP 24 has been excluded since all juvenile cases are to be heard without a jury. *See* D.C. Code § 16-2316(a).

Rule 25. Judge; Disability

(a) During the factfinding hearing. If by reason of death, sickness or other disability the judge before whom a factfinding hearing has commenced is unable to proceed with the hearing, a new hearing shall be granted and scheduled forthwith.

(b) After finding of guilt or need for supervision. If by reason of absence, death, sickness or other disability the judge before whom the respondent had his or her factfinding hearing is unable to perform the duties to be performed by the Family Court after a finding of guilt or need for supervision, any other judge regularly sitting in or assigned to the Family Court may perform those duties; but if such other judge is satisfied that he or she cannot perform those duties because he or she did not preside at the factfinding hearing or for any other reason, he or she may in his or her discretion grant a new factfinding hearing.

(c) Family Court Act of 2001. Nothing in this rule shall be construed in such a manner as to violate the District of Columbia Family Court Act of 2001 (D.C. Code § 11-1104(b)(2)(A) and (C)).

COMMENT

Section (a) is different from *FRCrP 25(a)* in that it provides for the mandatory granting of a new hearing upon the disability of the judge during the factfinding. A new judge could not simply proceed with the hearing since the judge himself is the trier of fact in non-jury cases and must be able to hear all the evidence and observe all the witnesses. Section (b) is substantially similar to *FRCrP 25(b)*. Section (c), referencing the Family Court Act of 2001, allows for one judicial officer to preside over all matters involving a juvenile after a finding of guilt or need for supervision.

Rule 26. Evidence

In all factfinding hearings the testimony of witnesses shall be taken orally under oath or affirmation unless otherwise provided by an act of Congress or by these Rules. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when an act of Congress or these Rules otherwise provide, by the principles of the common law as they may be interpreted by the courts in the light of reason and experience.

COMMENT

This Rule is substantially similar to *FRCrP 26* except for the following. "Under oath or affirmation" has been substituted for "in open court" in the 1st sentence, since a judge may wish to conduct the proceedings in chambers, and since juvenile proceedings, even in the courtroom, are confidential in nature. (See SCR-Juvenile 53.) "Of the United States" has been deleted after "courts" in the last sentence.

Rule 26.1. Determination of Foreign Law

[Excluded].

COMMENT

FRCrP 26.1 has been excluded since the possibility of its ever being used is extremely remote.

Rule 26.2. Production of Statements of Witnesses

(a) Motion for production. After a witness other than the respondent has testified on direct examination, the judicial officer, on motion of a party who did not call the witness, shall order the Office of the Attorney General or the respondent and the respondent's attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified.

(b) Production of entire statement. If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the judicial officer shall order that the statement be delivered to the moving party.

(c) Production of excised statements. If the other party claims that the statement contains privileged information or matter that does not relate to the subject matter concerning which the witness has testified, the judicial officer shall order that it be delivered to the Court in camera. Upon inspection, the judicial officer shall excise the portions of the statement that are privileged or that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion of the statement that is withheld from the respondent over the respondent's objection must be preserved by the Office of the Attorney General, and, if the respondent appeals an adjudication, must be made available to the appellate court for the purpose of determining the correctness of the decision to excise the portion of the statement.

(d) Recess for examination of statement. Upon delivery of the statement to the moving party, the judicial officer, upon application of that party, may recess the proceedings so that counsel may examine the statement and prepare to use it in the proceedings.

(e) Sanction for failure to produce statements. If the other party elects not to comply with an order to deliver a statement to the moving party, the judicial officer shall order that the testimony of the witness be stricken from the record and that the factfinding hearing proceed, or, if it is the Office of the Attorney General who elects not to comply, shall declare a mistrial if required by the interest of justice.

(f) Definitions. As used in this rule, a "statement" of a witness means:

(1) a written statement made by the witness that is signed or otherwise adopted or approved by the witness.

(2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or

(3) a statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.

(g) Scope of rule. This rule applies at a suppression hearing conducted under SCR-Juvenile 12, at trial under this Rule, and to the extent specified in SCR-Juvenile 32(i) at disposition or at a hearing to revoke probation.

Rule 26.3. Mistrial

Before ordering a mistrial, the Court shall provide an opportunity for the Office of the Attorney General and for each respondent to comment on the propriety of the order, including whether each party consents or objects to a mistrial, and to suggest any alternatives.

Rule 27. Proof of Official Record

An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

COMMENT

Identical to *FRCrP 27*.

Rule 28. Expert Witnesses and Interpreters

(a) Expert witnesses. The Family Court may order the respondent or the Office of the Attorney General or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The Family Court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the Family Court unless he consents to act. A witness so appointed shall be informed of his duties by the Family Court in writing, a copy of which shall be filed with the Clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any, and may thereafter be called to testify by the Family Court or by any party. He shall be subject to cross-examination by each party. The Family Court may determine the reasonable compensation of such a witness and direct its payment out of such funds as may be provided by law. The parties also may call expert witnesses of their own selection.

(b) Interpreters. The Family Court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the government, as the Family Court may direct.

COMMENT

Substantially similar to *FRCrP 28*.

Rule 29. Motion for Judgment of Acquittal

(a) Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The Family Court on motion of a respondent or of its own motion shall order the entry of judgment of acquittal of 1 or more offenses charged in the petition after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a respondent's motion for judgment of acquittal at the close of the evidence offered by the Office of the Attorney General is not granted, the respondent may offer evidence without having reserved the right.

(b) [Excluded].

(c) [Excluded].

COMMENT

This Rule is substantially similar to *FRCrP 29(a)*. *FRCrP 29(b)* "Reservation of Decision on Motion" and section (c) "Motion After Discharge of Jury" have been excluded as unnecessary with no jury.

Rule 30. Instructions

[Excluded].

COMMENT

FRCrP 30 has been excluded as unnecessary with no jury.

Rule 31. Findings by the Family Court

(a) In general. After a factfinding hearing the judge shall make a general finding and shall in addition on request find the facts specially, except that findings of fact with respect to the need for care or rehabilitation shall be made at the dispositional hearing. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(b) Several respondents. If there are 2 or more respondents, the Family Court shall make separate finding with respect to each respondent.

(c) Conviction of a lesser included offense. The respondent may be found guilty of an offense necessarily included in the offense charged or, in a delinquency case, of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) [Excluded].

COMMENT

This Rule implements *D.C. Code § 16-2317(b)*. Section (a) of the Rule is taken from *FRCrP 23(c)* "Trial Without a Jury". The phrase "except that findings of fact ... dispositional hearing" is new and makes clear that findings as to the need for care or rehabilitation are to be made at the dispositional hearing rather than at the factfinding hearing. The time for this finding seemed ambiguous under *D.C. Code § 16-2305(d)*, since it requires the petition to contain an allegation of apparent need for care or rehabilitation, and since findings as to the truth of the allegations of the petition are usually made at the factfinding hearing. *D.C. Code § 16-2301(17)*, however, states that the finding shall be made at the dispositional hearing.

Section (b) of the Rule is substantially similar to *FRCrP 31(b)*, except that references pertaining to jury trials have been deleted. The *FRCrP 31(b)* idea of separate findings has been retained. Section (c) is substantially similar to *FRCrP 31(c)* except that "in a delinquency case" has been added, since the concept of attempted offenses is not applicable to need of supervision cases.

In order not to be too burdensome on judges and staff, the findings required here and elsewhere in the Rules will ordinarily be made through the use of forms.

FRCrP 31(a) "Return" and section (d) "Poll of Jury" have been excluded as unnecessary with no jury.

Rule 32. Disposition and Judgment

(a) Disposition hearing. If the respondent has pleaded guilty, or has been found guilty or in need of supervision, the judicial officer shall proceed to hold a disposition hearing. Such disposition hearing may be held immediately if all parties consent and waive preparation of the predisposition report, unless the case involves a victim of crime. If the case involves a victim of crime the disposition hearing shall be set to allow a reasonable period of time for the preparation of a victim impact statement, and to incorporate it into the predisposition report. If the victim does not elect to submit a victim impact statement then the predisposition report may be waived and the disposition hearing may be held immediately. If the disposition hearing is not held immediately, and the respondent is detained or in shelter care pending the disposition hearing, the judicial officer shall schedule a disposition to be held within 15 days, and shall adjourn the proceedings to await the preparation of a predisposition report.

(b) Predisposition investigation.

(1) When made. The Director of Court Social Services ("CSS") or a qualified agency designated by the judicial officer shall make a predisposition investigation and report to the judicial officer before the entry of a dispositional order unless this requirement is waived by the judicial officer with the consent of all parties. The report shall not be submitted to or considered by the judicial officer, or its contents disclosed to anyone, unless the respondent has pleaded guilty or has been found guilty or in need of supervision.

(2) Report. The report of the predisposition investigation shall contain any prior juvenile record of the respondent and such information about the respondent's characteristics, family, environment and the circumstances affecting the respondent's behavior as may be helpful in determining the need for treatment and a proper disposition of the case. If the judicial officer has ordered a physical or mental examination to be conducted pursuant to D.C. Code § 16-2315, the report shall include a copy of the examination. Any victim impact statement that has been submitted to CSS shall be included in the report. The original report and any other material to be disclosed shall be furnished to the judicial officer and copies thereof shall be furnished to counsel for the respondent and to the Office of the Attorney General ("OAG") at least three business days prior to the disposition hearing.

(3) Notice to the Department of Youth Rehabilitation Services ("DYRS") or other agency/department responsible for supervision. As soon as practicable during the preparation of the predisposition report, but in no instance less than three (3) business days prior to the disposition hearing, the Director of CSS shall notify the Administrator of DYRS or other agency responsible for supervision if the predisposition report will recommend or is likely to recommend that the legal custody of respondent be transferred to DYRS or other agency responsible for supervision pursuant to D.C. Code § 16-2320(c)(2). A copy of the report constitutes sufficient notice to the Administrator under this subsection.

(4) Copy of Report to the Department of Youth Rehabilitation Services ("DYRS") or other agency/department responsible for supervision. If the predisposition report will recommend or is likely to recommend that the legal custody of respondent be transferred to DYRS or other agency responsible for supervision pursuant to D.C. Code § 16-2320(c)(2), a copy of the report and any other materials to be presented by the Director of CSS to the judicial officer shall be furnished also to the Administrator of the DYRS or

other agency responsible for supervision at least three (3) business days prior to the disposition hearing.

(c) Disposition.

(1) Entry of dispositional order. The dispositional order shall be entered without unreasonable delay. Before entering a dispositional order the judicial officer shall afford the respondent or the respondent's counsel an opportunity to comment on the predisposition report and, in the Court's discretion, to introduce testimony or other information relating to any alleged factual inaccuracy in the report. The judicial officer shall also afford counsel an opportunity to speak on behalf of the respondent and shall address the respondent personally, and the respondent's parent, guardian, or custodian, if present, and ask if they wish to make a statement in the respondent's behalf or to present any information that might affect the dispositional order. The OAG shall have an equivalent opportunity to address the Court and present information pertinent to disposition. The Court may also hear from victims of crime or members of their immediate family.

(2) Notification of right to appeal. After entering a dispositional order in a case which has gone to a factfinding hearing on a plea of not guilty or in which a conditional plea pursuant to SCR-Juvenile 11(a)(2) has been entered, the judicial officer shall advise the respondent of the right to appeal and of the right of a person who is unable to pay the cost of an appeal for leave to appeal in forma pauperis.

(d) Judgment. The judgment shall set forth the plea, the findings, the adjudication, and the dispositional order. If the dispositional order involves placement of the respondent outside the respondent's home, in an institution or elsewhere, it shall include a statement of reasons why such placement is necessary. If the respondent is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judicial officer and entered by the clerk of the Family Court.

(e) Withdrawal of plea of guilty. A motion to withdraw a plea of guilty may be made only before a dispositional order is entered; but to correct manifest injustice the judicial officer after entering a dispositional order may set aside the judgment and permit the respondent to withdraw the plea.

(f) Probation and other dispositional orders.

(1) Probation. Upon an adjudication of delinquency or need of supervision, the respondent may be placed on probation as provided by D.C. Code § 16-2320.

(2) Copy of probation order. A copy of the probation order with terms and conditions specified therein shall be furnished to the respondent, the respondent's parent, guardian, or custodian, the respondent's attorney, counsel for the government and the Director of Court Social Services. The order shall set forth the date upon which the respondent's probation shall expire and the respondent's rights with respect to the sealing of records upon fulfillment of the conditions specified in D.C. Code § 16-2335.

(3) Copy of other dispositional orders. Where the disposition involves an order other than probation, a copy of such order shall be furnished to the respondent, the respondent's parent, guardian, or custodian, the respondent's attorney, the Director of Social Services, and to the person or agency to whose custody the respondent has been committed, if any. Any commitment order shall set forth the date upon which the commitment shall expire and the respondent's rights with respect to the sealing of records upon fulfillment of the conditions specified in D.C. Code § 16-2335.

