

**SUPERIOR COURT RULES OF PROCEDURE
FOR
MENTAL HEALTH**

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Rule 1. Scope, purpose and construction.

(a) These Rules govern the procedure before the Commission on Mental Health and the Superior Court of the District of Columbia pursuant to D.C. Code §§ 21-501 — 592 (2004 Supp.), procedures before the Court pursuant to D.C. Code §§ 24-531.07(b) and (c)(2) (2005 Supp.), and procedures to transfer prisoners to mental institutions pursuant to D.C. Code § 24-502 (2001 Supp.).

(b) These Rules shall be construed to provide both for the protection of the rights of individuals with mental illness and the welfare of the community.

(c) The Rules may be known as the Superior Court Rules of Procedure for Mental Health, and may be cited as Superior Court Rules — Mental Health, or SCR MH.

Rule 2. Emergency detention proceedings.

(a) *Right to counsel.* A person detained pursuant to D.C. Code § 21-521 (2004 Supp.) shall be informed of his or her right to counsel upon admission to a hospital, a facility certified by the Department of Mental Health (Department) for emergency detention, or the Department.

(b) *Detention without hearing.* A petition for emergency detention pursuant to D.C. Code § 21-524 (2004 Supp.) may be granted in the absence of respondent and his or her counsel. In considering such a petition the Court shall consider the application for emergency admission; the certificate of the examining psychiatrist, qualified physician or qualified psychologist; and any other relevant information. If it appears to the Court that there is reason to believe that the respondent is mentally ill and because of the illness is likely to injure him or herself or others if not immediately detained, the Court shall order detention at a hospital, at a facility certified by the Department for emergency detention, or by the Department for not more than seven days; otherwise the Court shall order the respondent's immediate release from involuntary detention. If the Court denies the petition for emergency detention, counsel for the petitioner and the Public Defender Service Mental Health Division shall be notified immediately by the Mental Health and Mental Retardation Branch via telephone, facsimile or email.

(c) *Notice to respondent.* If the Court orders detention for a period of seven days, the Court shall also appoint counsel. If detention for a period of seven days is ordered, the Mental Health and Mental Retardation Branch shall immediately notify the respondent and his or her counsel of (1) the Court's order, and (2) the respondent's right under D.C. Code § 21-525 (2004 Supp.) to request a hearing within 24 hours to review the order.

(d) *Request for Court hearing.* A respondent or respondent's counsel may request a probable cause hearing pursuant to D.C. Code § 21-525 (2004 Supp.) within seven days from the time the order

required by D.C. Code § 21-524 (2004 Supp.) is entered. A respondent or respondent's counsel may request a probable cause hearing pursuant to D.C. Code § 21-525 (2004 Supp.) within seven days from the entry of a remand order pursuant to D.C. Code § 24-531.07(b) or (c) (2005 Supp.). A request for a hearing pursuant to D.C. Code § 21-525 (2004 Supp.) may be made either in writing, in person, or by telephone to the Mental Health and Mental Retardation Branch during normal business hours (Monday through Friday, 8:30 a.m. until 5:00 p.m.) or by filing a written request with the Family Court after normal business hours.

(e) *Scheduling of Court hearing.* The Family Court shall schedule a hearing pursuant to D.C. Code § 21-525 (2004 Supp.) and D.C. Code § 24-531.07(b) (2005 Supp.) within 24 hours of receipt of a request for a hearing from the respondent or respondent's counsel. A request shall be deemed to have been received when: 1) the request is communicated in person or by telephone to the Mental Health and Mental Retardation Branch during normal business hours (Monday through Friday, 8:30 a.m. until 5:00 p.m.); 2) a written request is received by and time stamped in the Mental Health and Mental Retardation Branch during normal business hours (Monday through Friday, 8:30 a.m. until 5:00 p.m.); or 3) a written request is filed with the Family Court after normal business hours. In the event of an after hours filing, respondent's counsel shall also notify the Mental Health and Mental Retardation Branch of the hearing request by telephone no later than 9:30 a.m. on the day following the after hours filing.

(f) *Court hearing upon request.* A respondent who requests a court hearing shall have the right to appear in person, to be represented by counsel, to testify, to present evidence, and to examine witnesses. If it appears to the Court that there is probable cause to believe that the respondent is mentally ill, and, because of the illness, is likely to injure him or herself or others if not immediately detained, the Court shall affirm the original order for detention. Otherwise, the Court shall order the

respondent's immediate release.

