

SUPERIOR COURT RULES OF CIVIL PROCEDURE

Rule 1. Scope of Rules.

These Rules govern the procedure in all suits of a civil nature in the Civil Division of the Superior Court of the District of Columbia whether cognizable as cases at law or in equity, with the exception of cases in the Landlord and Tenant Branch and the Small Claims and Conciliation Branch of the Court and other exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

COMMENT

This Rule parallels *Federal Rule of Civil Procedure 1* but has been modified to reflect applicability to appropriate cases in the Superior Court. Note that these Rules do not, by their own terms, extend to cases in the Landlord and Tenant Branch or the Small Claims and Conciliation Branch; however, the separate Rules for those respective branches do designate certain of these Rules for incorporation by reference therein. Further, the scope of these Rules will necessarily be expanded in the future as new rules are promulgated to govern procedure in areas (such as probate) over which the court receives jurisdiction in subsequent increments. See D.C. Code (1967 Edition, Supplement IV) § 11-921.

The phrase "these Rules" refers to the entire body of Superior Court Rules of Civil Procedure, those derived from the Federal Rules of Civil Procedure and those purely local Rules bearing numbers above 100. Any reference herein to a particular Rule, as, for example, "Rule 69" comprehends both the original Rule and any addenda thereto, e.g., "69-I" and "69-II".

Rule 2. One form of action.

There shall be one form of action to be known as "civil action".

COMMENT

Identical to *Federal Rule of Civil Procedure 2*. For ease of identification, the Clerk of the Court will place before the case number of every case filed in the Civil Division appropriate prefixes as follows: "SC" for Small Claims and Conciliation Branch cases, "LT" for Landlord and Tenant Branch cases, "F " for Fiduciary cases, and "CA" for all other civil actions.

Rule 3. Commencement of action.

A civil action is commenced by filing a complaint with the Court.

Rule 3-I. Actions involving real property.

Any pleading the adjudication of which may affect title to or interests in real property, including pleadings in change of name cases, shall bear immediately below the title of the pleading the inscription "ACTION INVOLVING REAL PROPERTY". Upon the filing of such a pleading the Clerk shall place after the number assigned to the case the suffix "RP".

COMMENT

Rule 3 identical to *Federal Rule of Civil Procedure 3*.

Rule 4. Summons.

(a) Form.

The summons shall be signed by the Clerk, bear the seal of the Court, identify the Court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The Court may allow a summons to be amended. Whenever service is made pursuant to a statute or rule of Court which provides (1) for service of a summons, or notice, or order in lieu of summons upon a party not an inhabitant of or found within the District of Columbia, or (2) for service upon or notice to a party to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of the party's property located within the District of Columbia, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule.

(b) Issuance.

A prepared summons, with copies for each defendant named in the complaint, shall be delivered to the Clerk at the time the complaint is filed. If additional process is required, a prepared summons for such process shall also be delivered to the Clerk. Upon receipt and due notation thereof, the Clerk shall return all but one copy of the summons to the plaintiff or the plaintiff's agent for service of process in accordance with paragraph (c) of this Rule, recording on all copies the date of such return to the plaintiff or the plaintiff's agent.

(c) Service with complaint; by whom made.

(1) A summons shall be served together with a copy of the complaint and initial order. The plaintiff is responsible for service of a summons, complaint and initial order within the time allowed under subdivision (m) and shall furnish the person effecting service with the necessary copies of the summons, complaint and initial order.

(2) Service may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the Court may direct that service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the Court for that purpose. Such direction shall be made only (a) when service is to be effected on behalf of the United States or an officer or agency thereof, or (b) when the Court issues an order stating that service by a United States marshal or deputy United States marshal or a person specially appointed for that purpose is required in order that service be properly effected in that particular action.

(3) As to any defendant described in subdivisions (e), (f), (h), or (j), service also may be effected by mailing a copy of the summons, complaint and initial order to the person to be served by registered or certified mail, return receipt requested.

(4) As to any defendant described in subdivisions (e), (f), or (h), service may be effected by mailing a copy of the summons, complaint and initial order by first-class mail, postage prepaid, to the person to be served, together with two copies of a Notice and Acknowledgment conforming substantially to Form 1-A and a return envelope, postage prepaid, addressed to the sender. Unless good cause is shown for not doing so, the Court shall order the payment by the party served of the costs incurred in securing an alternative method of service authorized by this Rule if the person served does not complete and return, within 20 days after mailing, the Notice and Acknowledgment of receipt of the summons.

(5) Service of process pursuant to paragraphs (2) or (3) of this subdivision, or acknowledgment of service pursuant to paragraph (4), may, at the plaintiff's election, be attempted either concurrently or successively.

(d) [Vacant].

(e) Service upon individuals within the United States.

Unless otherwise provided by law, service upon an individual from whom an acknowledgment has not been obtained and filed, other than an infant or an incompetent person, may be effected in any part of the United States:

(1) pursuant to District of Columbia law, or the law of the state or territory in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of that state or territory; or

(2) by delivering a copy of the summons, complaint and initial order to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion

then residing therein or by delivering a copy of the summons, complaint and initial order to an agent authorized by appointment or by law to receive service of process.

(f) Service upon individuals in a foreign country.

Unless otherwise provided by applicable law, service upon an individual from whom an acknowledgment has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extra-judicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons, complaint and initial order; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the Court.

(g) Service upon infants and incompetent persons.

Service upon an infant or an incompetent person in the United States shall be effected in the manner prescribed by the law of the District of Columbia or the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state. Service upon an infant or an incompetent person in a place not within the United States shall be effected in the manner prescribed by paragraph (2)(A) or (2)(B) of subdivision (f) or by such means as the Court may direct.

(h) Service upon corporations and associations.

Unless otherwise provided by applicable law, service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which an acknowledgment of service has not been obtained and filed, shall be effected:

(1) within the United States in the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons, complaint and initial order to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant, or

(2) in a place not within the United States in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph (2)(C)(i) thereof.

(i) Serving the United States, its agencies, corporations, officers or employees.

(1) Service upon the United States shall be effected

(A) by delivering a copy of the summons, complaint and initial order to the United States Attorney for the District of Columbia or to an assistant United States Attorney or clerical employee designated by the United States Attorney in a writing filed with the Clerk of the Court, or by sending a copy of the summons, complaint and initial order by registered or certified mail addressed to the civil process clerk at the office of the United States Attorney and

(B) by also sending a copy of the summons, complaint and initial order by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons, complaint and initial order by registered or certified mail to the officer or agency.

(2) Service on an agency or corporation of the United States, or an officer or employee of the United States sued only in an official capacity, is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by also sending a copy of the summons and complaint and initial order by registered or certified mail to the officer, employee, agency, or corporation.

(B) Service on an officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States -- whether or not the officer or employee is sued also in an official capacity -- is effected by serving the United States in the manner prescribed by Rule 4(i)(1) and by serving the officer or employee in the manner prescribed by Rule 4(e), (f), or (g).

(3) The Court shall allow a reasonable time to serve process under Rule 4(i) for the purpose of curing the failure to serve:

(A) all persons required to be served in an action governed by Rule 4(i)(2)(A), if the plaintiff has served either the United States attorney or the Attorney General of the United States, or

(B) the United States in an action governed by Rule 4(i)(2)(B), if the plaintiff has served an officer or employee of the United States sued in an individual capacity.