(4) Notice of termination of dispositional orders. Upon the automatic termination of any dispositional order, or in cases where the Family Court terminates a dispositional order prior to the stated termination date thereof, written notice of termination shall be furnished to the respondent, the respondent's parent, guardian or custodian, and the respondent's attorney. At that time the respondent and the respondent's attorney shall again be notified of the respondent's right to move for the sealing of records as provided in D.C. Code § 16-2335. An application for sealing shall be enclosed with the notice of termination.

(g) Review of disposition. If the dispositional order involves placement of the respondent in an institution, hospital, or agency upon specified conditions, the judicial officer may order that a report concerning implementation of the stated conditions be prepared by the institution, hospital or agency responsible for care and supervision of the respondent, and filed with the Family Court within 30 days after entry of the dispositional order, and a copy sent to counsel. If such report does not reflect full implementation of the original dispositional order, counsel for the respondent may request that the Family Court set a date for a prompt hearing and order notice sent to all parties, including the institution, hospital or agency in whose custody the respondent was placed by the dispositional order.

(h) Periodic evaluations. The Director of CSS or DYRS, whichever is responsible for the supervision of the disposition order, shall conduct a periodic evaluation of the child to determine if rehabilitative progress has been made and if the services provided to the child have been effective, and to determine, in conjunction with the child, the child's attorney and the OAG, what steps, if any, should be taken to ensure the rehabilitation and welfare of the child and the safety of the child and the safety of the public. At least one evaluation shall be conducted during the course of the probation or commitment. A report containing the periodic evaluation's findings and the bases for those findings shall be furnished to the judicial officer and copies thereof shall be furnished to counsel for the respondent and to the OAG within 10 business days of the completion of the evaluation.

(i) Revocation of probation.

(1) Referral to Director of Court Social Services. Complaints alleging that a minor on probation has violated a term or condition of probation shall be referred to the Director of Social Services. If any of the acts alleged in the complaint amount to a delinquent act which must be recommended for petitioning under the intake criteria of SCR-Juvenile 103, the Director of Social Services shall refer the complaint to the OAG with a recommendation that a new petition alleging a delinquent act be filed. If the acts alleged in the complaint may be recommended for petitioning as delinquent acts under the intake criteria of SCR-Juvenile 103, or if they merely violate the terms or conditions of probation without constituting delinquent acts, the Director of Social Services may attempt to adjust the matter informally, or may refer the complaint to the OAG with a recommendation either that a delinquency petition be filed or that a probation revocation petition be filed or both. In such cases, the OAG may proceed upon the basis of a new delinquency petition or upon the basis of a probation revocation petition or both, but evidence of any delinquent act denied by the respondent must be established by proof beyond a reasonable doubt.

(2) Probation revocation petition. A petition alleging a violation of the terms or conditions of probation shall recite the date that the respondent was placed on probation, the terms of probation alleged to have been violated, the acts giving rise to the violation and the dates thereof, and the time and manner in which notice of the terms of probation was given. Upon the filing of a petition to revoke, the OAG shall serve a copy of the

petition on the respondent's counsel and the Director of CSS. Notice of the hearing date and a copy of the petition shall be served by the judicial officer or the Clerk on the respondent, and notice of the hearing date shall be served by the judicial officer or the Clerk on the respondent's counsel, the OAG and the Director of CSS. If the respondent has been taken into custody, the provisions of D.C. Code §§ 16-2309 through 16-2312 shall apply. No child shall be detained for violation of probation prior to the filing of a revocation petition.

(3) Hearing. The judicial officer shall not revoke probation except after a hearing at which the respondent and the respondent's attorney shall be present. The OAG shall present evidence on behalf of its petition unless the OAG's presence is waived by the judicial officer. A copy of the petition and notice of the hearing shall be furnished as in delinquency and need of supervision cases generally. If the alleged violation of probation is established by a preponderance of the evidence according to the rules of evidence governing factfinding hearings, or if a delinquent act is established by proof beyond a reasonable doubt, the judicial officer may continue the respondent on probation or may make any other order of disposition that is authorized by D.C. Code § 16-2320(c). If no violation of probation or delinquent act is satisfactorily established, the judicial officer may continue the respondent on probation for the duration of the original probation order.

(j) Production of statements at disposition and probation revocation hearings.

(1) In general. SCR-Juvenile 26.2(a)-(d), and (f) applies at a disposition hearing and at a hearing to revoke probation under this Rule.

(2) Sanctions for failure to produce statement. If a party elects not to comply with an order under SCR-Juvenile 26.2(a) to deliver a statement to the moving party, the judicial officer may not consider the testimony of a witness whose statement is withheld.

Rule 33. New Factfinding Hearing

The judicial officer on motion of a respondent may grant a new factfinding hearing to the respondent if required in the interest of justice. On motion of a respondent for a new factfinding hearing, the judicial officer may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new factfinding hearing based on the ground of newly discovered evidence may be made only before or within 2 years after final judgment, but if an appeal is pending the judicial officer may grant the motion only on remand of the case. A motion for a new factfinding hearing based on any other grounds shall be made within 7 days after a finding of guilty or need of supervision or within such further time as the judicial officer may fix during the 7-day period.

Rule 34. Arrest of Judgment

[Excluded].

COMMENT

FRCrP 34 has been excluded as unnecessary since the Division [now Family Court] retains continuing power to set aside its orders under D.C. Code § 16-2323(a) and maintains continuing jurisdiction over the child pursuant to D.C. Code § 16-2303.

Rule 35. Correction or Reduction of Sentence

[Excluded].

COMMENT

FRCrP 35 has been excluded as unnecessary since D.C. Code § 16-2323 sets out the procedure for modification or termination of orders.

Rule 36. Clerical Mistakes

Clerical mistakes and errors in judgments, orders, or other parts of the record not including the transcript which arise from oversight or omission may be corrected by the Family Court at any time and after such notice, if any, as the Family Court orders. No changes in any transcript may be made by the Family Court except on notice to the Office of the Attorney General and counsel for the respondent. Where changes are made in the transcription of proceedings, the corrections and deletions shall be shown.

COMMENT

This Rule is substantially similar to *FRCrP 36*, except that the last 2 sentences are new. The Rule allows ex parte correction of the record other than the transcript, but is designed to prevent ex parte alteration of the transcript.

Rule 37. [Abrogated].

COMMENT

FRCrP 37 abrogated.

Rule 38. Stay of Execution, and Relief Pending Review

[Excluded].

COMMENT

FRCrP 38 has been excluded as inconsistent with D.C. Code § 16-2328(d).

Rule 39. [Abrogated].

COMMENT

FRCrP 39 abrogated.

Rule 40. Commitment to Another District; Removal

[Excluded].

COMMENT

FRCrP 40 has been excluded since the Interstate Compact on Juveniles and D.C. Code § 23-563(d) make it unnecessary.

Rule 41. Search and Seizure

(a) Authority to issue warrant. A search warrant authorized by this Rule may be issued by a judge of the Superior Court.

(b) Property or persons which may be seized with a warrant. A warrant may be issued under this Rule to search for and seize any (1) property that is stolen or embezzled; or (2) contraband, the fruits of a crime, or things otherwise illegally possessed; or (3) property which has been used or is possessed for the purpose of being used, or is designed or intended to be used to commit or conceal the commission of a delinquent act; or (4) property that constitutes evidence of or tends to demonstrate the commission of a delinquent act or the identity of a person participating in the commission of a delinquent act; or (5) person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Application for search warrants. Each application for a search warrant shall be made in writing upon oath to a judge of the Superior Court. Each application shall include the name and title of the applicant; a statement that there is probable cause to believe that property or persons described in paragraph (b) as subject to seizure are likely to be found in a designated premise, in a designated vehicle or object, or upon designated persons; allegations of fact supporting such statement; and a request that the judge issue a search warrant directing a search for and seizure of the property or person in question. The applicant may also submit depositions or affidavits of other persons containing allegations of fact supporting or tending to support those contained in the application.

The application may also contain a request that the search warrant be made executable at any hour of the day or night, upon the ground that (1) there is probable cause to believe that it cannot be executed during the hours of daylight, (2) the property sought is likely to be removed or destroyed if not seized forthwith, or (3) the property or person sought is not likely to be found except at certain times or in certain circumstances. Any request that a search warrant be executable at any time of the day or night must be accompanied and supported by allegations of fact supporting such request.

(d) Issuance and contents. Upon application of a law enforcement officer or the Office of the Attorney General, a judge of the Superior Court may issue a search warrant if the judge is satisfied that grounds for its issuance exist or that there is probable cause to believe that they exist. A finding of probable cause may be based upon hearsay evidence in whole or in part. A search warrant shall contain --

(1) The name of the Superior Court and the Division thereof, the name and signature of the issuing judge, and the date of issuance;

(2) The name of the officer, if the warrant is addressed to a specific law enforcement officer, or otherwise, the classifications of officers or agents to whom the warrant is addressed;

(3) A designation of the premises, vehicles, objects, or persons to be searched, sufficient for certainty of identification;

(4) A description of the property whose seizure is the object of the warrant;

(5) A direction that the warrant be executed during the hours of daylight or, where the judge has found cause therefor under paragraph (c) of this Rule, an authorization for execution at any time of the day or night;

(6) A direction that the warrant and an inventory of any property or person seized pursuant thereto be returned to the Family Court on the next court day after its execution.

(e) Execution; return with inventory.

(1) Time of execution. A search warrant shall not be executed more than 10 days after the date of issuance. A search warrant may be executed on any day of the week and, in the absence of express authorization in the warrant, shall be executed only during hours of daylight.

(2) Place of execution. A search warrant may be executed anywhere in the District of Columbia.

(3) Manner of execution. An officer or agent executing a warrant directing a search of a dwelling house, other building, or vehicle break and enter any of these premises pursuant to *18 U.S.C. § 3109.* An officer or agent executing a warrant directing a search of a person shall give, or make reasonable effort to give, notice of the officer's or agent's identity and purpose to the person.

(4) Inventory and return. An officer or agent executing a search warrant shall write and subscribe an inventory setting forth the time of the execution of the search warrant and the property seized under it. If the search is of a person, a copy of the warrant and of the return shall be given to that person. If the search is of a place, vehicle, or object a copy of the warrant and of the return shall be given to the owner if the owner is present, or if the owner is not, to an occupant, custodian, or other person present, or if no person is present, the officer or agent shall post a copy of the warrant and of the return on the place, vehicle, or object searched.

(f) Filing of papers; disposition of seized property. A copy of the warrant shall be filed with the Family Court on the next court day after its execution, together with a copy of the return. Property seized in the execution of the warrant shall be safely kept for use as evidence. No property seized shall be released or destroyed except in accordance with law and upon order of a court or of the United States attorney or Office of the Attorney General for the District of Columbia or one of their assistants.

(g) Motion for return of property and to suppress evidence. A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the Family Court for the return of the property and to suppress for use as evidence anything so obtained on the ground that such person is entitled to lawful possession of the property. The Family Court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted and has become final the property shall be returned to the movant, although reasonable conditions may be imposed to protect access and use of the property in subsequent proceedings.

(h) Scope and definition. This Rule does not modify any act, inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in proceedings regarding juvenile delinquency or persons in need of supervision. The term "property" is used in this Rule to include documents, books, papers, and any other tangible objects.

Rule 42. Contempt of Court

(a) Summary disposition. A contempt committed by a child may be disposed of summarily, and a contempt committed by an adult may be punished summarily, if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the Court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) Criminal contempt of an adult; disposition upon notice and hearing. A criminal contempt brought against a person who is not a child shall, except as provided in section (a) of this Rule, be prosecuted on notice. The notice shall state the time and place of hearing within the Criminal Division, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the Office of the Attorney General, or of an attorney appointed by the Court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury before the Criminal Division in any case in which an act of Congress so provides. He is entitled to be released on conditions. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the Criminal Division shall enter an order fixing the punishment.

(c) Delinquency contempt of a child; notice and hearing. A criminal contempt brought against a child shall be treated as a delinquent act. Except as provided in section (a) of this Rule, criminal contempt against a child shall be prosecuted on notice to the respondent as follows:

(1) If the contempt is initiated by the Court, the notice shall state the time and place of hearing within the Family Court, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the respondent or of an attorney appointed by the Court for that purpose, by an order to show cause or an order for custody.

(2) If the contempt is initiated by the Office of the Attorney General, the notice shall be given by the filing of a petition in accordance with the requirements of D.C. Code § 16-2305 and Juvenile Rule 7.

If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the factfinding hearing except with the respondent's consent. Upon a finding of guilt, the Family Court shall enter an order of disposition in accordance with the applicable statutes and rules governing juvenile delinquency matters.

COMMENT

This Rule is similar to *FRCrP 42*. Section (a) was previously modified to provide that contempt committed in the presence of the Court by a child (as defined in D.C. Code § 16-2301(3)) be "disposed of" rather than "punished." This precludes action appropriate only for nonchildren, e.g., jail sentences. Section (c) sets forth procedures for contempt prosecution under D.C. Code § 11-944.

Rule 43. Presence of the Respondent

(a) In general. The respondent must be physically present at the initial hearing, at the factfinding hearing, and at the entry of a dispositional order, except as otherwise provided by Rule 43(b) or D.C. Code § 16-2316(f) (2012 Repl.).