(g) *Release.* A respondent detained under a seven-day order pursuant to D.C. Code § 21-524 (2004 Supp.) must be released at the expiration of the seven-day period by the chief of service of the hospital or the chief clinical officer of the Department, or their respective designees, in which a person is detained unless a petition for judicial commitment has been filed pursuant to D.C. Code § 21-541 (2004 Supp.) and accompanied by a statement of the examining psychiatrist or qualified psychologist that the person being detained remains mentally ill and is likely to injure him or herself or others as a result of the illness unless the emergency detention is continued.

(h) *Extension of Emergency Detention.* Emergency detention of a person detained may be extended pursuant to D.C. Code § 21-526 or § 21-543 (2004 Supp.).

Rule 3. Proceedings before the Commission on Mental Health.

(a) *Hearing by the Commission.* (1) Persons admitted to hearings. The general public shall be excluded from proceedings before the Commission. Those persons having an interest in the work of the Commission, or in a particular case, may upon application be admitted to a Commission hearing provided that: a) respondent consents, and b) the applicant agrees to refrain from divulging information that would identify the respondent or the respondent's family members or any other persons involved in the proceedings without the respondent's prior consent. An applicant for permission to attend a hearing or hearings shall state in writing his or her name, address and telephone number, business or professional affiliation and reason for wishing to attend. Authorized representatives of the news media are presumed to have an interest in the work of the Commission.

(2) Hearing procedure. Hearings before the Commission shall be recorded.

(A) The Chairperson of the Commission shall explain the purpose of the hearing to the respondent and introduce the members of the Commission.

(B) Counsel for the petitioner and the respondent shall have a right to make opening and closing statements to the Commission.

(C) The Commission shall receive all relevant evidence as provided for in D.C. Code § 21-542 (2004 Supp.) and shall consider dispositional alternatives less restrictive than inpatient treatment.

(D) Upon request of counsel, or on its own initiative, the Commission may impose the Rule on witnesses. The Commission may excuse a respondent from attendance at the Commission hearing. A respondent may not be excluded from the hearing over his or her objection, unless that respondent has conducted him or herself in a manner so disorderly and disruptive of the proceedings that the hearing cannot be carried on in his or her presence.

(E) At the conclusion of the testimony and argument the Commission shall determine by majority

vote whether the respondent is mentally ill, and if so, whether because of the illness is likely to injure him or herself or other persons if not committed. The Commission may, in its discretion, continue the hearing or orally announce the decision to the respondent and his or her attorney immediately after the hearing.

(F) Whenever the Commission determines that the respondent should be committed, the Commission shall immediately notify the respondent and his or her counsel of its determination and of the respondent's right to a jury trial pursuant to D.C. Code § 21-544 (2004 Supp.) in an original commitment proceeding, and of his or her right to a review pursuant to D.C. Code § 21-545.01(h)(1) (2004 Supp.) in a renewal of commitment proceeding. A copy of the transcript shall be furnished to respondent's counsel upon request. Counsel for indigent patients shall be furnished a transcript without charge.

(G) Whenever the Commission determines that the respondent should not be committed, the Commission shall order the immediate release of the person and notify the Family Court in writing of its determination.

(b) Report by the Commission. (1) Time for filing. Within five days of a Commission hearing, the Commission shall file with the Family Court all reports required pursuant to D.C. Code § 21-544 (2004 Supp.). Within five days of a Commission hearing held pursuant to D.C. Code § 21-545.01(c) (2004 Supp.), the Commission shall file with the Family Court a written order and report required pursuant to D.C. Code § 21-545.01(d) and (e) (2004 Supp.).

(2) Contents of report. When the Commission determines that a respondent should be committed, the Commission's report shall contain:

(A) Findings of fact;

(B) Conclusions of law;

(C) Recommendations for disposition; and

(D) The name of any member of the Commission who has dissented from the conclusion.

Findings of fact shall be based on the record and the examination by the Commission doctors. Findings shall describe the kind and degree of mental illness found, the nature of the injury threatened, and the likelihood of the occurrence of the threatened injury, and shall summarize the evidence upon which the findings are based. The report shall specifically set forth what less restrictive alternatives to hospitalization the Commission has considered, and why these alternatives will or will not be appropriate. The report shall also include a description of the individualized treatment the respondent has received while in the hospital or in the community, and a description of any individualized treatment plan to be implemented in the future. In addition, the report shall include recommendations relative to payment of costs of respondent's care.