(j) Service upon the District of Columbia, an officer or agency thereof, or upon other government entities subject to suit.

(1) Service shall be made upon the District of Columbia by delivering (pursuant to paragraph (c)(2)) or mailing (pursuant to paragraph (c)(3)) a copy of the summons, complaint and initial order to the Mayor of the District of Columbia (or designee) and the Corporation Counsel of the District of Columbia (or designee). The Mayor and the Corporation Counsel may each designate an employee for receipt of service of process by filing a written notice with the Clerk of the Court. In any action attacking the validity of an order of an officer or agency of the District of Columbia not made a party, a copy of the summons, complaint and initial order also shall be delivered or mailed to such officer or agency. Service upon an officer or agency of the District of Columbia shall be made by delivering (pursuant to paragraph (c)(2)) or mailing (pursuant to paragraph (c)(3)) a copy of the summons, complaint and initial order to the Mayor (or designee), the Corporation Counsel (or designee), and such officer or agency.

(2) Service upon a state, municipal corporation, or other governmental organization subject to suit shall be effected by delivering a copy of the summons, complaint and initial order to its chief executive officer or by serving the summons, complaint and initial order in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(k) Territorial limits of effective service.

(1) Service of a summons, complaint and initial order or filing an acknowledgment of service is effective to establish jurisdiction over the person of a defendant

(A) who could be subjected to the jurisdiction of this Court, or

(B) who is a party joined under Rule 14 or Rule 19 and is served at a place not more than 100 miles from the place of hearing or trial, or

(C) [Vacant].

(D) when authorized by a statute of the United States or the District of Columbia.

(2) If the exercise of jurisdiction is consistent with the Constitution and applicable law, serving a summons or filing an acknowledgment of service is also effective, with respect to claims arising under such law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state.

(l) Proof of service.

If service is not acknowledged, the person effecting service shall make proof of service to the Court. If service is made by a person other than a United States marshal or deputy United States marshal, the person shall make affidavit thereof. The affidavit shall specifically state each of the following:

(1) If service is made by delivery pursuant to paragraph (c)(2) of this Rule, the return of service shall be made under oath (unless service was made by the United States marshal or deputy United States marshal) and shall specifically

state the caption and number of the case; the process server's name, residential or business address, and the fact that he or she is eighteen (18) years of age or older; the time and place at which service was effected; the fact that a summons, a copy of the complaint and the initial order setting the case for an Initial Scheduling Conference were delivered to the person served; and, if service was effected by delivery to a person other than a party named in the summons, then specific facts from which the Court can determine that the person to whom process was delivered meets the appropriate qualifications for receipt of process set out in subdivisions (e) through (j) of this Rule.

(2) If service is made by registered or certified mail under paragraph (c)(3) of this Rule, the return shall be accompanied by the signed receipt attached to an affidavit which shall specifically state the caption and number of the case; the name and address of the person who posted the registered or certified letter; the fact that such letter contained a summons, a copy of the complaint and the initial order setting the case for an Initial Scheduling Conference; and, if the return receipt does not purport to be signed by the party named in the summons, then specific facts from which the Court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in subdivisions (e) through (j) of this Rule.

Proof of service in a place not within the United States shall, if effected under paragraph (1) of subdivision (f), be made pursuant to the applicable treaty or convention, and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the Court. Failure to make proof of service does not affect the validity of the service. The Court may allow proof of service to be amended.

(m) Time limit for service.

Within 60 days of the filing of the complaint or, if an order of publication has been issued, within 60 days from the return date specified in the order, the plaintiff must file either an acknowledgment of service or proof of service of the summons, the complaint and any order directed by the Court to the parties at the time of filing. The acknowledgement or proof shall be filed as to each defendant who has not responded to the complaint. Prior to the expiration of the foregoing time period, a motion may be made to extend the time for service. The motion must set forth in detail the efforts which have been made, and will be made in the future, to obtain service. The Court shall extend the period for such time as may be warranted by circumstances set forth in the motion. Failure to comply with the requirements of this Rule shall result in the dismissal without prejudice of the complaint. The Clerk shall enter the dismissal and shall serve notice thereof on all the parties entitled thereto. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (h)(2) or to cases to which Rule 40-III is applicable.

(n) Seizure of property; service of summons not feasible.

(1) If a statute of the District of Columbia so provides, the Court may assert jurisdiction over property. Notice to claimants of the property shall then be sent in the manner provided by the statute or by service of a summons under this rule.

(2) Upon a showing that personal jurisdiction over a defendant cannot be obtained with reasonable efforts by service of summons in any manner authorized by this rule, the Court may assert jurisdiction over any of the defendant's assets found within the District of Columbia by seizing the assets under the circumstances and in the manner provided by District of Columbia law.

(o) Time allowed for service of process.

Notwithstanding the provisions of section (m) of this Rule, proof of service of the summons and any complaint embraced within section (a) of this Rule must be made no later than 180 days after the filing of the complaint in cases filed pursuant to *D.C. Code § 47-1370*. Failure to comply with the requirement of this Rule shall result in the dismissal without prejudice of the complaint. The Clerk shall enter the dismissal and shall serve notice thereof on the parties entitled thereto.

COMMENT

Federal Rule of Civil Procedure 4 was substantially revised and reorganized effective December 1, 1993. In order to maintain uniformity with the Federal Rule to the maximum extent feasible, Superior Court Rule of Civil Procedure 4 has been similarly revised and reorganized to match the structure and substance of the new Federal Rule in large part. Although most provisions of new Superior Court Rule 4 are identical to those of new Federal Rule 4, there are a few variations. Throughout the rule reference is made to the initial order. This refers to the order setting the initial scheduling conference that is given to plaintiffs at the time of their filing the summons and complaint. Many of the other varia-

tions result from the obvious inapplicability of the federal provisions and thus require no explanation. A few of the variations merit comment.

Subdivision (a) of this rule is virtually identical to new Federal Rule 4(a) except for the final sentence, which has been added to preserve the substance of a useful provision, contained in former SCR-Civil 4(b), regarding the form of summons or notice to be used when service is made outside the District of Columbia or is based on the seizure of property within the District.

In subdivision (b), the prior Superior Court provision concerning issuance of the summons has been retained, in lieu of the new federal rule provision. The prior Superior Court provision is well known to the Clerk's Office and the Bar and has worked well.

In subdivision (c), a sentence has been added to paragraph (2) to retain the language, contained in former SCR-Civil 4(c)(2)(B), regarding the limited circumstances in which service by a U.S. marshal, deputy marshal, or specially appointed process server is permitted.

Paragraph 3 has been added to subdivision (c) to preserve the long-standing Superior Court practice of allowing service of a summons, complaint and initial order by registered or certified mail, return receipt requested. This practice has been extensively used for years in this Court with great success and little difficulty. Paragraph 4 retains the language of former SCR-Civil 4(c)(2)(C) and (D) which deal with sending the defendant, via first-class mail, a request for an acknowledgment of service.

A paragraph (5) has been added to subdivision (c) to retain the provision of former SCR-Civil 4(c) allowing the plaintiff to attempt service through alternative means, either concurrently or successively.

In subdivision (j), paragraph 1 of the Federal Rule dealing with service upon a foreign national has been deleted as inapplicable to Superior Court jurisdiction. In its place has been inserted the provisions, previously contained in SCR-Civil 4(d)(4), governing service on the District of Columbia or an officer of [or] agency thereof.