(b) Authority for video teleconferencing or telephone conferencing. The court may permit any proceeding to occur by video teleconferencing or by telephone conferencing if:

(A) the respondent consents after consultation with counsel;

(B) the government consents; and

(C) the court makes an inquiry on the record to ensure that:

(i) the respondent's consent is knowing, voluntary, and intelligent; and

(ii) the respondent has an adequate opportunity to consult confidentially with counsel immediately before, during, and at the conclusion of the proceeding.

(c) Waiving presence.

(1) Voluntary Absence. A respondent who was initially present at the factfinding hearing waives the right to be present where the respondent is voluntarily absent after the factfinding hearing has begun, regardless of whether the court informed the respondent of an obligation to remain during the factfinding hearing. The factfinding hearing may proceed to completion, including the adjudication, during the respondent's absence.

(2) Upon motion by the respondent, the court may grant a respondent's waiver of the right to be present at any proceeding.

COMMENT TO 2022 AMENDMENTS

Rule 43 has been amended to expand the Superior Court's authority to permit a respondent to appear by video teleconferencing or telephone conferencing, i.e., remotely. The amended rule is modeled on 2022 amendments to Criminal Rule 43. It largely tracks, and makes permanent, temporary emergency authority the court exercised during the COVID-19 pandemic to hold remote hearings. The court's experience during COVID-19 has shown that remote juvenile proceedings function well.

COMMENT TO 2020 TEMPORARY AMENDMENTS

New section (c) provides explicit authority for the court to conduct proceedings by video teleconference or telephone conference if the Chief Judge has issued an order under D.C. Code § 11-947 (2019 Supp.) based on COVID-19 and there is a case specific finding. The section is modeled after provisions in the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (CARES Act), § 15002 (2020), and resulting district court orders. The CARES Act permitted the Judicial Conference of the United States to find that emergency conditions materially affected the functioning of the federal courts or a particular district court of the United States. The Chief Judge of a covered district court could then authorize the use of video teleconferencing or telephone conferencing for additional proceedings with certain conditions.

Rule 44. Right to and Assignment of Counsel

(a) Right to counsel.

(1) Assigned counsel. In delinquency and in need of supervision cases, the respondent shall be represented by counsel at all judicial hearings including, but not limited to, the detention or shelter care hearing or the initial appearance, hearings on contested motions, any transfer hearing, the pretrial conference, the factfinding hearing, the disposition hearing, and hearings for the review of a dispositional order. If counsel is not retained for the respondent, or if it does not appear that counsel will be retained, counsel shall be appointed (or reappointed, in the event of a re-petition pursuant to SCR-Juvenile 5) for the respondent. In appropriate cases where a respondent is alleged to be in need of supervision, the Family Court may appoint separate counsel to represent the parent, guardian or custodian.

(2) Joint representation. Whenever two or more respondents have been joined for a factfinding hearing pursuant to SCR-Juvenile 8(b) or 13, and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, the Court shall promptly inquire with respect to such joint representation and shall personally advise each respondent of the right to effective assistance of counsel, including separate representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the Court shall take such measures as may be appropriate to protect each respondent's right to counsel.

(b) Assignment of counsel.

(1) List of attorneys. Assignment of counsel shall be made by the Family Court from a list of panel attorneys approved by the court. Assignment of counsel should be made unless otherwise provided by rule or statute.

(2) When assigned. Counsel shall be assigned to represent a respondent under these Rules when the respondent and the respondent's parent, guardian or custodian are financially unable to obtain adequate representation. In cases where the respondent and the respondent's parent, guardian or custodian are financially able to obtain adequate representation but have not retained counsel, the Family Court may assign counsel and order the payment of reasonable attorney's fees in accordance with SCR-Juvenile 113, or may direct the respondent and the respondent's parent, guardian or custodian to retain private counsel within a specified period of time.

(3) Restrictions. The Family Court may impose restrictions from time to time upon the maximum number of respondents an attorney may represent pursuant to assignment under this Rule. No attorney shall receive compensation under the Criminal Justice Act for representation in excess of the prescribed number of assignments.

(c) Appearance and withdrawal. Appearance of attorneys shall be by praecipe. Once an attorney has entered an appearance, the attorney shall receive copies of all notices required by these Rules to be given to the parties and shall be entitled to inspect all legal and social records relating to the attorney's client as provided by the statute and these Rules. An attorney may withdraw the attorney's appearance only by order of the Court upon motion by the attorney served upon the client.

(d) Suspension or removal from participation in the CJA Program.

(1) Grounds.

(A) An attorney may be suspended from the list of attorneys maintained pursuant to D.C. Code § 11-2601 (1989 Repl.) for willful falsification, by commission or omission, of

any material information in any voucher, requisition or other document relating to the District of Columbia Criminal Justice Act, for receipt of other payments in violation of D.C. Code §§ 11-2604 through 11-2606 (1989 Repl.), or for any other conduct which violates the provisions of the District of Columbia Criminal Justice Act, the Plan for Furnishing Representation to Indigents Under the District of Columbia Criminal Justice Act or any guidelines promulgated by the Superior Court Board of Judges for the implementation of the Plan.

(B) Any person or organization authorized pursuant to D.C. Code § 11-2605 (1989 Repl.) to provide investigative, expert or other services may be suspended or removed from further participation in the District of Columbia Criminal Justice Act Program for willful falsification, by commission or omission, of any material information in any voucher, requisition or other document relating to the District of Columbia Criminal Justice Act, for receipt of other payments in violation of D.C. Code § 11-2606 (1989 Repl.), or for any other conduct which violates the provisions of the District of Columbia Criminal Justice Act, the Plan for Furnishing Representation to Indigents Under the District of Columbia Criminal Justice Act or any guidelines promulgated by the Superior Court Board of Judges for implementation of the Plan.

(2) Disciplinary committee. The power to suspend an attorney and the power to suspend or remove any other person or organization appointed or otherwise employed pursuant to the District of Columbia Criminal Justice Act shall be vested in a committee appointed by the Superior Court.

(3) Procedures. No order of suspension or removal shall be entered unless the attorney has been given an opportunity to be heard. Notice of the hearing date together with a clear and concise statement of the complaint against the attorney shall be served by certified mail not less than 21 days before the date of the hearing. In the conduct of the hearing, the committee may follow such procedures as it deems appropriate.

Rule 45. Time

(a) Computation. In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of some paper in Court, a day or any part of a day in which the office of the Clerk is closed, in which event the period runs until the end of the next day which is not one of the aforementioned days, except where otherwise provided by statute. When a period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation except where otherwise provided by statute. As used in these rules, "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the District of Columbia.

(b) [Excluded].

(c) [Excluded].

(d) For motions; affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless a different period is fixed by order of the judicial officer. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than one day before the hearing unless the judicial officer permits them to be served at a later time.

(e) Additional time after service by mail. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon that party and the notice or other paper is served by mail, three days shall be added to the prescribed period.

COMMENT

This rule is similar to SCR-Criminal 45(b), "Enlargement," is excluded since the conditions for enlargement of time periods are specified in D.C. Code § 16-2330.

Rule 46. Release on Bail

[Excluded].

COMMENT

FRCrP 46 has been excluded since there is no right to bail in juvenile proceedings. *Fulwood v. Stone, 394 F.2d 939 (D.C. Cir. 1967).*

Rule 47. Motions

An application to the Family Court for an order shall be by motion. A motion other than one made during a factfinding hearing or other hearing shall be in writing unless the Family Court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit. All citations to cases decided by the United States Court of Appeals for the District of Columbia Circuit shall include the volume number and page of both U.S. App. D.C. and the Federal Reporter.

COMMENT

Substantially similar to *FRCrP 47*.

Rule 47-I. Motions Procedure

(a) Service and filing. A copy of a written motion shall be served upon the opposing party or that party's counsel, and the motion including a certificate of service shall be filed with the Clerk.

(b) Points and authorities: entry of motions, etc.; opposing points and authorities. With each motion there shall be filed a statement of the specific points of law and authorities to support the motion and a proposed order. Such statement shall be additional to a statement of grounds in the motion itself, and it shall be entered on the docket. All citations to cases decided by the United States Court of Appeals for the District of Columbia Circuit shall include the volume number and page of both U.S. App. D.C. and the Federal Reporter. A statement of opposing points and authorities and proposed order shall be similarly filed, noted, and served. The certificate of service for each motion or statement of opposing points and authorities shall list the names and addresses of all parties upon whom the paper was served.

(c) Time for filing. All motions, except motions to dismiss for lack of speedy trial or for social reasons pursuant to SCR-Juv 48(b) or for continuance, or applications for reconsideration of orders for detention or of conditions of release, shall be filed within 10 days of the status hearing, or the first appearance of counsel, whichever date is later, unless otherwise provided by the assigned judge to whom the case has been assigned. A statement of opposing points and authorities in writing shall be filed within 10 days thereafter, unless otherwise provided by the assigned judge to whom the case has been assigned but in no case later than two days before the hearing on the motion. If such opposing statement is not filed within the prescribed time the motion may be treated as conceded.

(d) Hearing and ruling on motion. If the movant wishes a hearing on the motion, the movant shall so request in the motion. A motion made before the factfinding hearing shall be determined before the factfinding hearing unless the assigned judge to whom the case has been assigned or the judicial officer to whom the motion has been referred orders that it be deferred for determination at the factfinding hearing, but no such determination shall be deferred if a party's right to appeal is adversely affected. A motion presented to the Clerk for filing out of time as established by these rules shall be accompanied by a written request for leave to file the motion late. The Clerk of the Family Court shall receive the motion, file the request for late filing, and immediately forward both documents to the assigned judge to whom the case has been assigned. The judge may then allow time for the opposing party to oppose the request and may decide the request for leave to late file with or without a hearing. The judge may deny such request, which denial shall have the effect of denying the accompanying motion as untimely, or grant the request to late file, in which case the motion shall be filed by the Clerk and ruled upon as otherwise provided by these rules. All motions shall be determined by the assigned judge to whom the case has been assigned except that motions for release on conditions, for reconsideration of orders for detention or conditions of release, to dismiss for social reasons, or evidentiary motions which, if heard by the assigned judge might preclude that judge from presiding at the factfinding hearing, may be certified to another judicial officer in the Family Court in the discretion of the assigned judge to whom the case has been assigned.

(e) Effect of determination. If a motion is determined adversely to the respondent, the respondent shall be permitted to plead if a plea had not previously been entered. A plea

previously entered shall stand. If the judicial officer grants a motion based on a defect in the institution of the proceedings or in the petition, the judicial officer may also order that the respondent be detained or that the respondent's release on conditions be continued for a specified time pending the filing of a new petition. Nothing in the Rules shall be deemed to affect the provisions of any act of Congress relating to periods of limitations.

(f) Matters taken under advisement. When a judicial officer takes any motion or other matter under advisement, the Clerk shall note on the docket the date on which the matter was taken under advisement. If within 30 days of such date a decision has not been rendered by the judicial officer, the Clerk shall send notice of that fact to that judicial officer and shall repeat such notice every 30 days thereafter until a decision is rendered. If no decision has been rendered within 60 days of the issuance of the first such notice, the Clerk thereafter shall so advise that judicial officer and the Chief Judge. The Chief Judge may take any action he or she deems appropriate in order to cause the matter to be decided promptly.

Rule 48. Dismissal

(a) By Office of the Attorney General. The Attorney General may file a dismissal of a petition and the proceedings shall thereupon terminate. The dismissal shall be without prejudice unless otherwise stated. Such a dismissal may not be filed during the factfinding hearing without the consent of the respondent.

(b) By the Family Court. At or after a disposition hearing, the judicial officer may dismiss a petition and terminate the proceedings relating to the respondent, if the judicial officer finds by clear and convincing evidence that the child is not in need of care or rehabilitation. The reason for such dismissal shall be set forth upon request of the Attorney General. A hearing on this issue may be held at the request of any party. If a motion to dismiss is made under this section, the opposing party shall have an opportunity to respond and, if necessary to preserve the rights of either party, the disposition hearing shall be continued for a hearing on the motion.

(c) Notwithstanding subparagraph (b), the Court retains its authority to dismiss a petition for want of prosecution if there is unnecessary delay in the filing of a petition or in bringing a respondent to a hearing or disposition.

Rule 49. Service and Filing of Papers

(a) Service: When required. Written motions other than those which are heard ex parte, written notices, designations of record on appeal and similar papers shall be served upon each of the parties.

(b) Service: How made. Whenever under these Rules or by an order of the Family Court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the Family Court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) Notice of orders. Immediately upon the entry of an order made on a written motion subsequent to the initial hearing the Clerk shall mail to each party a notice thereof and shall make a note in the docket of the mailing. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Family Court to relieve a party for failure to appeal within the time allowed, except as may be permitted by the Rules of the District of Columbia Court of Appeals.

(d) Filing. Papers required to be served shall be filed with the Clerk. Papers shall be filed in the manner provided in civil actions.