(3) Service of report. In an original commitment case, copies of the report recommending commitment and written notice of the right to demand a jury trial shall be served personally on the respondent and his attorney and on any relative who may be required to pay for the cost of respondent's care. In a recommitment case, copies of the report recommending recommitment and written notice of the right to a review by an Associate Judge shall be sent by registered mail to the respondent and by regular mail to his or her attorney.

Rule 4. Court hearing on Commission on Mental Health report for hospitalization or less restrictive treatment.

(a) *Procedure.* If a court or jury trial is requested, the Court shall at a time prior to trial, consider any motion by either party raising any objection, defense, or other matter capable of determination without trial of the issues of mental illness and dangerousness.

(b) *Time of final hearing.* The hearings on a Commission report recommending commitment to inpatient hospitalization or a less restrictive form of commitment shall be held as soon as practicable after the Commission hearing.

(c) *Final hearing on Commission report.* Where the findings of the Commission with respect to mental illness and dangerousness are not contested, the Court may at the hearing on the report, upon motion of either party or on its own initiative, consider any relevant matter.

(d) *Trial by jury or trial by the Court.* If the respondent has requested, within five days of notice of the final hearing served pursuant to D.C. Code § 21-545 (2004 Supp.), a trial by jury or a trial by the Court on the issues of mental illness and dangerousness, the Court shall set trial at the earliest practicable date.

(e) *Trial waiver.* The Court shall not enter an order of commitment without finding that the respondent is waiving his or her right to a trial.

COMMENT

Subsection (e) does not specify the means by which the Court should ascertain the appropriateness of any waiver of trial rights. The Court will make that determination upon consideration of the totality of the circumstances presented by the particular case.

Rule 5. Trial on issues of mental illness and dangerousness.

(a) *Burden of proof.* In any hearing held pursuant to D.C. Code § 21-545 (2004 Supp.) the petitioner shall have the burden of proving by clear and convincing evidence that the respondent is mentally ill and because of that illness is likely to injure him or herself or other persons if not committed.

(b) *Jury verdict.* The jury shall deliver a separate verdict on each of the following questions:

(1) Whether the respondent is mentally ill,

(2) If the respondent is mentally ill, whether because of that illness he or she is likely to injure him or herself or other persons if not committed.

(c) *Findings by the Court.* If trial is by the Court, the Court shall make a general finding as to whether the respondent is mentally ill and, if so, whether because of that illness he or she is likely to injure him or herself or other persons if not committed. Upon request of a party, the Court shall in addition find the facts specially, except that findings of fact with respect to disposition and future treatment shall be made at the disposition hearing. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear therein.

Rule 6. Disposition hearing and order; decision not to renew commitment.

(a) *Disposition.* The disposition hearing shall be held immediately after the final hearing or trial provided for by Rule 4 of these Rules unless continued for good cause shown. The Court may receive evidence and, consistent with its determination of the least restrictive alternative and the best interests of the person and the public, may order the respondent committed for a period of one year to the Department, a hospital, or any other facility or mental health provider.

(b) *Copy of disposition order.* Upon entry of the dispositional order, a copy of the order shall be furnished to the respondent, a member of his or her family, his or her attorney, any relatives of the respondent who have been ordered to pay any portion of the cost of the respondent's care, and the person or agency in whose custody or under whose supervision the respondent has been placed, if any.

(c) *Notification of right to appeal.* After entry of a final order in a case which has gone to trial, the Court shall advise the respondent of his or her right to appeal within 30 days in accordance with the Rules of the D.C. Court of Appeals.

(d) *Notification of decision not to seek renewal of commitment.* The Department or the mental health provider to which a respondent has been committed, pursuant to D.C. Code § 21-545 or § 21-545.01 (2004 Supp.), shall notify the Court of a decision not to seek renewal of the respondent's commitment. Notice of a decision not to seek renewal of commitment shall be in writing and filed with the Court within the last 30 days of the period of commitment. A copy of the notice shall be mailed by the Department or the mental health provider to the person who was committed and to the person's attorney.

Rule 7. Judicial review of the renewal of commitment.