In subdivision (1), there has been inserted language describing the information required in affidavits of personal service and mail service. These provisions were previously contained in SCR-Civil 4(g).

Finally, Federal Rule 4(m), which allows 120 days to effect service or obtain a waiver thereof, has been replaced entirely with the language previously contained in Superior Court Rule 4(j). That provision allowed 60 days for effecting service so that the case could proceed to an Initial Scheduling Conference within 90-120 days of filing the complaint (except in cases where an order of publication has been issued) and a disposition within the time limits recommended by the American Bar Association (i.e., one year in 90% of cases and two years in 100% of cases). The rule has an additional paragraph (o) allowing greater time for service of the summons in cases filed under *D.C. Code § 47-1370*.

Rule 4.1. Service of other process.

(a) Generally.

Process other than a summons as provided in Rule 4 or a subpoena as provided in Rule 45 may be served by a United States marshal, a deputy United States marshal, or unless otherwise provided by statute, by a person who is not a party and not less than 18 years of age, who shall make proof of service as provided in Rule 4(l). The process may be served anywhere within the District of Columbia, and, when authorized by applicable statute, beyond the territorial limits of the District of Columbia.

(b) Civil contempt proceedings.

Orders in civil contempt proceedings shall be served in the District of Columbia or elsewhere within the United States if not more than 100 miles from the District of Columbia.

COMMENT

Rule 4.1 is substantially identical to *Federal Rule of Civil Procedure 4.1*, which sets forth provisions on service of process other than a summons or subpoena. Most of the variations from federal rule language are self-explanatory. The principal change involves the deletion from subdivision (b) of a provision for nationwide service of process of a Federal court order for civil commitment of a person held to be in contempt of a decree or injunction issued to enforce the laws of the United States. This provision is not applicable to Superior Court and has thus been deleted.

Rule 4-I. Service by publication.

Notices relating to proceedings in this Court of which publication is required shall be published for the prescribed time in at least one legal newspaper or periodical of daily circulation and any other newspaper or periodical specifically designated by the Court. Publication shall be proved by affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the order as published. For purposes of this rule, a legal newspaper or periodical of daily circulation shall mean a publication designated by the Court that is (1) devoted primarily to publication of opinions, notices and other information from the courts of the District of Columbia, (2) circulated generally to the legal community, and (3) published at least on each weekday that the Superior Court is in session.

Rule 5. Service and filing of pleadings and other papers.

(a) Service: When required.

Except as otherwise provided in these Rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the Court otherwise orders, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. Any pleadings asserting new or additional claims for relief against any party in default must be served upon such party in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Making service.

(1) Service under Rules 5(a) and 77(d) on a party represented by an attorney is made on the attorney unless the Court orders service on the party.

(2) Service under Rule 5(a) is made by:

(A) Delivering a copy to the person served by:

(i) handing it to the person;

(ii) leaving it at the person's office with a clerk or other person in charge, or if no one is in charge leaving it in a conspicuous place in the office; or

(iii) if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.

(C) If the person served has no known address, leaving a copy with the Clerk of the Court.

(D) Delivering a copy by any other means, including electronic means, as permitted or required by administrative order or consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery.

(3) Service by electronic means under Rule 5(b)(2)(D) is not effective if the party making service learns that the attempted service did not reach the person to be served.

(c) Same: Numerous defendants.

In any action in which there are unusually large numbers of defendants, the Court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the Court directs.

(d) Filing.

All filings after the complaint required to be served upon a party, other than those referred to in Rule 12-I(e), shall be filed with the Court either before service or within 5 days after service; however, the clerk shall not accept for filing depositions transcripts, interrogatories, requests for documents, requests for admission, and responses thereto except as set forth below. The requesting party must retain the original discovery paper, and must also retain personally, or make arrangements for the reporter to retain, in their original and unaltered form, any deposition transcripts which have been made at the party's request. Such discovery papers and deposition transcripts must be retained until the case is concluded in this Court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided. Discovery papers and deposition transcripts may be filed, without leave of court, if they are appended to a motion or opposition to which they are relevant and may otherwise be filed if so ordered by the Court

sua sponte or pursuant to motion. A CERTIFICATE REGARDING DISCOVERY, summarizing all discovery that has occurred to date, shall be filed with the Court as an attachment to: (1) any motion regarding discovery; (2) any opposition to a dispositive motion based on the need for discovery; and (3) any motion to extend Scheduling Order dates.

(e) Filing with the Court defined.

(1) [Filing papers].

The filing of papers with the Court as required by these Rules shall be made by filing them with the Clerk of the Court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the Office of the Clerk. On the date of the filing of any motion, or of any papers related to a motion (i.e., an opposition to a motion, memorandum of points and authorities, exhibits related thereto or proposed order), the party filing such motion, papers or pretrial statements and other papers described in SCR Civil 16(d) and (e) shall deliver a chambers copy thereof to a depository designated by the Clerk of the Court for receipt of such papers by the assigned judge. Along with the chambers copy of the motion, the moving party must provide the assigned judge with (1) an original proposed order and (2) an addressed envelope or a mailing label for each counsel or unrepresented party to the case. With the chambers copy of any opposition to a motion, the party filing the opposition must provide the assigned judge with an original proposed order. If the original document has been mailed, the chambers copy may be mailed to chambers. No other papers shall be delivered to the judge's chambers unless the assigned judge so orders.

(2) 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) Form 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) Every document filed electronically through the Court's authorized eFiling system shall be deemed to have been signed by the attorney who made the filing or authorized that the filing be made. Each filing shall bear either an "/s/" or a typographical or imaged signature on the signature line. Below the signature line there shall appear the typed name, address, telephone number, e-mail address and Bar number of the attorney who submitted the filing. A party appearing *pro se* who chooses to eFile through the Court's authorized eFiling system shall use either an "/s/" or a typographical signature on the signature line and must include under that line, his or her name, address, telephone number and email address. A *pro se* party shall be responsible for the filing under Rule 11.

(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) Service of Original Complaint and related documents.

After electronic filing of the original complaint, service upon parties is the responsibility of the filer and must be accomplished in accordance with these rules. Proof of service shall be filed electronically.

(E) 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, the Court 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.

(F) 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, statutes or administrative order.

(G) 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.

(H) [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.

(f) Privacy requirements.

(1) All parties shall exclude the following personal identifiers from all filed documents, except as provided below.

(A) Social Security numbers: Except as otherwise provided below, social security numbers are to be excluded from public filings. If a party intends to file any document that includes an individual's social security number, the party shall file the document with the acronym "SSN" placed where the individual's social security number would have been included. On Writs of Garnishment social security numbers should be deleted only from the original writ and not from the service copies.

(B) Names of minor children: The names of minor children are to be excluded from public filings. If a party intends to file any document in which a minor child will be identified, only the initials of that child should be used in any public filing.

(C) Dates of birth: Dates of birth are to be excluded from public filings. If a party intends to file any document that includes an individual's date of birth, the party shall file the document with the acronym "DOB" placed where the individual's date of birth would have been included.

(D) Financial account numbers: Financial account numbers are to be excluded from public filings. If a party intends to file a document that includes a financial account number, only the last four digits should be used.

(2) A party wishing to file a document containing the unredacted personal identifiers listed in subparagraph (A) through (D) of this rule may submit a motion to file an unredacted document under seal.