(e) Communications by counsel to judicial officer. Copies of all written communications, memoranda and briefs submitted by counsel to a judicial officer and relating to a proceeding pending before the judicial officer shall be delivered to each of the parties except where ex parte submissions are permitted by law.

Rule 50. Calendaring

Priority in calendaring shall be given to cases in which the child is in detention or shelter care as far as practicable.

Rule 51. Exceptions Unnecessary

Exceptions to rulings or orders of the Family Court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the Family Court is made or sought, makes known to the Family Court the action which he desires the Family Court to take or his objection to the action of the Family Court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objections does not thereafter prejudice him.

COMMENT

Substantially similar to *FRCrP 51*.

Rule 52. Harmless Error and Plain Error

(a) Harmless error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the Family Court.

COMMENT

Substantially similar to *FRCrP 52*.

Rule 53. Regulation of Conduct in the Courtroom

(a) Persons admitted to hearings.

(1) Generally. Pursuant to D.C. Code § 16-2316(e), the general public shall be excluded from judicial hearings concerning juvenile delinquency or persons in need of supervision. However, a person having a proper interest in a particular case or in the work of the Family Court may be admitted upon preliminary approval of the Presiding Judge of the Family Court and final approval of the judicial officer before whom the hearing is scheduled. Such a person shall apply for permission to attend a hearing or series of hearings by stating in writing the person's name, address and telephone number, business or professional affiliation, reason for wishing to attend, and that the person will refrain from divulging information identifying the respondent or members of the respondent's family or any other child involved in the proceedings. The required information shall be furnished in duplicate on a form supplied by the Family Court, which the applicant shall personally sign. When initialled by the Presiding Judge of the Family Court and signed by the judicial officer before whom the case is scheduled, the original application shall be kept on file by the Family Court, and the copy shall be carried with the applicant at all times during attendance at Family Court hearings.

(2) Persons who need not apply for admission. The following persons shall be deemed to have a proper interest in the work of the Family Court and need not apply for admission under subparagraph (a)(1) of this Rule in order to be admitted to Family Court hearings, but (a) shall nonetheless be required to refrain from divulging information identifying the respondent or members of the respondent's family or any other child involved in the proceedings, and (b) may be excluded by the judicial officer presiding over the proceeding:

(A) Any member of the Bar of the District of Columbia or law student admitted to the limited practice of law under SCR-General Family M;

(B) Authorized personnel of the District of Columbia Superior Court and the District of Columbia Department of Human Services, and other personnel of the Superior Court and the Department of Human Services when engaged in the delivery of court documents;

(C) Members of the respondent's family;

(D) Subject to the rule on witnesses, the victim, the immediate family members, and custodians of the victim shall have a right to attend transfer, fact-finding, disposition and post-disposition hearings, and shall have a right to be present during the victim's testimony. Those admitted under this subsection shall be advised of their obligation to refrain from divulging information identifying the respondent or members of the respondent's family or any other child involved in the proceedings; and

(E) Subject to the rule on witnesses, eyewitnesses, the immediate family members, and custodians of eyewitnesses shall have a right to attend transfer, fact-finding, disposition and post-disposition hearings, and shall have a right to be present during the eyewitness' testimony. Those admitted under this subsection shall be advised of their obligation to refrain from divulging information identifying the respondent or members of the respondent's family or any other child involved in the proceedings.

(3) Persons deemed admissible upon application. The following persons shall be deemed to have a proper interest in the work of the Family Court, and shall be admissible to Family Court hearings after filling out an application pursuant to subparagraph (a)(1) of this Rule:

(A) Any authorized representative of the news media; and

(B) Any attorney not a member of the Bar of the District of Columbia.

(4) Other persons. Eligibility of other persons for admission shall be governed by the provisions of subparagraph (a)(1) of this Rule.

(b) Taking photographs and radio and television broadcasting.

(1) Taking photographs, radio and television broadcasting prohibited. The taking of photographs, or radio or television broadcasting will not be permitted in any of the courtrooms of the Family Court during the progress of judicial proceedings, or in any of the anterooms adjacent thereto, in the detention rooms, in the lobby, or in the corridors of the court house occupied by the Family Court.

(2) Limited permission to take photographs. The taking of photographs in any office or other room of the Family Court shall be only with the knowledge and consent of the official or person in charge of such office or room and of the person or persons photographed.

COMMENT

"Immediate family member" is defined in D.C. Code § 16-2301(42); and "Custodian" is defined in D.C. Code § 16-2301(12).

Rule 54. Application and Exception

[Excluded].

COMMENT

FRCrP 54 has been excluded as inapplicable to the Superior Court.

Rule 55. Records

(a) Review or inspection of information contained in juvenile case records.

(1) Persons with statutory access; no application required.

(A) Unless the court has limited access pursuant D.C. Code § 16-2331(c), the following persons and entities may gain access to and share information from juvenile case records with other persons and entities named in this paragraph without seeking permission from or notifying the court: the judges and professional staff of the Superior Court, including Court Social Services; the Attorney General and his or her assistants assigned to the Family Court; the respondent, his or her parents or guardians, and their duly authorized attorneys; and authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals or their families under the jurisdiction of the Family Court. Inspection of sealed juvenile case records is subject to the limitations of D.C. Code § 16-2335. The persons and entities named in this paragraph may release juvenile case records to contract and service providers and their authorized personnel if the recipients of the information certify that they will not disclose or use the record or information for any purpose other than that for which the information is provided and that the information will not be used in a manner reasonably likely to identify the respondent.

(B) Nothing in this rule shall prevent the Attorney General and his or her assistants assigned to the Family Court from disclosing to the United States Attorney for the District of Columbia, his or her assistants, any other prosecuting attorneys, or law enforcement personnel: orders issued in juvenile cases regarding conditions of release, probation or commitment, including but not limited to stay-away orders and curfew restrictions; resolution of the charges; and photographs, physical descriptions, and address contained in juvenile case records under D.C. Code § 16-2331(b). The Attorney General and his or her assistants assigned to the Family Court may also disclose other information contained in juvenile case records to the United States Attorney for the District of Columbia, his or her assistants, and any other prosecuting attorneys:

(i) when the prosecuting attorney receiving the information is involved in the investigation or prosecution of a criminal case arising out of the same transaction or occurrence as a case in which a child is alleged to be delinquent;

(ii) when the records are relevant to a determination of the conditions of release or bail in a criminal proceeding, to plea bargaining, or to the sentencing of a person charged with a criminal offense; or

(iii) when the United States Attorney for the District of Columbia is considering charging an individual pursuant to D.C. Code § 16-2301(3) or the Attorney General is considering transfer of a child or minor pursuant to D.C. Code § 16-2307.

(C) Public disclosure by the Office of the Attorney General shall be governed by subparagraph (a)(2)(D) of this rule.

(2) Persons with statutory access; application required.

(A) Except for those persons and entities named in section (a)(1) and for the purposes identified therein, the following persons or entities who seek to inspect or copy juvenile case records shall file an application with the Clerk of the Family Court for submission to the Presiding Judge of the Family Court or his or her designee:

(i) any other court in which the respondent is charged or convicted as a respondent in a delinquency case or status offense or as a defendant in a criminal case, the court's probation staff, and counsel for the respondent or defendant in that case;

(ii) public or private agencies or institutions providing supervision or treatment, or having custody of, the child, if supervision, treatment, or custody is under order of the Family Court;

(iii) the United States Attorney for the District of Columbia, his or her assistants, and any other prosecuting attorneys or defense attorneys, when necessary for the discharge of their official duties;

(iv) the Child Fatality Review Committee, for the purpose of examining past events and circumstances surrounding deaths of children in the District of Columbia or of children who are either residents or wards of the District of Columbia, or for the discharge of its official duties;

(v) the Children's Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for the purpose of carrying out of their official duties, except that only information contained in the records, and not the records or copies of the records, may be provided pursuant to this paragraph; and

(vi) any law enforcement personnel when necessary for the discharge of their official duties.

(B) The application shall:

(i) provide the applicant's name, address, telephone number, and professional affiliation;

(ii) indicate whether the applicant seeks to inspect or copy case records, social records, or both;

(iii) indicate the purpose for which inspection is sought;

(iv) if applicable, specify the statutory provision that entitles the applicant to access; and

(v) certify that the applicant will not disclose or use the record or information for any purpose other than that for which it is provided.

(C) If the court determines that the applicant meets the requirements set forth in D.C. § 16-2331, the court shall grant the request, except that the court may redact or withhold particular items or classes of items contained in the juvenile case records pursuant to D.C. Code § 16-2331(c). The court shall act promptly upon an applicant to inspect and issue a written order.

(D) Public disclosure by the Office of the Attorney General.

(i) Pursuant to D.C. Code §§ 16-2331(b-2) and 16-2333(b-1), when the Attorney General for the District of Columbia or his or her designees seeks to release information contained in a juvenile case or juvenile law enforcement record for the purpose of public safety, they must file a written request and a proposed order with the judicial officer presiding over Family Court proceedings involving the respondent and shall provide notice of the request to the respondent or his or her counsel. The written request shall:

a) state that the respondent has escaped from detention or from the custody of the Department of Youth Rehabilitation Services and is likely to pose a danger or threat of bodily harm to another person;

b) set forth factors that demonstrate that release of such information is necessary to protect the public safety and welfare; and

c) state that the respondent has been charged with a crime of violence as set forth in the D.C. Code § 23-1331(4).

(ii) The Court shall act promptly on the application and shall issue a written order setting forth specific information that may be released to the public and advising the parties of the penalties that attached to the unauthorized disclosure of information.

(3) All other persons having a professional interest; application required.

(A) Other persons or entities who have a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or a member of his or her family, or in the work of the Superior Court and who seek to inspect or copy juvenile case records as permitted by D.C. Code § 16-2331(b)(7) shall file an application with the Clerk of the Family Court for submission to the Presiding Judge of the Family Court or his or her designee.

(B) The application shall:

(i) provide the applicant's name, address, telephone number, and professional affiliation;

(ii) indicate whether the applicant seeks to inspect or copy case records, social records, or both;

(iii) indicate the purpose for which inspection is sought;

(iv) if applicable, specify the statutory provision that entities the applicant to access; and

(v) certify that the applicant will not disclose or use the information for any purpose other than that for which it was provided.

(C) If the court determines that the applicant meets the requirements set forth in D.C. Code § 16-2331(b)(7), the court shall grant the request except that the court may redact or withhold particular items or classes of items contained in the juvenile social records pursuant to D.C. Code § 16-2331(c). The court shall act promptly upon an application to inspect and shall issue a written order.

(b) Review or inspection of information contained in juvenile social records.

(1) Persons with statutory access; no application required. Unless the court has limited access pursuant to D.C. Code § 16-2332(c), the following persons and entities may gain access to and share information from juvenile social records with other persons and entities named in this paragraph: the judges and professional staff of the Superior Court, including Court Social Services; the Attorney General and his assistants assigned to the Family Court; the attorney for the child at any stage of a proceeding in the Family Court, including intake; and authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals or their families under the jurisdiction of the Family Court. Inspection of sealed juvenile social records is subject to the limitations of D.C. Code § 16-2335. The persons or entities named in this paragraph may release juvenile social records to contract and service providers and their authorized personnel if the recipients of the information certify that they will not disclose or use the record or information for any purpose other than that for which the information was provided and that

the information will not be used in a manner which is reasonably likely to identify the respondent.

(2) Persons with statutory access; application required.

(A) Except for those parties named in section (b)(1) and for the purposes identified therein, the following persons or entities, who seek to inspect or copy juvenile social records, shall file an application with the Clerk of the Family Court for submission to the Presiding Judge of the Family Court or his or her designee:

(i) any other court or its probation staff, for purposes of sentencing the child as a defendant in a criminal case, and, if and to the extent other presentence materials are disclosed to him or her, the counsel for the defendant in that case;

(ii) public or private agencies or institutions providing supervision or treatment, or having custody of the child, if the supervision, treatment or custody is under order of the Family Court;

(iii) the Child Fatality Review Committee for the discharge of its official duties; and

(iv) law enforcement officers of the United States, the District of Columbia, and other jurisdictions when a custody order has issued for the respondent.

(B) The application shall:

(i) provide the applicant's name, address, telephone number, and professional affiliation;

(ii) indicate whether the applicant seeks to inspect or copy case records, social records, or both;

(iii) indicate the purpose for which inspection is sought;

(iv) if applicable, specify the statutory provision that entitles the applicant to access; and

(v) certify that the applicant will not disclose or use the information for any purpose other than that for which it was provided.

(C) If the court determines that the applicant meets the requirements set forth in D.C. Code § 16-2332, the court shall grant the request, except that the court may redact or withhold particular items or classes of items contained in the juvenile social records pursuant to D.C. Code § 16-2332(c). The court shall act promptly upon an application to inspect and issue a written order.

(3) All other persons having a professional interest; application required.

(A) Other persons or entities who have a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or a member of his or her family, or in the work of the Family Court and who seek to inspect or copy juvenile social records as permitted by D.C. Code § 16-2332(b)(1)(E) shall file an application with the Clerk of the Family Court for submission to the Presiding Judge of the Family Court or his or her designee.