If the Commission orders the renewal of a respondent's commitment, pursuant to D.C. Code § 21-545.01(e) (2004 Supp.), a party may seek review of the Commission order by the Associate Judge of the Family Court assigned to handle mental health cases. The Associate Judge shall review the Commission order of renewal of commitment pursuant to Rule D of the General Rules of the Family Court.

Rule 8. Periodic review of committed person on convalescent leave.

If the disposition order provides for release of the respondent upon specified conditions, to be implemented or monitored by some other person or agency, the Court may order any appropriate person or agency to file a report concerning implementation of the conditions within a specified period of time and periodically thereafter. If the report does not reflect satisfactory implementation of the original dispositional order, any party may request, or the Court may on its own initiative schedule a prompt hearing. Notice shall be sent to all parties and to the person or agency responsible for implementation or monitoring of the specific conditions.

Rule 9. Release proceedings.

(a) *Conduct of hearing.* Upon receipt of a petition for release filed by a committed person pursuant to D.C. Code § 21-546 (2004 Supp.), the Court shall promptly set the matter down for hearing. The committed person has the right to be present at the hearing, to present evidence, and to cross-examine witnesses. The committed person shall have the burden of establishing by a preponderance of the evidence that he or she is no longer mentally ill to the extent that he or she is likely to injure him or herself or others if not committed, or that he or she should be released to a less restrictive form of commitment.

(b) *Findings by the Court.* In ruling upon a petition for release, the Court shall make appropriate findings of fact and conclusions of law.

Rule 10. Commitment of prisoners to mental institutions.

(a) *Petition.* In the case of a prisoner under sentence who is believed to have become mentally ill and whose transfer to St. Elizabeths Hospital is sought under D.C. Code § 502 (2001 Supp.), the proceeding shall be initiated by the filing by the Office of the Attorney General of a petition signed by the Director, D.C. Department of Corrections. The petition shall state the prisoner's name and his or her present place of confinement. It shall set forth the case number and date and duration of sentence. It shall also state the earliest date on which he or she is entitled to be released, and may state the date on which he or she is eligible for parole and any other matters thought relevant. The petition shall state that the prisoner has been examined by a psychiatrist or qualified psychologist and that in the opinion of the examining psychiatrist or qualified psychologist the prisoner is mentally ill and, because of his or her illness, is likely to injure him or herself or cause a substantial disruption of prison routine.

(b) *Certificate.* The petition shall be accompanied by a certificate of the examining psychiatrist or qualified psychologist stating that he or she has examined the prisoner and giving the date or dates of the examination. The certificate shall state that in the opinion of the examining psychiatrist or qualified psychologist the prisoner is mentally ill and, because of such illness, is likely to injure him or herself or cause a substantial disruption of prison routine. It shall also set forth the diagnosis of the prisoner and shall summarize the medical, psychiatric, social or other evidence upon which the examining psychiatrist's or qualified psychologist's findings of mental illness and dangerousness or disruptiveness are based.

(c) *Date of hearing.* Upon the filing of the petition and certificate, or as soon as practicable thereafter the Court shall set a hearing date.

(d) *Appointment of counsel.* Unless it appears affirmatively from the petition or elsewhere that the

prisoner has counsel presently acting on his or her behalf, the order shall also appoint counsel to represent him or her at all Court proceedings.

(e) *Notice of petition and hearing.* The Mental Health and Mental Retardation Branch shall mail to the prisoner and his or her attorney copies of the petition, the certificate and the order of the Court.

(f) *Court hearing on the petition.* A hearing on a petition for transfer of a prisoner may include consideration of the following:

(1) Defenses or objections raised in accordance with the procedure set forth in Rule 4 of these Rules, including but not limited to challenges to the procedural sufficiency of the doctor's examination and report;

(2) Determination of the prisoner's mental condition on the basis of the petition and certificate of the psychiatrist or qualified psychologist, and entry of an order transferring the prisoner to St. Elizabeths Hospital, if counsel for the prisoner has not requested a court or jury trial;

(3) On request of counsel or on its own initiative, the Court may order further evidence to be presented, and may hear the case forthwith if the parties are prepared, or may set a date for a court or jury trial, if requested, on the issues of mental illness and dangerousness or disruptiveness;

(g) *Court or jury trial.* A court or jury trial on the issues of prisoner's mental illness and dangerousness or disruptiveness shall be conducted in accordance with Rule 5 of these Rules, except that the verdict or findings shall state (1) whether the prisoner is mentally ill, and (2) if so, whether because of his or her illness he is likely to injure him or herself, or cause a substantial disruption of prison routine.