(3) The responsibility for redacting these personal identifiers rests solely with counsel and the interested persons.

Rule 5-I. Proof of service.

Proof of service of filings required or permitted to be served (other than those for which a method of proof is prescribed elsewhere in these Rules or by statute) and proof that chambers copies have been supplied to the assigned judge as required by Rule 5(e), shall be filed before action is to be taken thereon. The proof shall show the date and manner of service on the parties and delivery to the judge, and may be by written acknowledgment thereof, by affidavit of the person making service or delivery, by certificate of a member of the Bar of this Court, or by other proof satisfactory to the Court. Failure to make such proof will not affect the validity thereof. The Court may at any time allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

Rule 5-II. Pleadings and orders affecting estates of veterans.

A copy of any pleading or order affecting the estate of a veteran shall be mailed to the Veterans Administration by the party filing or obtaining the same.

COMMENT

Rule 5 is substantially identical to *Federal Rule of Civil Procedure 5* except that paragraph (d) specifies the time within which papers must be filed with the Court.

Several changes are made to *Federal Rule of Civil Procedure 5*. Deleted from paragraph (a) is the provision that no service need be made upon parties in default for failure to appear. It is required, for example, that a copy of a Rule 55-II(a)(3) affidavit be sent to a defendant who is in default. If new or additional claims are asserted against parties in default, then such parties must be served in the manner provided in Rule 4. Unlike the federal rule which permits courts to make exceptions to the requirement that every pleading subsequent to the original complaint be served upon each of the parties because of the large number of defendants, the local rule would allow the Court to make such exceptions in all cases. Paragraph (d) specifies the time within which papers must be filed with the Court and provides that discovery papers or deposition transcripts shall not be filed unless relevant to a motion or opposition or authorized to be filed by order of the Court. Paragraph (e) requires that any party filing a motion, any paper related to a motion or a pretrial statement and other papers described in SCR Civil 16(d) and (e), deliver a chambers copy of such motion or papers to judge assigned to the case via a designated depository at the Courthouse. If the original paper has been mailed, the copy can likewise be mailed. Note, as to this matter, original papers should never, unless ordered otherwise, be filed with a judge.

This Rule expresses the Court's concern about access to, and dissemination of, private information in the Court's public records to the detriment of individuals whose privacy is compromised simply because their otherwise private information is contained in court filings. The risk of invasion of privacy is heightened where the court's public records are made available through the internet. Although the Rule does not expressly prohibit all use of personal identifiers and other private information, such as home addresses, it is the policy of the Court that parties not include home addresses and other private information in any court filings unless it is necessary to the matter being litigated or is otherwise expressly required by statute or other Rules of the Court, such as, for example, Rules 16(a)(2), 10-I(b), and 4(1)(2).

Rule 5-III. Sealed or confidential documents.

(a) Absent statutory authority, no case or document may be sealed without an order from the Court. Any document filed with the intention of being sealed shall be accompanied by a motion to seal or an existing order. The document will be treated as sealed, pending the ruling on the motion. Failure to file a motion to seal will result in the pleading being placed in the public record.

(b) Unless otherwise ordered or otherwise specifically provided in these Rules, all documents submitted for a confidential in camera inspection by the Court, which are the subject of a Protective Order, which are subject to an existing order that they be sealed, or which are the subject of a motion for such orders, shall be submitted to the Clerk securely sealed. The envelopeox containing such documents shall contain a conspicuous notation such as "DOCUMENT UNDER SEAL" or "DOCUMENTS SUBJECT TO PROTECTIVE ORDER" or the equivalent.

(c) The face of the envelope/box shall also contain the case number, the title of the Court, a descriptive title of the document and the case caption unless such information is to be, or has been, included among the information ordered sealed. The face of the envelopeox shall also contain the date of any order or the reference to any statute permitting the item to be sealed.

(d) Filings of sealed materials shall be made only in the Clerk's Office during regular business hours. Such filings of sealed materials at the security desk are prohibited because the Security Officers are not authorized to accept this material.

Rule 6. Time.

(a) Computation.

In computing any period of time prescribed or allowed by these rules, by order of Court, or by any applicable statute, the day of the act, event, or default 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 a 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. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Rule and in Rule 77(c), "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) Enlargement.

When by these Rules or by a notice given thereunder 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 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; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) [Omitted].

(d) 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.

(e) Additional time after certain kinds of service.

Whenever a party must or may act within a prescribed period after service and service is made under Rule 5(b)(2)(B), (C), or (D), 3 days are added after the prescribed period would otherwise expire under subdivision (a).

COMMENT

Rule 6 identical to *Fed. Rule of Civil Procedure 6* except for deletion from section (a) of reference to local rules of district courts and states in which district courts are held, deletion from section (b) of reference to Federal Rule 74(a), which prescribes the method of appeal from a judgment of a magistrate, and revision of section (d) in accordance with local practice respecting service of motions and affidavits. In addition, section (a) of the Superior Court Rule, like Superior Court Criminal Rule 45(a), has been modified to permit an extra day for the computation of time for the filing of legal papers only when the office of the clerk has been ordered closed.

Rule 6-I. Continuous session of Court.

Terms of court are abolished. The Court shall be in continuous session.

Rule 7. Pleadings allowed; form of motions.

(a) Pleadings.

There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a 3rd-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a 3rd-party answer, if a 3rd-party complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a 3rd-party answer.

(b) Motions and other papers.

(1) Application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(2) The Rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these Rules.

(3) All motions shall be signed in accordance with Rule 11.

(c) Demurrers, pleas, etc., abolished.

Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

COMMENT

Civil Rule 7 has been amended to clarify that the Court may impose sanctions against litigants who engage in improper motions practice. A new provision has been added to this rule to make explicit that the certification requirements and sanctions set forth in new Civil Rule 11 apply as well to motions filed with the Court.

Rule 7.1. Disclosure statement.

(a) Who must file; nongovernmental corporate party.

A nongovernmental corporate party to an action or proceeding must file two copies of a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) Time for filing; supplemental filing.

A party must (Subject to 7.1(c)):

(1) file the Rule 7.1(a) statement with its first appearance, pleading, petition, motion, response, or other request addressed to the Court, and

(2) promptly file a supplemental statement upon any change in the information that the statement requires.

(c) A plaintiff need not file a statement in a case filed pursuant to Civil Rule 40-III(a) unless the defendant files a responsive pleading or otherwise appears to contest the allegations contained in the complaint. In a case in which such a pleading is filed or a defendant appears, the statement shall be filed promptly.

Rule 7-I. Stipulations.

No stipulation shall be considered by the Court in any action before it unless the same be in a writing signed by the parties thereto or their attorneys; or made before the Court or a master at a reported hearing; or made in the taking of a deposition and recorded by or at the direction of the officer before whom the deposition is being taken.

COMMENT

Rule 7 is identical to *Federal Rule of Civil Procedure 7* except for deletion of the last sentence of subsection (b)(1) which is inconsistent with local practice regarding notice of hearings on motions. Rule 7-I is identical to former Rule 43-II. The location of the Rule was changed in order to avoid the impression that stipulations are limited to evidentiary matters.

Rule 8. General rules of pleading.

(a) Claims for relief.

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or 3rd-party claim, shall contain (1) a short and plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; form of denials.

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the Court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative defenses.

In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of failure to deny.