(B) The application shall:

(i) provide the applicant's name, address, telephone number, and professional affiliation;

(ii) indicate whether the applicant seeks to inspect or copy case records, social records, or both;

(iii) indicate the purpose for which inspection is sought;

(iv) if applicable, specify the statutory provision that entitles the applicant to access;

(v) certify that the applicant will not disclose or use the information for any purpose other than that for which it was provided.

(C) The application may include written consent to the application by the respondent, the respondent's parent, guardian, or custodian, and the respondent's attorney.

(D) Unless the application includes the respondent's written consent to access the records as provided by subparagraph (b)(3)(C), the court shall give notice to the respondent, the respondent's parent, guardian, or custodian, and the respondent's attorney that an application to inspect was filed. Following the provision of notice, the court may conduct a hearing on the application. If the court determines that the applicant meets the requirements set forth in D.C. Code § 16-2332(b)(1)(E), the court shall grant the request except that the court may redact or withhold particular items or classes of items contained in the juvenile social records pursuant to D.C. Code § 16-2332(c). The court shall act promptly upon an application to inspect and issue a written order. The court shall deny an application sought pursuant to D.C. Code 16-2332(b)(1)(E) unless it appears that:

(i) the application is accompanied by written consent of the respondent, the respondent's parent, guardian, or custodian and the respondent's attorney;

(ii) the information contained in the social records and sought by the applicant is not otherwise available to the applicant and the applicant has a professional interest in the protection, welfare, treatment, or rehabilitation of the respondent or the respondent's family; or

(iii) the applicant has a professional interest in the work of the Family Court and inspection of the juvenile social record and the intended use by the applicant of the information is not reasonably likely to cause the respondent or the respondent's family embarrassment or emotional or psychological harm.

(E) An applicant who receives access to juvenile social records, released pursuant to section (b)(3)(D) of this Rule, shall not use information obtained from the social records in a manner which is reasonably likely to identify the respondent and shall not reveal or publish information of a personal nature about the respondent or the respondent's family.

COMMENT

While this rule provides that applications to inspect case records should be submitted to the Presiding Judge of the Family Court, nothing in the rule is intended to preclude the Presiding Judge from certifying the matter to a judge presiding over a trial in which a party has made a motion to inspect case or social records of a juvenile.

Juvenile Rule 55 was revised to implement the Omnibus Juvenile Justice Act of 2004, D.C. Law 15-0261 (March 17, 2005), which amended D.C. Code §§ 16-2331 and 16-2332 to expand the number of persons and entities that may access confidential Family Court records and broadened the scope of information that may be inspected. The rule sets forth procedures for persons to apply to the court to inspect records. The rule also requires application by some persons who are provided access under the statute, pursuant to the court's authority under D.C. Code §§ 16-2331(d) and 16-2332(d), which state that, "[t]he Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile case records by persons entitled to inspect them."

Rule 56. Courts and Clerks

[Excluded].

COMMENT

Rule 56 has been excluded as unnecessary since SCR-General Family Rule B sets out the hours of the Family Division Clerk's Office.

Rule 57. Bias or Prejudice of a Judge

[Excluded].

COMMENT

Identical to SCR-Civ 63-I. *Federal Rule of Criminal Procedure 57(a)* has been excluded as inapplicable to the Superior Court. *Federal Rule of Criminal Procedure 57(b)* has been moved to SCR-Juv 2.

Rule 58. Forms

The Forms contained in the Appendix of Forms are illustrative and not mandatory.

COMMENT

Identical to *FRCrP 58*.

Rule 59. Effective Date

[Vacant].

Rule 60. Title

These Rules shall be known and cited as the Rules Governing Juvenile Proceedings in the Family Court of the Superior Court of the District of Columbia and may be cited as SCR-Juvenile.

COMMENT

FRCrP 60 has been omitted and a new Rule on the same topic is substituted.

Rule 101. Definitions

(a) "Civil action" refers to an action in the Civil Division of the Superior Court of the District of Columbia.

(b) "Oath" includes affirmations.

(c) "Petition" means the legal document containing the allegations upon which the Court's jurisdiction is based.

(d) "Party" means a child who is the subject of a Court proceeding; or the parent, guardian, or legal custodian of such child; or any person denominated by a statute as a party in a given case.

(e) "Traffic offense" used in § 16-2301(3)(C) means any violation of the Traffic and Motor Vehicle Regulations for the District of Columbia or any violation of Title 40 of the D.C. Code except 40 D.C. Code § 606 (negligent homicide).

(f) "Court" means the Superior Court of the District of Columbia.

(g) "Division" means the Family Division of the Superior Court of the District of Columbia.

COMMENT

D.C. Code § 16-2301 also defines many of the terms used in the Juvenile Rules. The effect of section (e) is to take all the defined offenses (except negligent homicide) out of the jurisdiction of the Family Division (D.C. Code § 11-1101(13) and SCR-Juvenile 1).

Rule 102. Intake Procedures

(a) Referral to intake unit. Complaints alleging delinquency or need of supervision shall be referred to the intake unit established by the Director of Social Services, which shall make a preliminary determination as to whether the facts presented in the complaint warrant further action within the Family Court and whether the respondent appears to be in need of care and rehabilitation.

(b) Preliminary investigation. Each preliminary investigation shall consider all available relevant factors to determine whether the interests of the public or the respondent require that a petition be filed. Such factors may include an examination of court records on the respondent; an interview with the respondent and the respondent's parents, guardian or custodian; an investigation of the respondent's home environment; an examination of the complaint(s); an examination of reports from the respondent's school or a discussion with school officials; and any other considerations deemed relevant to the inquiry. The preliminary investigation may be based upon oral inquiries made at the intake interview, or upon public records and other information of a non-private nature. Wherever possible, the intake unit shall ascertain from other records kept by the Court whether members of the respondent's family or household have been or are the subject of other judicial proceedings.

(c) Intake interview. Whenever possible a preliminary investigation shall include an interview with the respondent and the respondent's parents, guardian or custodian. The parties shall be informed that the intake interview is voluntary, but that if the parties fail to appear, the intake unit may immediately recommend the filing of a petition. The intake unit shall also inform the parties that the respondent will be represented by counsel at all judicial hearings, as provided in D.C. Code § 16-2304 and SCR-Juvenile 44, and shall inform them that the Family Court will appoint counsel to represent the respondent in court if the respondent is eligible for such appointment. Statements made by the respondent to the intake unit during an intake interview shall not be admissible for any purpose at a subsequent factfinding hearing or criminal trial based on the allegations set forth in the juvenile complaint.

(d) Recommendation of the intake unit. Upon conclusion of the preliminary investigation, the intake unit shall make a written recommendation as to whether a petition should be filed using the criteria set forth in SCR-Juvenile 103. A copy of this recommendation shall be forwarded to the Office of the Attorney General.

(e) Petitioning by Office of the Attorney General. The Office of the Attorney General shall determine whether to file a petition against the respondent after an inquiry into the facts of the complaint, including any interviews with the complainant(s), a review of the legal basis for the petition, and consideration of the recommendation of the intake unit.

COMMENT

Paragraph (c) of this Rule has been amended to clarify and narrow the former prohibition on use of a respondent's and parents' statements at an intake interview. Under former SCR-Juvenile 102(f), there was disagreement about whether statements made by the respondent or the respondent's parent, guardian or custodian to the intake unit or to the Corporation Counsel prior to the filing of a petition could be admitted at any hearing (evidentiary or otherwise) prior to the disposition hearing, or in a criminal proceeding, at

any time prior to conviction. Paragraph (c) as revised bars only the admission of the respondent's statements, but not the parent's, at a factfinding hearing or a criminal trial based on the allegations of the juvenile complaint. This amendment permits use of the respondent's and parent's intake interview statements at an initial hearing. There is no statute that precludes use of such statements at the initial hearing, and the additional information provided by the statements will permit a more informed determination at the initial hearing. Paragraph (e) ensures that although the Corporation Counsel will normally conduct an interview with the complainant in a juvenile case at the same time the intake interview is being conducted, no petition will be filed by the Corporation Counsel until the intake unit's recommendation has been considered.

Rule 103. Criteria for Intake

(a) Delinquency cases. In determining whether the best interest of the respondent or the public require that a petition be filed, the intake unit shall consider the following factors:

(1) The seriousness of the alleged act(s). With regard to the seriousness of the alleged act(s), the intake unit may proceed with discretion, except that the filing of a petition shall be recommended in all cases where the complaint alleges that the respondent committed one or more of the following offenses: Homicide, forcible rape, robbery while armed, attempt to commit any such offense, assault with intent to commit any such offense, and burglary in the first degree.

(2) The respondent's record of prior police and court contacts. With regard to the respondent's record of prior police and court contacts, the intake unit may proceed with discretion, giving due weight to the number and nature of such prior contacts, except that no act found not committed at a factfinding hearing shall be considered. The filing of a petition shall be recommended in all cases (A) where the respondent is on probation and the complaint alleges an offense which would be a felony if committed by an adult, or (B) where the respondent is 16 or more years of age and is already under commitment to an agency or institution as a delinquent child.

(3) Whether the alleged delinquent act was committed under mitigating circumstances or other conditions rendering judicial action inappropriate. With regard to mitigating circumstances or conditions rendering judicial action inappropriate, the intake unit may proceed with discretion, taking into account the respondent's age and other circumstances surrounding the offense, and giving particular weight to the existence and availability of non-judicial community services which might serve the respondent's needs without the filing of a petition.

(4) Whether a petition has been or will be filed against an alleged co-respondent for substantially similar acts. With regard to the pendency of other petitions filed against co-respondents, the intake unit shall, whenever possible, assign the same officer for all the alleged co-respondents in a given case, and shall attempt to give fair and equal treatment to all persons involved in a given offense.

(b) Need of supervision cases. In determining whether the best interest of the respondent or the public require that a petition be filed, the intake unit shall consider the following factors:

(1) In habitual truancy cases, the mental and physical condition of the respondent, the number of alleged absences from school, the circumstances surrounding such absences, the efforts of the school or other community resources to remedy the situation, and whether or not judicial action appears appropriate and reasonably likely to remedy the situation.

(2) In cases of offenses committable only by children, the nature and seriousness of the alleged offense, the circumstances surrounding the offense, and whether or not judicial action appears appropriate and reasonably likely to help.

(3) In cases of habitual disobedience and ungovernability, the specific acts of disobedience charged, the circumstances surrounding such acts, the reasonableness of the parental commands allegedly violated, the reasonableness of the respondent's actions in the light of prevailing community standards, whether or not there are non-judicial community services which might better serve the respondent's or the family's needs

without the filing of a petition, and whether or not judicial action appears appropriate and reasonably likely to help.

Rule 104. Consent Decree

(a) Terms and conditions. Upon approval of the Office of the Attorney General and the respondent, and upon suspension of the proceedings by the Court, a consent decree authorized by D.C. Code § 16-2314 may be entered. The consent decree may contain any term or condition that could be imposed in an order of probation.

(b) Reinstatement of original petition.

(1) Rearrest. When a new delinquency or need of supervision petition is filed concerning a respondent under a consent decree, the Office of the Attorney General may reinstate the original petition by filing a praecipe, after consultation with the Director of Social Services. Following reinstatement of the original petition, the case shall be placed on the trial calendar and a status date shall be set.

(2) Violations other than rearrest. When a respondent under a consent decree is alleged to have violated any of the consent decree other than by rearrest, the original petition may be reinstated upon motion by the Office of the Attorney General, following a consultation with the Director of Social Services. Following reinstatement of the original petition, the case shall be placed on the trial calendar and a status date shall be set.

(c) Evidence. Evidence of violation of the terms and conditions of the consent decree shall not be admitted for any purpose at the factfinding hearing but may be admitted at the disposition hearing. Statements made by a respondent to the Office of the Attorney General or to the Director of Social Services or the Director's delegate during negotiations leading to a consent decree shall not be admitted for any purpose at a factfinding hearing, but may be admitted at a disposition hearing.

COMMENT

Paragraph (b) provides the mechanism for reinstatement under D.C. Code § 16-2314(c). The first sentence of paragraph (c) insures that a violation of the consent decree will not prejudice the factfinding hearing on the original petition. Of course the evidence would be admissible if the violation of the consent decree was also a law violation and was itself the subject of the factfinding hearing. The last sentence of paragraph (c) is designed to insure that meaningful negotiations toward a consent decree can take place.

Rule 105. Detention and Shelter Care Procedures

(a) Scope. The provisions of this Rule shall apply to all respondents taken into custody including those taken into custody by the Director of Social Services pursuant to D.C. Code § 16-2337.

(b) Review by Director of Social Services. The Director of Social Services or the Director's delegate shall, if possible, release the respondent to the care of the respondent's parent, guardian, custodian, or other person or agency able to provide supervision and care for the respondent, or may admit the respondent to the shelter or detention facility subject to further order.