(h) *Disposition order.* If a prisoner is found by the court or jury not to be mentally ill, or to be mentally ill but not likely to injure him or herself or to cause a substantial disruption of prison routine, he or she shall be returned to the correctional institution. If a prisoner waives trial and

consents to hospitalization, or if he or she is found by a court or jury to be mentally ill and because of such illness, likely to injure him or herself or to cause a substantial disruption of prison routine, the Court shall order the prisoner transferred to St. Elizabeths Hospital to receive treatment for his or her illness. If the prisoner recovers prior to the expiration of his or her term, the prisoner shall be returned to the custody of the Department of Corrections and the Mental Health and Mental Retardation Branch shall be furnished a copy of the certification by the administrator of the Hospital. Confinement pursuant to the order shall not exceed the duration of the prisoner's sentence unless proceedings to commit him pursuant to D.C. Code § 21-501 et seq. (2004 Supp.) are initiated.

(i) *Notification of right to appeal.* After entry of an order transferring a mentally ill prisoner to St. Elizabeths Hospital in a case that has gone to trial, the Court shall advise the prisoner of his or her right to appeal within 30 days in accordance with the Rules of the D.C. Court of Appeals.

(j) *Emergency transfer before hearing.* Nothing in these Rules shall prevent the transfer by the Director of the Department of Corrections of a prisoner to St. Elizabeths Hospital prior to hearing if, in addition to the matters set forth in subsection (b) of this Rule, the psychiatrist or qualified psychologist also certifies that the prisoner is in immediate need of treatment, and provided the petition and certificate for his or her transfer are filed not more than 48 hours after the transfer of the prisoner. In such cases the hearing order provided for in subsection (c) of this Rule shall set a hearing date not more than seven days thereafter.

COMMENT

This Rule was drafted to conform to the holding in *Matthews v. Hardy*, 137 U.S. App. D.C. 39, 420 F.2d 607 (1969), requiring that prisoners transferred to mental hospitals be afforded substantially the same due process protections as civilly committed persons.

Rule 11. Return of escapee.

(a) *Petition.* The administrator of a hospital or other institution to which a person has been ordered confined or the chief clinical officer of the Department by which a person has been detained may file, pursuant to D.C. Code § 21-592 (2004 Supp.) and SCR MH Rule 14(b), with the Mental Health and Mental Retardation Branch a motion for an order requiring the return of a person who has left the hospital, institution or facility without authorization or has failed to return as directed. Such a motion shall be supported by a report by the movant setting forth the pertinent facts.

(b) *Order.* The Court shall issue an order for custody directing a law enforcement authorities to return the respondent to the hospital, institution or facility.

COMMENT

The changes to the Rule have been drafted to reflect the language of D.C. Code § 21-592 (2004 Supp.), which refers to a person “confined in a hospital or institution” and not a “committed” person as referenced in the earlier Rule.

Rule 12. General provisions.

(a) *Appointment of counsel.* (1) Right to counsel. Any person who is involuntarily hospitalized or the subject of any petition filed pursuant to D.C. Code §§ 21-501 - 592 (2004 Supp.) or § 24-502 (2001 Supp.) shall have a right to consult with counsel promptly upon admission to the hospital or detention by the Department and shall be represented by counsel in any proceeding before the Commission and the Court. If counsel is not retained by a respondent, or if it does not appear that counsel will be retained, counsel shall be appointed by the Court.

(2) *Assignment of counsel.* (A) Any person detained under the emergency procedures of D.C. Code §§ 21-521 - 528 (2004 Supp.) shall be appointed counsel by the Court at the same time the Court issues an order granting or denying detention pursuant to D.C. Code § 21-524 (2004 Supp.). The order shall include the name and telephone number of the appointed attorney.

(B) A respondent who has not been detained for emergency observation and diagnosis but who is the subject of a petition for judicial commitment pursuant to D.C. Code § 21-541 (2004 Supp.) shall be appointed counsel by the Commission at the time the case is set for a hearing pursuant to D.C. Code § 21-542 (2004 Supp.). Notice of appointment of counsel shall be mailed to the respondent with a copy of the petition and the order scheduling a hearing before the Commission.