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be concise and direct; consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth 2 or more statements of a claim or defense alternately or hypothetically, either in 1 count or defense or in separate counts or defenses. When 2 or more statements are made in the alternative and 1 of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of 1 or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of pleadings.

All pleadings shall be so construed as to do substantial justice.

COMMENT

Identical to *Federal Rule of Civil Procedure 8*.

Rule 9. Pleading special matters.

(a) Capacity.

It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the Court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, mistake, condition of the mind.

In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions precedent.

In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official document or act.

In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment.

In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and place.

For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special damage.

When items of special damage are claimed, they shall be specifically stated.

(h) [Deleted].

Rule 9-I. Verifications and affidavits.

(a) Sufficiency.

When verification of a pleading is required, it shall be sufficient for the person verifying to swear or affirm that the person verily believes the facts stated in the pleading to be true. Verification by an individual party may be in the form set out in CA Form 101.

(b) One party may verify.

If several parties are united in interest and plead together, the verification may be made by 1.

(c) By officer, agent, attorney.

A verification or affidavit may be made by an officer, agent or attorney only (1) when a corporation is a party; (2) when the facts are within the personal knowledge of the attorney or agent; (3) when the party is an infant, or of unsound mind, or in prison; or, (4) when the party is absent from the District of Columbia. Where verification of a pleading or an affidavit is made on behalf of a party to an action, it shall set forth the representative capacity and, in the case of a corporation, the title of a person so verifying or making the affidavit, and shall contain a statement that the person has authority to verify the particular pleading or make the affidavit on behalf of the person's principal.

(d) Form of affidavits.

Affidavits other than verifications shall be separate and distinct from a pleading, verification, motion or other paper filed in the action. All facts contained in any affidavit submitted to this Court shall be expressly stated in detail in separately numbered paragraphs and shall not be incorporated therein by reference.

COMMENT

Rule 9 identical to *Federal Rule of Civil Procedure 9* except for deletion of section (h) thereof dealing with claims for relief "within the admiralty and maritime jurisdiction" which are within the exclusive jurisdiction of federal District Courts. See 28 *U.S.C.* § 1333(1).

Rule 10. Form of pleadings.

(a) Caption; names of parties.

Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, a designation as in Rule 7(a), and the name or names of the party or parties on whose behalf the pleading is filed. If the case has been assigned to a specific calendar or a single judge, the calendar number or the judge's name shall appear below the file number on every pleading. In the complaint the title of the action shall include the names of all parties, but in other pleadings it is sufficient to state the name of the 1st party on each side with an appropriate indication of other parties.

(b) Paragraphs; separate statements.

All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by reference; exhibits.

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

COMMENT

Rule 10 is identical to *Federal Rule of Civil Procedure 10* except for the additional requirement that the calendar number or the judge's name be placed on the pleading. A similar provision was formerly in Rule 40-II(e). Rule 40-I(a) contemplates two different types of case assignment. In almost all instances, a case will be assigned to a particular calendar. Such a case may be transferred from one judge to another as judicial assignments change; for these cases the caption should contain the calendar number only. In exceptional circumstances, a particular judge may be assigned permanently to a case; for these cases the caption should contain the judge's name. Note, that in certain cases described in Rule 24(c) the pleading must bear immediately below the caption the inscription "RULE 24 NOTIFICATION REQUIRED." Note that the requirements of Rule 10 apply not only to pleadings but also to the form of all motions and other papers provided for by the civil rules. See Rule 7(b)(2).

Rule 10-I. Pleadings: Stationery and locational information.

(a) Stationery; title; relief prayed.

Pleadings and like papers shall be on opaque white paper, approximately 11 inches long and 8 1/2 inches wide, without back or cover, fastened at the top and stating under the caption the nature of the pleading and the relief, if any, prayed.

(b) Locational information: Pleadings and other papers.

The 1st pleading filed by or on behalf of a party shall set forth in the caption the party's name, full residence address, and unless the party is represented by counsel, the party's telephone number, if any. All subsequent pleadings and other papers filed by or on behalf of a party shall set forth the name, full residence address and telephone number of the party, unless that party is represented by counsel. If a party is represented by counsel, all pleadings or other papers shall set forth the name, office address, telephone number, e-mail address, and Bar number of the attorney. The names, addresses, and telephone numbers so shown shall be conclusively deemed to be correct and current. It is the obligation of the attorney or unrepresented party whose address or telephone number has been changed to immediately notify the appropriate branch or office within the Civil Division and all other attorneys and unrepresented parties named in the case of this change. Attorneys must include their Bar number in all such notices. Should a party incur expenses, including reasonable attorney's fees, due to the failure of any other party to promptly give notice of a change of address or telephone number, the Court, upon motion or upon its own initiative, may order the party failing to give notice to reimburse the other party for expenses incurred.

(c) Nonconformance with above.

A pleading or other paper not conforming to the requirements of this Rule shall not be accepted for filing.

COMMENT

Rule 10 identical to *Federal Rule of Civil Procedure 10*. Note, however, that in certain cases described in Rule 24(c) the pleading must bear immediately below the caption the inscription "RULE 24 NOTIFICATION REQUIRED."

Rule 11. Signing of pleadings, motions, and other filings; representation to Court; sanctions.

(a) Signature.

Every pleading, written motion, and other filing shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each filing shall state the signer's address and telephone number and email address, if any. A name affixed by a rubber stamp shall not be deemed a signature. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned filing shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. If the filing is submitted through the Court's authorized eFiling program, Rule 5(e)(2)(B)(ii) shall govern the signing of any electronic filing.

(b) Representations to court.

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other filing, including an electronic filing, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions.

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How initiated.

(A) By motion.

A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On court's initiative.

On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of sanctions; limitations.

A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order.

When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to discovery.

Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rule 26 through 37.

COMMENT

This rule is identical to *Federal Rule of Civil Procedure 11*. This Rule also makes clear that a signature affixed by a rubber stamp is not sufficient.

Rule 12. Defenses and objections -- When and how presented -- By pleading or motion -- Motion for judgment on the pleadings.

(a) When presented.

(1) Unless a different time is prescribed in an applicable statute, a defendant shall serve an answer within 20 days after being served with the summons and complaint.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the Court, within 20 days after service of the order, unless the order otherwise directs.

(3) The United States or the District of Columbia, or an officer, agency or employee of either sued in an official capacity shall serve an answer to the complaint or cross-claim; or a reply to a counterclaim, within 60 days after the United States Attorney (in suits involving the United States) or the Corporation Counsel (in suits involving the District of Columbia) is served with the pleading asserting the claim.

(B) An officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States shall serve an answer to the complaint or cross-claim -- or a reply to a counterclaim -- within 60 days after service on the officer or employee, or service on the United States attorney whichever is later.

(4) Unless a different time is fixed by Court order, the service of a motion permitted under this rule alters these periods of time as follows:

(A) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the Court's action;

(B) if the Court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(5) Except where the time to respond to the complaint has been extended as provided in Rule 55(a), failure to comply with the requirements of this Rule shall result in the entry of a default by the Clerk or the Court sua sponte unless otherwise ordered by the Court.

(b) How presented.

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or 3rd-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) [Deleted], (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with 1 or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for judgment on the pleadings.

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary hearings.

The defenses specifically enumerated (1)-(7) in subdivision (b) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this Rule shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for more definite statement.

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 10 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to strike.