(c) Notice of rights to respondent. The Director of Social Services or the Director's delegate shall notify any respondent upon admission to shelter care or detention of the reasons for such admission, and of the respondent's right to telephone the respondent's parent, guardian or custodian and attorney, if any. The Director shall also notify the respondent that a hearing will be held by the Family Court the next day (excluding Sundays) concerning the necessity for further shelter care or detention, and that the respondent will be represented by counsel at such hearing pursuant to SCR-Juvenile 44.

(d) Notice to respondent's parent, guardian, or custodian. The Director of Social Services or the Director's delegate shall promptly notify the parent, guardian, or custodian of the respondent, by telephone or in person, that the respondent has been admitted to shelter care or detention, what the nature of the complaint is, and that a detention hearing which they must attend will be held by the Family Court at a specified hour on the next day (excluding Sundays). The Director shall inform them that they may meet the Director prior to the detention hearing to discuss any questions that they may have. The Director shall also inform the parent, guardian, or custodian of the right to visitation and of the respondent's right to be represented by counsel or, if the respondent's parent, guardian, or custodian is unable to retain counsel, that the Family Court will appoint counsel to represent the respondent.

(e) Interview of respondent in detention prohibited.

(1) Need for written permission of parent, guardian, custodian or attorney. Except for a staff member of a shelter or detention facility, an authorized provider of medical, psychiatric, or other evaluation or treatment, or a probation officer, and unless the Family Court orders otherwise, no person shall be permitted to interview a respondent held in the facility without the respondent's parent, guardian, custodian or attorney being present, unless the parent, guardian, custodian or attorney has been informed of the purpose of the interview and has given written permission for the interview to be held without her or him.

(2) Exception when respondent consents to questioning about unrelated offense. Any respondent held in a shelter or detention facility who is the victim of, the witness to, or has any information pertaining to any criminal offense committed in the facility or in transit to or from the facility, and with which the respondent is not currently charged, may be interviewed by law enforcement officers with respect to that offense without an order of the Family Court, without permission of the parent, guardian, or custodian, and without the consent of the respondent's attorney provided that:

(A) the respondent is not suspected of having been a participant in the criminal act or acts under investigation;

(B) the respondent consents to the interview; and

(C) the respondent is notified of the right to terminate the interview at any point.

Any statement made by a respondent to a law enforcement officer pursuant to this subparagraph (e)(2) shall not be admissible for any purpose, except for impeachment, at any proceeding brought against the respondent.

COMMENT

Paragraph (a) of this Rule makes it clear that the procedures set forth in the Rule apply to all cases where children are taken into custody. Paragraphs (b) and (c) implement D.C. Code § 16-2311(b). Paragraph (d) provides for notice to the parent, guardian, or custodian by the Director of Social Services or the Director's delegate in addition to the notice by the person taking the respondent into custody required under D.C. Code § 16-2311(a). Paragraph (e) is designed to prevent interviews of a respondent in detention by the police and others, about the offense for which the respondent is in custody without the presence or consent of the respondent's parent, guardian, custodian, or attorney. Subparagraph (e)(2) permits a law enforcement officer to interview a respondent, with the respondent's consent, about an offense committed in or on route to or from the detention facility and with which the respondent has not been charged. Statements obtained pursuant to subparagraph (e)(2) are not admissible, except for impeachment, at any proceeding brought against the respondent. See *Harris v. New York, 401 U.S. 222, 91 S. Ct. 643, 28 L. Ed. 2d 1 (1971).*

Rule 106. Criteria for Detention and Shelter Care

(a) Detention. No respondent shall be placed in detention prior to a factfinding hearing or a dispositional hearing unless the respondent is alleged to be delinquent or in need of supervision and unless it appears from available information that detention is required to protect the person or property of others or of the respondent, or to secure the respondent's presence at the next court hearing.

(1) In determining whether detention is necessary to protect the person of others, relevant factors include but are not limited to the following:

(i) Record of the respondent's previous offenses against persons,

(ii) Record of the respondent's previous weapons offenses,

(iii) Nature and circumstances of the pending charge,

(iv) Nature and circumstances of other pending charges, if they involve an offense against the person or a weapons offense,

(v) Allegations of danger or threats to witnesses, and

(vi) Emotional character and mental condition of the respondent.

(2) In determining whether detention is necessary to protect the property of others from serious loss or damage, relevant factors include but are not limited to the following:

(i) Record of the respondent's previous offenses against the property of others, if serious loss or damage was involved,

(ii) Nature and circumstances of the pending charge, and

(iii) Nature and circumstances of other pending charges, if they involve serious loss or damage to the property of others.

(3) In determining whether detention is necessary to protect the respondent's own person, relevant factors include but are not limited to the following:

(i) Narcotics addiction by the respondent or other indication of illegal drug use,

(ii) Abuse of alcohol by the respondent,

(iii) Suicidal actions or tendencies of the respondent, and

(iv) Other seriously self-destructive behavior creating an imminent danger to the respondent's life or health.

(4) In determining whether detention is necessary to secure the respondent's presence at the next court hearing, relevant factors include but are not limited to the following:

(i) The respondent's residence in the District of Columbia,

(ii) Length of the respondent's residence and present community ties,

(iii) Employment and school record of the respondent,

(iv) Record of the respondent's appearances at prior court hearings and circumstances surrounding non-appearances, if any,

(v) Record of the respondent's previous abscondences from institutions or official custody, and circumstances surrounding such abscondences,

(vi) Record of respondent's abscondences from home, and circumstances surrounding such abscondences and the respondent's eventual return home, and

(vii) Seriousness of the pending charge and its likelihood of inducing non-appearance.

(5) If detention appears to be justified under the factors listed in subparagraphs (a)(1), (2), (3), or (4) of this Rule, the person making the detention decision may nevertheless consider whether the respondent's living arrangements and degree of supervision might justify release pending adjudication.

(6) No respondent who is charged with homicide, forcible rape, robbery while armed, attempt to commit any such offense, assault with intent to commit any such offense, or burglary in the first degree, or who is in abscondence from Court-ordered secure custody shall be released prior to a detention decision by a judicial officer of the Family Court.

(7) No respondent charged with being a person in need of supervision shall be admitted to a detention facility, except upon order of a judicial officer, unless it appears from available information that immediate detention is necessary to protect the respondent's own person under the criteria listed in subparagraph (a)(3) of this Rule.

(b) Shelter care. No respondent who is alleged to be delinquent or in need of supervision shall be placed in shelter care prior to a factfinding hearing or a dispositional hearing, unless it appears from available information that shelter care is required to protect the person of the respondent, or because the respondent has no suitable parent, guardian, custodian, or other person or agency able to provide supervision and care for the respondent and the respondent appears unable to care for himself or herself.

(1) In determining whether shelter care is necessary to protect the person of the respondent, relevant factors include but are not limited to the following:

(i) Abusive or threatening conduct toward the respondent by a member or members of the family or household,

(ii) Dangerous conduct or threats toward the respondent by persons in the respondent's environment or neighborhood, if the parents, guardian or custodian are unable to protect the respondent therefrom, and

(iii) Danger to the health or welfare of the respondent's person for which additional supervision is required short of secure custody.

(2) In determining whether a respondent alleged to be delinquent or in need of supervision who is without parental or custodial supervision should be placed in shelter care because of inability to care for himself or herself, relevant factors include but are not limited to the following:

(i) The respondent's age,

(ii) Adequacy of the respondent's existing living arrangements,

(iii) Length of existing living arrangements and the respondent's adjustment to them, and

(iv) Evidence or likelihood of serious harm to the respondent's physical or mental health resulting from existing living arrangements, if any.

(3) No respondent who is judged to be in need of shelter care under D.C. Code § 16-2310(b) and the provisions of this Rule shall be placed in detention, unless the respondent's detention is independently justified under paragraph (a) of this Rule.

COMMENT.

This Rule is adopted pursuant to the statutory direction in D.C. Code § 16-2310(c).

Rule 107. Detention or Shelter Care Hearing

(a) Presence of parent, guardian, or custodian. The detention hearing may be held without the presence of the respondent's parent, guardian, or custodian. However, upon request of the respondent's attorney for good cause shown, the Family Court may postpone the hearing because of the absence of a parent, guardian, or custodian.

(b) Order of proceedings. The judicial officer may admit any testimony and other evidence relevant to the necessity for detaining the respondent, whether or not such evidence would be admissible at a factfinding hearing, provided that any written reports or social records made available to the judicial officer at the hearing shall be made available to the Office of the Attorney General and to counsel for the respondent at the hearing. At the conclusion of the hearing, the judicial officer shall set a date for the next hearing, and counsel for the respondent shall be furnished with a copy of the judicial officer's detention order, with reasons set forth therein.

(c) Application for reconsideration. A judicial officer ordering the release of a respondent upon conditions specified in D.C. Code § 16-2312(d)(2) may at any time amend the order to impose additional or different conditions of release, or order that the respondent be detained, provided the judicial officer gives prompt notice of such action to counsel for the respondent. A respondent who has been placed in detention, shelter care, or released under conditions pursuant to D.C. Code § 16-2312, or the Office of the Attorney General, may, at any time thereafter upon written application to the Family Court, have the order reviewed by the judicial officer who entered the order, and a decision rendered within five days of presentation to the judicial officer who will state the reasons therefor in writing. If the judicial officer finds, after notice to the respondent and opportunity to be heard, that the respondent has violated the respondent's conditions of release, the judicial officer may impose additional conditions of release, or may order that the respondent be detained; provided, however, that the respondent shall not be detained unless (1) detention is required to protect the person or property of others or of the respondent or to secure the respondent's presence at the next court hearing as set forth in SCR-Juvenile 106; and (2) the judicial officer determines that there is probable cause to believe that the allegations in the petition are true. If the judicial officer who entered the above order is unavailable or is no longer sitting in the Family Court at the time of the application, the judicial officer then sitting in New Referrals Court shall review the order and may modify or terminate it, stating the reasons therefor in writing.

(d) Review of hearing commissioner's order of detention, shelter care or release upon conditions. Review of a hearing commissioner's order of detention, shelter care or release upon conditions shall be made upon the request of the respondent by a judge designated by the Presiding Judge of the Family Court within 24 hours (excluding Saturdays, Sundays and legal holidays) following the entry of the order by the hearing commissioner, provided, however, that the time for review may be extended for no more than an additional 24 hours (excluding Saturdays, Sundays and legal holidays) upon notice to the parties and for good cause shown. No written motions or oppositions are required under this paragraph. Nothing in this paragraph shall preclude review of a hearing commissioner's order pursuant to SCR-Family D(e).

(e) Appeal from order of detention or release upon conditions. If a respondent is ordered detained and probable cause is found, or if a respondent is ordered released subject to conditions under D.C. Code § 16-2312(d)(2), the judicial officer shall inform the parties of

the respondent's right to an interlocutory appeal within two days under D.C. Code § 16-2328.

(f) Transfer to adult detention facility. Whenever the Family Court receives notice that a respondent who comes within the provisions of D.C. Code § 16-2313(e) constitutes a menace to other children in detention or cannot be controlled, it shall notify respondent's attorney and shall schedule a summary hearing not later than the next day (excluding Sundays) to determine whether the child should be transferred to a place of detention for adults.

COMMENT

The detention order with reasons called for in paragraph (b) will be on a form. Under paragraph (c), a judicial officer may impose additional conditions of release, or may order the respondent detained, if the judicial officer finds that the respondent has violated conditions of release. Because there is no statutory standard of proof for a finding of violation of conditions of release in juvenile cases, the rule does not provide one. However, under comparable circumstances in the criminal system, D.C. Code § 23-1329(b) provides that violations of conditions of release must be established by clear and convincing evidence before conditional release may be revoked. Paragraph (c) also requires that before detaining a respondent who has been released upon conditions, the judicial officer must find that detention is required to protect the person or property of others or of the respondent, or to secure the respondent's presence at the next court hearing under the factors set forth in SCR-Juvenile 106. Paragraph (d) sets forth an expedited procedure for review of a hearing commissioner's order of detention, shelter care or release upon conditions. Paragraph (f) provides a fair procedure for transfers under D.C. Code § 16-2313(e).

Rule 108. Transfer for Criminal Prosecution

(a) Request for transfer. A motion requesting the transfer of a child for criminal prosecution filed by the Office of the Attorney General ("OAG") pursuant to *D*.C. Code § 16-2307 shall allege that the transfer is in the interest of the public welfare and protection of the public security and there are no reasonable prospects for rehabilitating the child prior to his majority. The motion shall contain a statement of facts supporting this allegation under the factors enumerated in D.C. Code § 16-2307(e) and showing the child's eligibility for transfer under D.C. Code § 16-2307(a). Copies of the motion shall be served on the Director of Social Services and on counsel for the child.

(b) Notice of transfer hearing. Following the filing of the motion, summonses shall be issued to the child and his spouse (if any) and to his parent, guardian, or custodian, in accordance with D.C. Code § 16-2307(b) and SCR-Juvenile 9. The summons shall be accompanied by a copy of the petition if the parties have not already received a copy. The summons shall contain a brief description of the offense which is the subject of the transfer proceedings and a statement that jurisdiction over the offense may be transferred to the Criminal Division unless the judge finds at the transfer hearing that there are reasonable prospects for rehabilitating the child prior to his 21st birthday. The summons shall also advise the parties that the child will be represented by counsel at the transfer hearing, and that the Family Court will appoint counsel for him if counsel is not retained.