(b) *Expert witnesses.* The Court may appoint an expert witness when requested by counsel for an indigent respondent.

(c) *Confidentiality of transcripts.* Transcripts of all proceedings before the Commission on Mental Health shall be kept in a confidential file apart from the mental health case files, and shall not be open to inspection by the general public. The Director of the Family Court shall grant access to the transcript only to the respondent involved, his or her attorney, his or her guardian, members of his or her immediate family, the United States Attorney or the Office of the Attorney General or their

authorized assistants, and judges and professional staff of the Family Court. Any other person seeking access to the transcripts of a hearing before the Commission shall apply for a special order from the Family Court. The application for a special order shall state in writing the name, address and telephone number of the person or agency desiring to inspect the transcript, the professional or business affiliation of the person or agency, and the person for which the special order is sought. The application for special order shall be approved or denied by the Family Court in writing and filed by the Director of the Family Court in the respondent's case docket.

(d) *Applicability of Superior Court Rules of Civil Procedure.* Proceedings before the Commission and the Court shall be conducted in accordance with the following Superior Court Rules of Civil Procedure insofar as practicable, except to the extent inconsistent with these Rules or D.C. Code § 21-501 *et seq.* (2004 Supp.):

SCR Civ 5, 11(b), (c) and (d), 12-I (d) and (e), 43, 43-I, 44, 44-I, 45, 46, 47, 47-I, 50, 51, 52, 59, 60, 62 (b) and (c), 63-I, 77(a), 101(a), 102, and 103.

COMMENT

Subsection (d) of this Rule includes a reference to SCR Civ 62(c), which authorizes the granting of an injunction pending appeal. The intent of including the reference to SCR Civ 62(c) is to authorize the granting of a stay pending appeal of an order of civil commitment.

Rule 13. Time.

(a) *Computation.* In computing any period of time prescribed or allowed by statute, by these Rules or by order of Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included, except as otherwise provided by statute. The last day of the period of time prescribed or allowed by statute, these Rules or court order shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday, unless otherwise provided by the statute. When the period of time prescribed or allowed is 11 (eleven) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Rule, "legal holiday" includes New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, D.C. Emancipation Day, 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) *Enlargement.* When these Rules or by a notice given there under or by order of Court an act is required or allowed to be done at or within a specified time, the Court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(c) *Time for serving affidavits.* When a motion or opposition is supported by affidavit, the affidavit shall be served with the motion or opposition unless the Court permits them to be served at some other time.

(d) *Additional time after service by mail.* Whenever, under these Rules or by order of Court, a party

has the right to or is required to do some act within a prescribed time period after the service of a notice or other paper upon him or her and the notice or paper is served upon him or her by mail, 3 three days shall be added to the prescribed period.

Rule 14. Form of court filings; motions practice.

(a) *Caption: Name of respondent.* Every court filing shall contain the following heading: Superior Court of the District of Columbia, Family Court, Mental Health and Mental Retardation Branch, and a designation as to the nature of the court filing. The caption shall include the name of the respondent and shall be in the following format: "In the Matter of [name of respondent]."

(b) *Motions.* With each motion there shall be filed and served a proposed order for the Court's signature which shall contain a list of all persons with their current addresses to whom copies of the Court's order shall be sent. Each motion shall be accompanied by the specific points and authorities to support the motion, including, where appropriate, a concise statement of material facts. The points and authorities shall be captioned as such and placed either on a separate paper or below all other material, including signatures, on the last page of the motion. A statement of opposing points and authorities, with a proposed order, shall be filed and served within ten days or such further time as the Court may grant. If a statement of opposing points and authorities is not filed within the prescribed time, the Court may treat the motion as conceded.

(c) *Adoption by reference; exhibits.* Statements in a court filing may be adopted by reference in a different part of the same court filing or in another court filing. A copy of any written instrument which is an exhibit to a court filing is a part thereof for all purposes.

(d) *Stationery; title; relief prayed.* Other filings shall be on opaque white paper, without back or cover, fastened at the top and stating under the caption the nature of the court filing and the relief, if any, prayed.

(e) *Locational information.* Every court filing signed by an attorney shall show the name, an office address meeting the requirements of SCR Civ 101 (a), telephone number, email address and Bar number of the attorney. The names, addresses, telephone numbers and email addresses shall be

conclusively deemed to be correct and current except as modified by praecipe filed with the Court and served upon the parties pursuant to SCR Civ 5.