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses in motion.

A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to the party which this Rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or preservation of certain defenses.

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this Rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection or failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

COMMENT

SCR-Civil 12(a) is rearranged to reflect the format established by the federal rule revisions of December 1993. Federal limitation periods are altered to comport with those in the existing Superior Court rule. Additionally, a paragraph (5) has been added to preserve the existing Superior Court rule of automatic entry of default against a defendant who does not timely respond to the complaint.

Rule 12-I. Motions practice.

(a) Before filing any motion, except motions filed pursuant to Rule 11, the moving party shall first ascertain whether other affected parties will consent to the relief sought.

For motions filed pursuant to Rule 11, good faith efforts to resolve or dispose of the issues in dispute must be made before the motion is served pursuant to Rule 11(c)(1)(A). Only when the movant certifies in writing that despite diligent efforts consent could not be obtained, or in the case of Rule 11 motions, resolution of the disputed issues is not possible, will the Court consider the motion as a contested matter. If consent is obtained, and if the relief does not require court approval, the party seeking the relief may memorialize the other parties' consent in a letter to such parties (which shall not be filed) or in a praecipe filed and served as provided in Rule 5. If the relief sought is consented to but requires court approval, the moving party shall file, serve, and provide to the assigned judge a courtesy copy of a motion which includes the word "Consent" in its title and states that all affected parties have consented to the relief sought. No response to a consent motion is required. The Court will generally enter the proposed order, submitted with a consent motion pursuant to paragraph (e) of this rule, unless the Court determines that the order is not proper form or would unduly protract the litigation or otherwise be inappropriate. Copies of any order entered by the Court with respect to a consent motion will be docketed and mailed to the parties pursuant to Rule 77(d).

(b) Judge in chambers.

(i) The following matters may at any time be presented for disposition to a judge in chambers designated by the Chief Judge, either ex parte or with opposing counsel, as appropriate: Approval of accounts, warrants and return of warrants, approval of subpoenas for administrative proceedings, applications for appointment of special process servers in small claims cases, applications for name change, petitions to release mechanic's liens, applications for entry of administrative agencies' final orders as judgments, petitions to take depositions pursuant to Rule 27(a), master-meter proceedings under D.C. Code § 43-541 et seq. (1981) [§ 43-541 et seq., 2001 Ed.]; and requests for issuance of subpoenas under Rule 28-I(b).

(ii) The following matters, if presented on the day the complaint is filed, must be presented to the Judge in Chambers; thereafter, such matters must be presented to the judge assigned to the case: Appointment of a special process server, motions with respect to publication of notice requirements, judicial approval of settlements involving minors, motions regarding security for costs, writs of ne exeat, applications to set bonds, applications for temporary restraining orders, writs of attachment before judgment, writs of replevin, libels of information, motions for protective orders barring access to court documents and motions to use pseudonyms in any pleading or paper filed in a case.

(c) Judge on Emergency Assignment.

Any motion requiring immediate judicial attention at a time outside the regular business hours of the Court may be presented to the Judge on Emergency Assignment. The Chief Judge shall establish a roster for such emergency assignments.

(d) Form of motions.

With the exception of motions made in open court during hearing or trial when opposing counsel is present and motions made under emergent conditions, every petition or motion to the Court shall be reduced to writing and filed with the Clerk. Every motion shall state clearly its object and the grounds on which it is based or the reasons for the relief sought. If a motion is consented to by all affected parties, that fact shall be indicated in the title of the motion, e.g., "Consent Motion to Extend Time for Filing Plaintiff's Rule 26(b)(4) Statement."

(e) Points and authorities; failure to file opposing points and authorities.

With each motion and opposition 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 judge'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. Such statement of points and authorities shall be a part of the record. 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. 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 shall be filed and served within 10 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.

(f) Hearing: When allowed.

A party may specifically request an oral hearing by endorsing at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested"; but the Court in its discretion may decide the motion without a hearing. If the judge assigned to the case determines to hold a hearing on the motion, that judge shall give to all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing and the amount of time afforded to each party. If a pending motion is resolved by counsel, the movant must immediately notify the Court by telephone.

(g) Same: Failure of 1 party to appear.

If, at the time the case is called for hearing on a petition or motion the moving party fails to appear, the petition or motion may be treated as submitted or waived, or may be continued or stricken from the calendar. If the opposing party fails to appear, it may be treated as conceded, or the Court in its discretion may hear argument on behalf of the party appearing.

(h) Movant to provide pretrial conference scheduling order.

At the end of each motion, the movant shall provide a proposed order, as required by Rule 12-I(e), that reflects the existing scheduling order dates as well as the proposed dates that are sought by the motion. If a specific court event has been set (e.g., case evaluation, pretrial conference, or trial), that date shall be shown in the caption of the motion, immediately below the calendar designation, as, for example, "Next Event: Mediation 11/25/91."

(i) [Vacant].

(j) Motions to vacate default; verified answer.

A motion to vacate an entry of default or a judgment by default, or both, shall comply with the requirements of Rule 55(c).

(k) Motions for summary judgment.

In addition to the points and authorities required by subparagraph (e) of this Rule, there shall be served and filed with each motion for summary judgment pursuant to Rule 56 a statement of the material facts numbered by paragraphs as to which the moving party contends there is no genuine issue. Each material fact shall be stated in a separate numbered paragraph. Any party opposing such a motion may, within 10 days after service of the motion upon the party, serve and file a concise statement of genuine issues setting forth all material facts numbered by paragraphs as far as possible to correspond to the paragraphs of the movant's statement of facts claimed not to be in issue as to which it is contended there exists a genuine issue necessary to be litigated. The opponent's statement of disputed material facts shall be stated in separate numbered paragraphs that correspond to the extent possible with the numbering of the paragraphs in the movant's statement of facts claimed not to be in issue. In determining any motion for summary judgment, the Court may assume that the facts as claimed by the moving party are admitted to exist without controversy except as and to the extent that such facts are asserted to be actually in good faith controverted in a statement filed in opposition to the motion. Any statement filed pursuant to this section of this Rule shall include therein references to the parts of the record relied on to support such statement and shall be a part of the record.

(l) Order.

Notwithstanding that a proposed order was submitted with a motion as provided in 12-I(e), counsel prevailing at oral argument shall, unless otherwise directed by the Court, submit, within 5 days after the Court shall rule on any motion, a proposed form of order in accordance with the Court's ruling, having previously transmitted a copy thereof to opposing counsel.

(m) Matters taken under advisement.

If a decision has not been rendered within 45 days of the date on which a motion was filed or a nonjury trial concluded, the Clerk shall send notice of that fact to the assigned judge 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 1st such notice, the Clerk thereafter shall so advise that judge and the Chief Judge, and the assigned judge shall provide to the Chief Judge within 30 days a written explanation for why the decision has not been rendered. The Chief Judge may take any action the Chief Judge deems appropriate in order to cause the matter to be decided promptly.

(n) Time limit for motions.

All motions, other than motions specified in Rule 16(d) and posttrial motions, must be filed by the deadline set forth in the scheduling order issued pursuant to Rule 16(b). For good cause shown, the Court may extend the period for filing such motions.

COMMENT

Rule 12-I(a) provides that a moving party must seek consent of other affected parties prior to the filing of a motion, except with respect to Rule 11 motions for imposition of sanctions. In these instances, a good faith effort to resolve the disputed issues is required. Even on dispositive motions a good faith effort to achieve consent can eliminate some issues or parties.