(c) Mental examination. Upon receipt of the motion requesting transfer, the Director of Social Services shall arrange for an immediate psychological or psychiatric examination of the child, unless the child has had a psychological or psychiatric examination within the past year. The report of the examination should state whether there are reasonable grounds to believe the child is incompetent. If on the basis of the examination and other evidence the Family Court determines there are reasonable grounds to believe the child is incompetent, it shall stay the proceedings for the purpose of obtaining a psychiatric examination and shall proceed according to D.C. Code § 16-2307(c). If, as a result of the mental examination the Family Court determines that the child is incompetent, it shall proceed according to D.C. Code §§ 16-2307(c) and 16-2315(c).

(d) Time to conduct the transfer hearing and enter an order on motion to transfer. Except in cases in which there is an issue pertaining to the child's competency as provided in D.C. Code § 16-2307(c), the Family Court shall conduct a hearing on a transfer motion within 30 days (excluding Sundays and legal holidays) of the filing of the transfer motion. Upon the motion of the child or the OAG, for good cause shown, the hearing may be continued for an additional period not to exceed 30 days (excluding Sundays and legal holidays). If the hearing commences more than 60 days (excluding Sundays and legal holidays) after the filing of the motion for transfer, the Family Court must state in the order the extraordinary circumstances for the delay. The order deciding the motion to transfer shall be entered within 30 days (excluding Sundays and legal holidays) of the conclusion of the transfer hearing. The Family Court may extend the time to enter its order deciding the motion to transfer, for good cause shown, for an additional period not to exceed 30 days (excluding Sundays and legal holidays).

(e) The transfer order. If the motion is granted by the Family Court, a statement of its reasons for ordering the transfer shall accompany the transfer order. The court's findings with respect to each of the factors set forth in D.C. Code § 16-2307(e) relating to the public welfare and protection of the public security shall be included in the statement of reasons.

The statement shall be available upon request to any court in which the transfer is challenged, but shall not be available to the trier of fact of the criminal charge prior to verdict.

COMMENT

This rule sets forth procedures for adjudicating motions to transfer a child and specific procedures in cases where there is reason to believe the child may be incompetent.

Rule 109. Transfer Hearing

(a) Examination of records. Upon request to the clerk of the Family Court, the Office of the Attorney General ("OAG") and counsel for the respondent shall have opportunity to examine and copy all case and social records pertaining to the respondent as defined in D.C. Code §§ 16-2331 and 16-2332.

(b) Filing of written materials. Counsel may submit any written materials which might be helpful to the judicial officer in making the transfer decision. Such materials must be filed with the clerk of the Family Court no later than three days prior to the scheduled date of the transfer hearing.

(c) Evidence. Evidence which is material and relevant shall be admissible at the transfer hearing. Except as provided by D.C. Code § 16-2307(e-2), the OAG shall have the burden of showing by a preponderance of the evidence that it is in the interest of the public welfare and protection of the public security that the respondent be transferred for criminal prosecution and that there are no reasonable prospects for rehabilitating the respondent within the jurisdiction of the Family Court prior to the respondent's majority.

(d) Presence of parties. The respondent and the respondent's parent, guardian, or custodian shall be present throughout the transfer hearing, unless the judicial officer makes a written finding that the presence of the parent, guardian, or custodian is not possible, except that the judicial officer may temporarily exclude the respondent if the judicial officer finds such exclusion to be in the respondent's best interest.

(e) Presence of non-parties. Victims and eyewitnesses, and the immediate family members and custodians of the victims and eyewitnesses, shall have a right to attend the transfer hearing, subject to the rule on witnesses.

COMMENT

Paragraph (a) reflects D.C. Code § 16-2307(f), which requires that the transfer report and all other relevant social records of the respondent be made available to both sides at least three days prior to the hearing. The first sentence of paragraph (c) reflects D.C. Code § 16-2316(b) and makes clear that evidence need not be competent to be admissible at the transfer hearing. The second sentence of paragraph (c) resolves an ambiguity in D.C. Code § 16-2307(d) by putting the burden of proof on the Corporation Counsel to show that it is in the interest of the public welfare and protection of the public security that the respondent be transferred for criminal prosecution, and that there are no reasonable prospects for rehabilitating the respondent prior to the respondent's majority. The burden is thus logically placed on the movant.

Rule 110. Physical and Mental Examinations

(a) Authority of the Family Court and place of examination. At any time following the filing of a petition, the Family Court may order a child examined as an aid in determining his physical or mental condition in accordance with D.C. Code § 16-2315. The Family Court may order the examination conducted at the Child Guidance Clinic, or any other appropriate hospital, agency or institution, or may refer the child to the appropriate District of Columbia agency with instructions to secure examination within a prescribed period of time.

(b) Hearing on request for mental health examination. When a request for a mental health examination of a child is made on motion of one of the parties or by the court, the Family Court shall notify the parties and hold a hearing on that request to determine whether to order such examination and whether any such examination should be conducted on an outpatient or inpatient basis.

(1) Inpatient examination. The Family Court may order an inpatient mental health examination of a child only if a psychiatrist or qualified psychologist as defined in D.C. Code § 16-2301(40) certifies that he has examined the child and that the child is presently in need of a mental health examination that cannot be provided effectively on an outpatient basis. If the Family Court receives a request for an inpatient mental health examination that is not filed with a written finding of a psychiatrist or qualified psychologist that the child is in need of a mental health examination which cannot be effectively provided on an outpatient basis, the Family Court shall order that a forensic screening be conducted by the Department of Mental Health within 24 hours or by the next business day.

(2) If the Family Court orders a forensic screening pursuant to subparagraph (b)(1) of this rule, upon completion of the forensic screening, the psychiatrist or qualified psychologist shall prepare a written report indicating whether further examination of the child's mental health is needed and whether such examination can be conducted on an outpatient basis. The report shall be filed with the Family Court with copies served on the attorneys of record. A forensic screening report shall include the following information:

(A) a certification of whether the examination can be effectively conducted on an outpatient basis;

(B) if an inpatient mental health examination is recommended,

(i) an explanation of the need for an inpatient examination;

(ii) a recommendation of an appropriate hospital, facility or institution where the inpatient examination should be conducted;

(iii) a statement of whether immediate hospitalization is recommended, and if so,

(iv) the bases for such recommendation.

(C) If the forensic screening is ordered in whole or in part to determine whether the child is competent to proceed:

(i) a preliminary assessment of the child's capacity to understand the proceedings against him, including the nature of the charges and range of options available to the court at disposition; and

(ii) the child's ability to assist his attorney.

(3) Prior to any hearing pursuant to subsection (b) of this Rule, the Family Court shall notify counsel for the child, the child's parents, guardian or custodian, and the Assistant Attorney General of the request for the examination, the requesting party, and the reasons proffered for the request.

(4) An order of the Family Court for an inpatient mental health examination shall provide:

(A) That the hospital or other appropriate facility for the purpose of the mental health examination shall not discharge the child without further order of the Family Court; and

(B) For a return date for a hearing no later than the 21st day from the date of the order for inpatient mental health examination.

(c) Court order for access to mental health and educational records. Upon motion of either party, and after consideration of any response from the opposing party, the Family Court may issue an order to procure a child's mental health and educational records that are relevant for purposes of an examination ordered pursuant to D.C. Code § 16-2315(a). The Family Court order shall provide in detail which mental health and educational records the order covers and identify who shall have authority to procure the records. The Family Court shall order that the person who obtains these records pursuant to the Court order shall not disclose the records or information contained therein except as permitted by the Court.

(d) Outpatient examination prior to factfinding hearing. If a child is ordered to be examined on an outpatient basis prior to a factfinding hearing, the Family Court shall promptly notify counsel for the child, and the child's parents, guardian or custodian, of the reasons for the examination and the place where the examination is to take place. Upon request by counsel for the child or the child's parent, guardian, or custodian, the Family Court shall hold a hearing within 48 hours to establish the necessity for the examination.

(e) Report of inpatient or outpatient examination.

(1) Timing. A written report of the examining psychiatrist or qualified psychologist shall be filed with the Family Court with copies to attorneys of record no later than 20 days from the date of the order of examination and no later than one day prior to a hearing. A written report may be filed with the Family Court with copies to the attorneys of record at any time after the examining psychiatrist or qualified psychologist has completed the examination.

(2) Content of report conducted in whole or in part for the purpose of determining the competency of the child to proceed. A written report of the examining psychiatrist or qualified psychologist shall include the following information: an assessment of whether the child has the capacity to understand the proceedings against him, including the nature of the charges and range of potential options available to the court at disposition; an assessment of the child's ability to assist his attorney; whether the child is incompetent to proceed, and if so, the reasons and bases for the conclusion and the suspected cause of the incompetence; an assessment of the likelihood of the child attaining competence in the reasonably foreseeable future, and if likely, any recommended treatment and services that may render the child competent in the reasonably foreseeable future; and a certification as to the least restrictive setting for providing the recommended treatment and services.

(f) HIVIDS testing.

(1) At the request of the Attorney General or his or her designee to have a respondent tested for the HIVIDS virus, the Family Court shall hold a hearing to determine if there is probable cause to believe that a victim or eyewitness to an alleged delinquent act may have been put at risk of the HIVIDS virus by virtue of being a victim or eyewitness to an alleged delinquent act.

(2) If the Family Court determines that there is probable cause to believe that the victim or eyewitness was put at risk of the HIVIDS virus by virtue of being a victim or eyewitness

to an alleged delinquent act, the Family Court shall order that the respondent be tested for the HIVIDS virus and shall order the Attorney General or his or her designee to disclose the results of the testing to the respondent and the victim or eyewitness and advise the victim or eyewitness that he or she may disclose the respondent's identity only to his or her doctor or counselor.

COMMENT

This Rule supplements D.C. Code § 16-2315. Sections (c) and (d) of the Rule reflect the statutory preference for outpatient examinations. (*See* D.C. Code § 16-2315(b)). Section (f) implements D.C. Code §16-2315(f).

Rule 110A. Treatment When Child Determined to Be Incompetent

(a) Court order for competency treatment. If the Family Court orders treatment and services that may render the child competent in the reasonably foreseeable future, pursuant to D.C. Code § 16-2315(c)(2), the order shall specify the following:

(1) whether the treatment is to be received on an outpatient or inpatient basis;

(2) if outpatient treatment is ordered, the name of the psychiatrist or qualified psychologist who will provide the treatment;

(3) if inpatient treatment is ordered, which hospital or mental health facility or unit designated by the Mayor shall provide the treatment;

(4) that if the psychiatrist or qualified psychologist responsible for the treatment is of the opinion that the child is competent or inpatient hospitalization is no longer the least restrictive setting for providing treatment and services that may render the child competent, the psychiatrist or qualified psychologist shall immediately send a report to the Family Court, with copies to the attorneys of record;

(5) the dates, which shall be no less than every two months from the date of the order for treatment, by which the psychiatrist or qualified psychologist responsible for the treatment of the child shall submit reports to the Family Court, with copies to the attorneys of records, pursuant to D.C. Code § 21-2315(c)(6); and

(6) that if inpatient treatment is ordered, the facility providing the inpatient treatment shall not discharge the child without further order of the Family Court.

(b) Court hearing on report of competency or inpatient treatment. A statement of whether immediate hospitalization is recommended, and if so,

(1) If at any time during treatment or services to render the child competent, pursuant to D.C. Code § 16-2315(c)(2)(A), the psychiatrist or qualified psychologist files a report with the Family Court stating the opinion that the child is competent to proceed or that inpatient hospitalization is no longer necessary, the Family Court shall hold a prompt hearing on the report.

(2) The Family Court shall hold a hearing on the report of the treating psychiatrist or the qualified psychologist filed pursuant to D.C. Code § 16-2315(c)(6) concerning whether the child is competent to proceed. The hearing shall be held no more than 30 days from the date of the treating psychiatrist's or the treating qualified psychologist's report, if the child is receiving treatment as an inpatient and no more than 60 days, if the child is receiving treatment as an outpatient. The Family Court may, for good cause shown, extend the time for the hearing but no more than 30 days, if the child is detained or hospitalized, and not more than 60 days, if the child is not detained or hospitalized.

(c) Report of psychiatrist or qualified psychologist. The report filed by the psychiatrist or qualified psychologist responsible for the treatment of a child ordered pursuant to D.C. Code § 16-2315(c) shall contain the information required by subsection 2315(c)(6).