(f) *Nonconformance with above.* A court filing not conforming to the requirements of this Rule shall not be accepted for filing.

(g) Filing electronically. (A) Electronic Filing. As permitted or required by statute, rule or administrative order, pleadings and filings may be filed by electronic means. Filing by electronic means is complete upon transmission, unless the party making the transmission learns that the attempted transmission was undelivered or undeliverable.

(B) Forms of Documents Electronically Filed.

(i) Format of Electronically Filed Documents. All filings submitted electronically shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper filings, and in such other and further format as the Court may require from time to time.

(ii) Representations by Using a Typographical Signature. Every document filed electronically shall be deemed to have been signed by the attorney or declarant and shall bear a facsimile or typographical signature of such person, along with the typed name, address, telephone number, e-mail address and Bar number of a signing attorney. Typographical signatures shall be treated as personal signatures for all purposes under these rules. Typographical signature means the typed or imaged signature of each lawyer or party who is responsible for the filing under SCR MH Rule 15.

(C) Maintenance of Original Document. Unless otherwise ordered by the Court, an original of all documents filed electronically, including original signatures, shall be maintained by the party filing the document during the pendency of the case and through exhaustion of any appeals or appeal times, and shall be made available, upon reasonable notice, for inspection by other counsel or the Court.

(D) Conventional Filing of Documents. Notwithstanding the foregoing, the following types of

documents may be filed conventionally and need not be filed electronically, unless expressly required by the Court:

(i) Documents filed under seal. A motion to file documents under seal shall be filed and served electronically. The documents to be filed under seal shall be filed in paper form, unless a different procedure is required by statute, rule, or administrative order. Documents filed under seal should be clearly marked as such by the filer.

(ii) Exhibits and real objects. Exhibits to declarations or other documents that are real objects (e.g. x-ray film or vehicle bumper) or which otherwise may not be comprehensibly viewed in an electronic format shall be filed and served conventionally in paper form.

(iii) Courtesy Copies. Unless specifically requested by the Court, paper courtesy copies of documents filed electronically need not be delivered to the Court.

(E) Electronic Filing and Service of Orders and Other Papers. The Court may issue, file, and serve notices, orders, and other documents electronically, subject to the provisions of these rules, statute or administrative order.

(F) Who Shall File Electronically. By statute, rule or administrative order, all attorneys representing parties may be required to submit filings electronically. By statute, rule or administrative order, any person appearing pro se may file and serve documents electronically and may be served electronically, if they have consented in writing thereto, and if such activities are provided for by the Court's e-filing program.

(G) Failure to process transmission. If the electronic filing is not filed because of a failure to process it through no fault of the sending party, the Court shall enter an order permitting the document to be filed nunc pro tunc to the date it was sent electronically, as long as the document is filed within ten (10) days of the attempted transmission.

COMMENT

This Rule has been derived substantially from corresponding provisions of SCR Civ 10, 10-I, and 12-I(e).

Rule 15. Signing of court filings.

(a) *Signature by attorney.* With the exception of petitions filed pursuant to D.C. Code §§ 21-523, 21-541, and 21-545.01 (2004 Supp.), every court filing of a party represented by an attorney shall be signed by at least one attorney of record in his or her individual name, and shall include locational information required by Rule 14(e). The signature of an attorney constitutes a certificate by him or her that he or she has read the court filing; that to the best of his or her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a court filing is not signed or is signed with intent to defeat the purpose of this Rule, it may be stricken as sham and false and the action may proceed as though the court filing had not been served. For a willful violation of this Rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

(b) *Signature of party appearing pro se.* A party who is not represented by an attorney shall sign his or her court filing and state his or her address, telephone number, and email address, if any. The signature of a party constitutes a certificate by him or her that he or she has read the court filing; that to the best of his or her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a court filing is not signed or is signed with intent to defeat the purpose of this Rule, it may be stricken as sham and false and the action may proceed as though the court filing had not been served.

(c) *Representations to court.* The provisions set forth in Rule 11 (b), (c) and (d) of the Superior Court Rules of Civil Procedure are incorporated by reference into this Rule.

(d) *Signature by rubber stamp not permitted.* A name affixed by a rubber stamp shall not be deemed a signature.