In respect to motions for imposition of Rule 11 sanctions, the good faith requirement may be satisfied by giving notice to the other party, whether in person, by telephone or by letter, of a potential violation before proceeding to prepare and serve a Rule 11 motion.

In respect to motions for orders to compel discovery filed pursuant to Rule 37(a), complying with the good faith efforts to obtain discovery under Rule 37(a) satisfies the requirement to obtain consent pursuant to Rule 12-I(a).

Rule 12-I(b) is amended to show which actions may be presented to the Judge in Chambers and which must be handled by the judge assigned to the case.

The last sentence in Rule 12-I(d) provides that motions which are consented to by the affected parties should indicate that fact. The purpose of this provision is to allow the Court to rule on such motions without the necessity of waiting until the end of the opposition deadline.

Prior language in Rule 12-I(f) and (h) is deleted in its entirety and the letter headings of the paragraphs of this Rule are redesigned to reflect these deletions. Accordingly, paragraph (f) now contains the provisions previously found in paragraph (i). A sentence is added to this paragraph which provides for appropriate notice to the parties when a decision is made to hold a hearing on a motion. It also allows the judge to specify the matters to be addressed at the hearing and the amount of time each side shall be given to present arguments on the motion. The last sentence of paragraph (f) requires that counsel immediately inform the Court by telephone if the motion has been resolved. New language has been placed in paragraph (h) to provide that all motions must be accompanied by a copy of the Scheduling Order, if any has been issued in the case.

Rule 12-I(m) is intended to have equal applicability to posttrial motions and such non-motion matters as findings of fact and conclusions of law following a nonjury trial.

Rule 12-I(n) should be read in conjunction with Rule 26(d), which imposes a time limit for the completion of discovery.

Rule 13. Counterclaim and cross-claim.

(a) Compulsory counterclaims.

A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of 3rd parties of whom the Court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13, or (3) it is not within the jurisdiction of this Court.

(b) Permissive counterclaims.

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim if such counterclaim is within the jurisdiction of the Court.

(c) Counterclaim exceeding opposing claim.

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim against the United States or the District of Columbia.

These Rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the United States or the District of Columbia or an officer or agency of either.

(e) Counterclaim maturing or acquired after pleading.

A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

(f) Omitted counterclaim.

When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of Court set up the counterclaim by amendment.

(g) Cross-claim against co-party.

A pleading may state as a cross-claim any claim by 1 party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of additional parties.

Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate trials; separate judgments.

If the Court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the Court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

COMMENT

Identical to *Federal Rule of Civil Procedure 13* except that (1) reference to the District of Columbia has been added to section (d) which provides that these Rules do not enlarge existing legal limitations with respect to suits against the government or its agents and (2) an exemption has been added to sections (a) and (b) for counterclaims which are without the jurisdiction of the Court.

Rule 14. Third-party practice.

(a) When defendant may bring in 3rd party.

At any time after commencement of the action a defending party, as a 3rd-party plaintiff, may cause a summons and complaint to be served, in the manner and within the time limits prescribed by Rule 4, upon a person not a party to the action who is or may be liable to the 3rd party plaintiff for all or part of the plaintiff's claim against the 3rd-party plaintiff. The 3rd-party plaintiff need not obtain leave to make the service if the 3rd-party plaintiff files the 3rd-party complaint not later than 10 days after the serving of the original answer. Otherwise the 3rd-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and 3rd-party complaint, hereinafter called 3rd-party defendant, shall make any defenses to the 3rd-party plaintiff's claim as provided in Rule 12 and any counterclaims against the 3rd-party plaintiff and cross-claims against other 3rd-party defendants as provided in Rule 13. The 3rd-party defendant may assert against the plaintiff any defenses which the 3rd-party plaintiff has to the plaintiff's claim. The 3rd-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the 3rd-party plaintiff. The plaintiff may assert any claim against the 3rd-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the 3rd-party plaintiff, and the 3rd-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the 3rd-party claim, or for its severance or separate trial. A 3rd-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to the 3rd-party defendant for all or part of the claim made in the action against the 3rd-party defendant. Persons brought into the action pursuant to the preceding sentence shall be designated as 4th-party defendants, 5th-party defendants, and so on, as appropriate, but the practice as to such parties shall be governed by the Rules respecting 3rd-party defendants.

(b) When plaintiff may bring in 3rd party.

When a counterclaim is asserted against a plaintiff, the plaintiff may cause a 3rd party to be brought in under circumstances which under this Rule would entitle a defendant to do so.

(c) [Deleted].

COMMENT

Substantially identical to *Federal Rule of Civil Procedure 14* except for deletion therefrom of section (c) and the last sentence of section (a), both of which deal with matters within the exclusive admiralty and maritime jurisdiction of federal district courts, *28 U.S.C. § 1331(1)*, and addition to section (a) of one sentence making clear the designations to be given to persons brought into the action by the third-party defendant or by later-party defendants. Also added to the Rule is the provision that service of process must be accomplished in accordance with Rule 4, including the time limit imposed by Rule 4(j). For principles governing service of process on third-party defendants within one hundred miles of the place of hearing or trial, see Rule 4(f) and *D.C. Code § 11-943(b)* (1981).

Rule 15. Amended and supplemental pleadings.

(a) Amendments.

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. If a pleading is dismissed or stricken with leave to amend, an amended pleading must be filed within 20 days unless otherwise provided by Order of Court. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders. No motion to amend will be considered unless it recites that the movant sought to obtain the consent of parties affected, that such consent was denied and the identity of the party or parties who declined to consent.

(b) Amendments to conform to the evidence.

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation back of amendments.

An amendment of a pleading relates back to the date of the original pleading when

- (1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or
- (2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or
- (3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint, the party to be brought in by amendment
 - (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and
 - (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

The delivery or mailing of process to the United States Attorney, or United States Attorney's designee, or the Attorney General of the United States, or an agency or officer who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A) and (B) of the above paragraph with respect to the United States or any agency or officer thereof to be brought into the action as a defendant; and the delivery or mailing of process to the Corporation Counsel of the District of Columbia, or an agency or officer who would have been a proper defendant if named, similarly suffices with respect to the District of Columbia or an agency or officer thereof to be brought into the action as a defendant.

(d) Supplemental pleadings.

Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

COMMENT

Identical to *Federal Rule of Civil Procedure 15* except for additions to paragraph (a) which specify a time limit within which an amended pleading must be filed, a requirement that the movant seek to obtain the consent of affected parties and an addition to the last sentence of paragraph (c) that refers to amendments which seek to change party designations so as to bring in the District of Columbia or an official or agency thereof as a defendant. See Rule 54(c).

Rule 16. Pretrial conferences; scheduling; management.

(a) Applicability.

With the exception of cases assigned to the magistrate judge under Rule 40-III or, unless otherwise ordered by the judge to whom the case is assigned, the provisions of this Rule shall apply to all civil actions and to all small claims actions and landlord-tenant actions certified to the Civil Division for jury trial.

(b) Initial scheduling and settlement conference.