Rule 111. Privilege Against Self-incrimination

A child charged with a delinquent act or alleged to be in need of supervision shall be accorded the privilege against self-incrimination. Unless advised by counsel, or unless the judge is satisfied that the statement was made voluntarily and after knowing waiver of rights the statement of the child made while in custody to police or law enforcement officers shall not be used against the child as part of the government's case in chief in a delinquency or need of supervision case prior to the dispositional hearing or in a criminal proceeding prior to conviction. Statements made by a juvenile without a valid waiver of rights may be used against a child for purposes of impeachment. Unless advised by counsel, the statement of a child made to the Office of the Attorney General, or to a probation officer during the processing of the case, including a statement made during a preliminary inquiry, pre-disposition study or consent decree, shall not be used against the child for any purpose in a delinquency or need of supervision case prior to the dispositional hearing or in a criminal proceeding prior to conviction.

An extra-judicial statement which would be constitutionally inadmissible in a criminal proceeding shall not be received in evidence over objection. A constitutionally admissible, extra-judicial statement is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence. Evidence illegally seized or obtained shall not be received in evidence over objection.

COMMENT

The first 3 sentences of the Rule codify present case law in the District of Columbia. *Harris v. New York, 401 U.S. 222 (1971); Application of Gault, 387 U.S. 1, 55 (1966); In re Creek, 243 A.2d 49 (D.C.C.A. 1968); In re M.L.H., 98 W.L.R. 633 (D.C. Juvenile Court 1970).* The 4th sentence extends the concepts of these cases and consolidates provisions elsewhere in the Juvenile Rules. See SCR Juvenile 102(f) and 104(c) and the Comments thereto. The last three sentences codify existing case law and practice in the District of Columbia. *Naples v. U.S., 344 F.2d 504 [344 U.S. 508], 120 U.S. App. D.C. 123 (1964)* (corroboration); Two Brothers and a Case of Liquor, Juvenile Docket Nos. 66-2652-J, 66-2653-J (1966) (suppression of seized evidence).

Rule 112. Restitution and Fines

(a) Following a restitution hearing, the Family Court may enter a judgment of restitution against a child, who has been found to have committed a delinquent act, against the child's parent or against the child's guardian pursuant to D.C. Code § 16-2320.01.

(b) The restitution hearing may be part of the fact-finding hearing or disposition hearing, or held separately. If not held as part of the fact-finding or disposition, the restitution hearing shall be held within 30 days of the disposition hearing, unless the Court extends the date of the hearing for good cause.

(c) A judgment of restitution may not be entered against a parent or guardian unless the parent or guardian is afforded notice and a reasonable opportunity to be heard and to present appropriate evidence in the parent or guardian's behalf.

(d) A written statement or bill for medical, dental, hospital, funeral or burial expenses, or for the cost for repair and replacement of property, shall be prima facie evidence that the amount indicated on the written statement or bill represents a fair and reasonable charge for the services or materials provided. The burden of proving that the amount indicated on the written statement or bill is not fair and reasonable shall be on the person challenging the fairness and reasonableness of the amount.

(e) If the Family Court finds that the child, parent or guardian is financially unable to pay restitution, the Family Court may order the child, parent, or guardian instead to perform community service or some other non-monetary service of equivalent value.

(f) Payment of any judgment of restitution may be made directly to the victim, governmental entity or third party payor as the Court directs. Alternatively, the Court may direct that payment be made through the Clerk of the Court. Payment will be made over such period of time as the Court directs.

COMMENT

The rule was redrafted to implement D.C. Code § 16-2320.01, a provision created by the Omnibus Juvenile Justice Act of 2004, D.C. Law 15-0261 (March 17, 2005).

Rule 113. Payment of Court Costs and Expenses

(a) In general. Persons found able to pay Court costs and expenses pursuant to D.C. Code § 16-2325 may be ordered to do so in designated monthly payments according to the person's financial conditions. Payments shall be made by cash or money order to the District of Columbia Courts for remittance to those to whom compensation is due, or if costs and expenses have been paid under the Criminal Justice Act of 1964 as amended, to the D.C. Budget Office. The District of Columbia courts shall keep records of all payments made and submit a statement to the parties on request.

(b) Attorney's fees. Reasonable compensation for services and related expenses of counsel shall be those allowed by the Criminal Justice Act of 1964 as amended, or those otherwise approved by the Family Court. Counsel shall be required to submit a list of expenses on the form provided, which must be signed by the judge before payment can be ordered.

COMMENT

This Rule is adopted pursuant to the statutory direction in D.C. Code § 16-2325.

Rule 114. Record Made in Regular Course of Business: Photographic Copies

[Redesignated].

COMMENT

Juvenile Rule 114 has been redesignated as General Family Rule Q in order to make its provisions applicable to all proceedings in the Family Division.

Rule 115. Practice by Attorneys Not Members of the Bar of the District of Columbia

An attorney who is a member in good standing of the bar of the highest court of any state of the United States, may appear and participate in the Family Court in a particular case by leave of court provided that the attorney has complied with the requirements of District of Columbia Court of Appeals Rule 49(c).

Rule 116. [Vacant].

Rule 117. [Vacant].

Rule 118. Sealing of Arrest Records

(a) Pursuant to *District of Columbia v. Hudson, 404 A.2d 175 (D.C. App. 1979).*

(1) Motion for sealing and declaratory relief. Any respondent arrested for the commission of a delinquent act as defined in D.C. Code § 16-2301(7) who has not been the subject of a petition may file a motion to seal the records of the respondent's arrest within 120 days after the charges have been dismissed. For good cause shown and to prevent manifest injustice, the respondent may file a motion within three years after the prosecution has been terminated, or at anytime thereafter if the government does not object. As to arrests occurring on or after July 19, 1979, but before the adoption of this Rule, a motion may be filed within 120 days after the adoption of this Rule. The motion shall state facts in support of the movant's claim and shall be accompanied by a statement of points and authorities in support thereof. The movant may also file any appropriate exhibits, affidavits, and supporting documents. A copy of the motion shall be served upon the Office of the Attorney General.

(2) Response by Office of the Attorney General. If the Office of the Attorney General does not intend to oppose the motion, it shall so inform the Court and the movant, in writing, within 30 days after the motion has been filed. Otherwise, the Office of the Attorney General shall not be required to respond to the motion unless ordered to do so by the Court, pursuant to subparagraph (a)(3) of this Rule.

(3) Initial review by court; summary denial; response by Office of the Attorney General. If it plainly appears from the face of the motion, any accompanying exhibits and documents, the record of any prior proceedings in the case, and any response which the Office of the Attorney General may have filed, that the movant is not entitled to relief, the Court, stating reasons therefore on the record or in writing, shall deny the motion and send notice thereof to all parties. In the event the motion is not denied, the Court shall order the Office of the Attorney General to file a response to the motion, if it has not already done so. Such response shall be filed and served within 60 days after entry of the Court's order. The response shall be accompanied by a statement of points and authorities in opposition, and any appropriate exhibits and supporting documents.

(4) Court's determination of whether to hold a hearing. Upon the filing of the Office of the Attorney General's response, the Court shall determine whether an evidentiary hearing is required. If it appears that a hearing is not required, the Court shall enter an appropriate order, pursuant to subparagraph (a)(6) of this Rule. If the Court determines that a hearing is required, one shall be scheduled promptly.

(5) Determination of motion. If a hearing is held, hearsay evidence shall be admissible. If, based upon the pleadings or following a hearing, the Court finds by clear and convincing evidence that the offense for which the movant was arrested did not occur or that the movant did not commit the offense, the Court shall order the movant's arrest records retrieved and sealed pursuant to subparagraph (a)(6).

(6) Findings and order; declaratory relief.

(A) Order denying motion. If the Court denies the motion, it shall issue an order and shall set forth its reasons on the record or in writing.

(B) Order granting motion. If the Court grants the motion, it shall issue an order, in writing, pursuant to subparagraphs (a)(6)(B)(i), (ii) and (iii) of this Rule.

(i) Retrieval of arrest records and purging of computer records. The Court shall order the Office of the Attorney General to collect from its office, the law enforcement

agency responsible for the movant's arrest and/or the Metropolitan Police Department all records of the movant's arrest in their central files, including without limitation all photographs, fingerprints, and other identification data. The Court shall also direct the Office of the Attorney General's office to arrange for the elimination of any computerized record of the movant's arrest. However, the Court shall expressly allow the Office of the Attorney General's office and the law enforcement agency to maintain a record of the arrest so long as the record is not retrievable by the identification of the movant. The Court shall also order the Office of the Attorney General's office to request that the law enforcement agency responsible for the arrest retrieve any of the aforementioned records which were disseminated to the Court's Social Services Division, the Youth Services Administration, and the Family Services Administration, and to collect these records when retrieved.

(ii) Requirement that arrest records be sealed. The Court shall order the Office of the Attorney General to file with the Clerk of the Court, within 60 days, all records collected by the law enforcement agency and in the Office of the Attorney General's own possession. These records shall be accompanied by a certification that to the best of the Office of the Attorney General's knowledge and belief no further records exist in the Office of the Attorney General's own possession or in the possession of the law enforcement agency's central records files or those of its disseminees, or that, if such records do exist, steps have been taken to retrieve them. The Court shall order the Clerk to collect all Superior Court records pertaining to the movant's arrest and cause to be purged any computerized record of such arrest. However, the Court shall expressly allow the Clerk to maintain a record of the arrest so long as the record is not retrievable by the identification of the movant. The Court shall also order the Clerk to file under seal all Superior Court records so retrieved, together with all records filed by the Office of the Attorney General pursuant to this paragraph, within seven days after receipt of such records.

(iii) Declaratory relief. The Court shall summarize in the order the factual circumstances of the challenged arrest and any post-arrest occurrences it deems relevant, and, if the facts support such a conclusion, shall rule as a matter of law that the movant did not commit the offense for which the movant was arrested or that no offense had been committed. A copy of the order shall be provided to the movant or the movant's counsel. The movant may obtain a copy of the order at any time from the Clerk of the Court, upon proper identification, without a showing of need.

(7) Sanitization of records involving co-respondents. In a case involving co-respondents in which the Court orders the movant's records sealed, the Court may order that only those records, or portions thereof, relating solely to the movant be sealed. The Court may make an in camera inspection of these records in order to make this determination. If practicable, the Court may order those records relating to co-respondents returned to the Office of the Attorney General with all references to the movant sanitized.

(8) Indexing and access to sealed records. The Clerk shall place the records ordered sealed by the Court in a special file, appropriately and securely indexed in order to protect its confidentiality, subject to being opened on further order of the Court only upon the showing of compelling need. A request for access to such sealed records may be made ex parte. However, unless otherwise ordered by the Court, the Clerk shall reply in response to inquiries concerning the existence of arrest records which may have been sealed pursuant to this Rule that no records are available.

(9) Appeal. An aggrieved party may note an appeal from a final order entered pursuant to this Rule in accordance with Rule 4(b) of the General Rules of the District of Columbia Court of Appeals.

(b) Pursuant to D.C. Code § 16-2335. On motion of a respondent who has been the subject of a petition filed pursuant to D.C. Code § 16-2305, or on the Court's own motion, the Court shall vacate its order and findings and shall order the sealing of the case and social records referred to in D.C. Code §§ 16-2331 and 16-2332 and the law enforcement records and files referred to in D.C. Code § 16-2333, or those of any other agency active in the case if it finds that:

(1) two years have elapsed since the final discharge of the respondent from legal custody or supervision, or since the entry of any other Family Court order not involving custody or supervision, and

(2) the respondent has not been subsequently convicted of a crime, or adjudicated delinquent or in need of supervision prior to the filing of the motion, and no proceeding is pending seeking such conviction or adjudication. Notice of the right to seal and the procedure for sealing shall be governed by SCR-Family P.

COMMENT

This rule sets forth the two methods for sealing arrest records of respondents in juvenile cases. Paragraph (a) modifies SCR-Criminal 118 by providing for equitable sealing of records pursuant to Hudson for those cases not covered by D.C. Code § 16-2335 (providing for sealing of records when a petition has been filed). See *In Re R.T., 345 A.2d 156 (D.C. App. 1975)* (statute provides exclusive authority for sealing juvenile records). It requires a showing by clear and convincing evidence that the offense for which the movant was arrested did not occur or that the movant did not commit the offense. Paragraph (b) outlines the basis for sealing pursuant to D.C. Code § 16-2335. The procedure for sealing records pursuant to D.C. Code § 16-2335 is set forth in detail in SCR-Family P.

Rule 119. Participation Order

In any proceeding in which a child is alleged to be delinquent or in need of supervision, the Court shall enter an order specifically requiring a parent or guardian to participate in the rehabilitation process of a juvenile, including, but not limited to, mandatory attendance at a juvenile proceeding, parenting class, counseling, treatment, or an education program, unless the Court determines that such an order is not in the best interest of the child. In addition, when the Court determines that it is in the best interest of the child, the Court shall issue an order applicable to a parent or guardian of a child and the person with whom the child resides, if other than the child's parent or guardian. The order shall require the parent or guardian and the person with whom the child resides, if other than the parent or guardian, to be present at any juvenile proceeding or court-ordered program concerning the child. If the Court determines that the person ordered to appear received notice of the order and failed to appear without good cause, the Court shall issue a bench warrant pursuant to D.C. Code § 16-2325.01(d), as amended, and it may proceed to adjudicate the person in civil contempt pursuant to D.C. Code § 16-2325.01(c), as amended.