COMMENT

This rule is substantially identical to SCR Civ 11 except that paragraph (a) has been amended to make it clear that the signature of an attorney is not needed to file petitions for emergency hospitalization, pursuant to D.C. Code § 21-523 (2004 Supp.), petitions for commitment, pursuant to D.C. Code § 21-541 (2004 Supp.), and petitions for renewal of commitment, pursuant to D.C. Code § 21-545.01 (2004 Supp.).

Rule 16. Trial by jury or by the Court.

(a) *By jury.* When trial by jury has been demanded as provided in Rule 4 (d), the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open court and entered in the record, consent to trial by the Court sitting without a jury, or (2) the Court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or applicable law.

(b) *By the Court.* Issues not demanded for trial by jury as provided in Rule 4 (d) shall be tried by the Court; but notwithstanding the failure of a party to demand a jury in an action in which such demand might have been made as of right, the Court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) *Number of jurors.* Any jury demand made under Rule 4 (d) is conclusively presumed to constitute a demand that the trial shall be to a jury of 12 persons. The parties may stipulate that the jury shall consist of any number less than 12.

(d) *Pretrial hearing.* The Court may set pretrial hearings as necessary to resolve any pretrial issues.

COMMENT

Paragraphs (a) and (b) are substantially identical to paragraphs (a) and (b) of SCR Civ 39. Paragraph (c) is similar to SCR Civ 48 except that there is a conclusive presumption of a jury demand for twelve persons in the mental health rule.

Rule 17. Limited discovery in a commitment trial pursuant to D.C. Code § 21-545 (2004 Supp.).

(a) *Discovery generally.* These rules are intended to provide for the exchange of information between the parties to effectuate an efficient, fair, and complete commitment trial. The parties shall engage in informal exchange of information to obtain information in addition to that which is required to be disclosed pursuant to statutes or these rules. Upon a showing of exceptional circumstances, the Court may allow interrogatories, requests for production, requests for admission, and depositions.

(b) *Expert witnesses.* Each party shall make available the following regarding any expert witness whom the party intends to call at trial:

- (i) The name and qualifications of the witness;
- (ii) A written summary of the witness's opinions and the bases for those opinions for any witness whose opinion is not set forth in the records that have been or are being produced;
- (iii) Any report, record, or other document upon which the expert relied in forming the opinions about which he or she will testify for inspection and copying to the extent not produced informally; and
- (iv) Upon request, the test data and test materials created, used, or relied on by the other party's expert in forming the opinions about which he or she will testify at trial. This information shall be disclosed only to the requesting party's expert witness, if any, and attorney, and the disclosure shall be limited to use in these proceedings absent further order of the Court. Upon conclusion of these proceedings, all test data and test material, and any copies thereof, shall be returned to the party who produced it.

(c) *Notification of incidents by petitioner.* The petitioner shall provide written notification to the respondent of the incidents on which the petitioner intends to rely at trial to establish a likelihood that the respondent will cause injury to himself or others as a result of mental illness if not committed. The notification shall be limited to a description of the incident, including the date, time, and place, to the extent that this information is known to the petitioner. The Court may, for good cause shown, allow the petitioner to rely at trial on an incident not previously identified in the petitioner's notification.

(d) *Response to notification of incidents.* Upon receipt of petitioner's notification of incidents, the respondent shall provide written notification to the petitioner of whether the incidents or any part of them will be disputed at trial. In the event of any dispute, respondent's counsel shall specify what point is disputed. The Court may, for good cause shown, allow the respondent to dispute a matter at trial not previously noted in respondent's notification.

(e) *Timing and supplementation of discovery.* Time limitations for completion of discovery will be set by order of the Court. A party who has made a disclosure pursuant to this rule is under a duty to supplement or correct the disclosure to include information thereafter acquired consistent with Rule 26 of the Superior Court Rules of Civil Procedure.

COMMENT

The reference to "statute" in subsection (a) includes D.C. Code § 21-562 (2004 Supp.) and D.C. Code § 7-1201 *et seq.* (2003 Supp.), which regulate disclosure of mental health records.

In general, formal discovery as to all medical and mental health records is not needed. The rule is written with the expectation that parties will continue the informal discovery practice that is already in place. In this practice, petitioners make available to the respondent for inspection and copying the records relating to respondent.

Rule 16. [DELETED]

Rule 16 has been deleted because the procedures for summary rehospitalization and revocation of outpatient commitment are now set forth in D.C. Code § 21-548 (2004 Supp.).