In every case assigned to a specific calendar or a specific judge, an initial scheduling and settlement conference shall be held as soon as practicable after the complaint is filed. At that conference the judge will ascertain the status of the case, explore the possibilities for early resolution through settlement or alternative dispute resolution techniques, and determine a reasonable time frame for bringing the case to conclusion. After consulting with the attorneys for the parties and with any unrepresented parties, the judge will place the case on one of several alternative time tracks and will enter a scheduling conference order which will set dates for future events in the case. No attorney need appear in person for the scheduling conference if a praecipe conforming to the format of Civil Action Form 113 (Praecipe Requesting Scheduling Order) signed by all attorneys is filed no later than fourteen days prior to the scheduling conference date consenting to the entry by the Court of a track one or track two scheduling order outside their presence provided that the praecipe certifies that the case is at issue, all parties are represented by counsel, there are no pending motions and the praecipe is accompanied by an addressed envelope or mailing label for each attorney delivered with a copy to the assigned judge's chambers. Neither addressed envelopes nor mailing labels need be provided for documents filed under the Court's electronic filing program. The order will generally include dates for the following events:

(1) Deadline for discovery requests:

No interrogatories, requests for admission, requests for production or inspection, or motions for physical or mental examinations may be served after this date. Only party depositions ad testificandum and nonparty depositions duces tecum or ad testificandum may be noticed after this date.

(2) Exchange lists of fact witnesses:

On or before this date, each party must file and serve a listing, by name and address, of all fact witnesses known to that party, including experts who participated in, and will testify about, pertinent events. No witness may be called at trial, except for rebuttal or impeachment purposes, unless he or she was named on the list filed by one of the parties on or before this date or the calling party can establish that it did not learn of the witness until after this date.

(3) Proponent's Rule 26(b)(4) statement:

By this date a statement comporting with Rule 26(b)(4) must be filed and served by any proponent of an issue (a party asserting a claim or an affirmative defense) who will offer an expert opinion on such an issue.

(4) Opponent's Rule 26(b)(4) statement:

By this date a statement comporting with Rule 26(b)(4) must be filed and served by any opponent who will offer an expert opinion on such an issue.

(5) All discovery closed:

After this date, no deposition or other discovery may be had, nor motion relating to discovery filed, except by leave of court.

(6) Deadline for filing motions:

All motions must be filed by this date, except as provided in paragraphs (b)(5) and (d) of this Rule.

The scheduling conference order may also set dates for the joinder of other parties and amendment of pleadings, the completion of certain discovery, the filing of particular motions and legal memoranda, and any other matters appropriate in the circumstances of the case. The order will also ordinarily specify a date by which dispositive motions will generally be decided, a time period in which mediation or other alternative dispute resolution proceedings will be held, and a time period in which the final pretrial and settlement conference will be held.

All counsel and all parties must take the necessary steps to complete discovery and prepare for trial within the time limits established by the scheduling order. The scheduling order may not be modified except by leave of court upon a

showing of good cause; stipulations between counsel shall not be effective to change any deadlines in the order without court approval, provided, however, that any date in the scheduling order except for the date of court proceedings (e.g., status hearings, ex parte proofs, ADR sessions, pretrials and trials) may be extended once for up to 14 days upon the filing and delivery to the assigned judge of a praecipe showing that all parties who have appeared in the action consent to such extension. Any motion to further modify a date so extended must recite that the date in question was previously extended by consent and must specify the length of that extension.

(c) Meeting three weeks prior to pretrial conference.

Not less than three weeks prior to the pretrial conference, at least one of the attorneys who will conduct the trial for each of the parties, and any unrepresented parties, shall meet. If such persons are unable to agree on other arrangement, the meeting shall be held at 9:00 a.m. at the Courthouse on that day which is three weeks prior to the date of the pretrial conference. The participants in the meeting shall spend sufficient time together to thoroughly discuss the case and shall make a good faith effort to reach agreement on the following matters:

- (1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;
- (2) the necessity or desirability of amendments to the pleadings;
- (3) the possibility of obtaining admissions of facts and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;
- (4) the avoidance of unnecessary proof and of cumulative evidence;
- (5) the identification of witnesses and documents;
- (6) the advisability of referring matters to a commissioner or master;
- (7) settlement of the case or the use of alternative dispute resolution procedures to resolve the dispute;
- (8) the form and substance of the pretrial order;
- (9) the disposition of pending motions;
- (10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and
- (11) such other matters as may aid in the disposition of the action.

At this meeting each party shall provide to all other parties copies of all documentary exhibits which that party may offer at trial; affixed to each exhibit shall be a numbered exhibit sticker and the exhibits shall be identified, by exhibit number, on an index provided with the exhibits. Each party also shall make all non-documentary exhibits available for examination by other parties at or before this meeting.

(d) Two weeks prior to pretrial conference.

Two weeks before the pretrial conference, each party shall file with the Court, serve on all other parties and deliver to the assigned judge in accordance with the provisions of SCR Civil 5(e) any motion in limine, motion to bifurcate, or other motion respecting the conduct of the trial which a party wishes to have the Court consider.

(e) One week prior to pretrial conference.

One week prior to the pretrial conference, the parties shall file with the Court and deliver to the assigned judge in accordance with the provisions of SCR Civil 5(e) a joint pretrial statement which shall include a certification of the date and place of the meeting held pursuant to paragraph (c) of this Rule, shall be in a form prescribed by the Court, and shall also include the following items:

- (1) A list of any questions which the parties desire to propound, or have propounded, on voir dire;
- (2) A list, by number, of those instructions contained in Standardized Civil Jury Instructions for the District of Columbia which the parties wish the Court to give;
- (3) The complete text of any jury instruction not found in Standardized Civil Jury Instructions for the District of Columbia which the parties wish to have given;

(4) Any verdict form, other than a general verdict, which the parties wish the Court to utilize, including any special interrogatories to be answered by the jury; and

(5) Any objections and suggestions for alternative language that a party may have to the voir dire questions, jury instructions, verdict form, or SCR Civ. 16(d) pretrial motions submitted by any other party. Objections, if any, by a party to the exhibits submitted by any other party also must be made at this time as part of the joint pretrial statement. A party raising an objection to an exhibit of another party shall attach to the statement of objection a copy of the exhibit to which the objection is made. The Court will not consider any objection or alternative language which is filed beyond the time frames prescribed by this Rule unless the party making the objection or suggestion can establish that the objection or suggestion could not, for reasons beyond that party's control, be timely filed.

Except for plaintiff's rebuttal case or for impeachment purposes, no party may offer at trial the testimony of any witness not listed in the pretrial statement of the parties, nor any exhibit not served as required by this Rule, without leave of court.

(f) Pretrial and settlement conference.

The lead counsel who will conduct the trial for each of the represented parties, and, unless excused by the judge for good cause shown, all parties shall attend the pretrial and settlement conference. Such counsel and unrepresented parties must bring to the conference their trial exhibits, copies of which were served on other parties pursuant to paragraph (d) of this Rule. If any party proposes to offer more than 15 exhibits at trial, that party's exhibits shall be arranged as follows:

(i) In nonjury trials, the original exhibits, with numbered exhibit stickers affixed, shall be placed in a looseleaf, three-ring notebook with tabbed divider pages. At the front of the notebook shall be an Exhibit Summary Form (copies of which are available in the Clerk's Office) describing each exhibit by number.

(ii) In jury trials, the notebook shall contain copies of all the exhibits; the original exhibits, with stickers affixed, shall be placed in a folder, in numerical order, along with the original Exhibit Summary Form.

The conference will generally be held by the judge who will preside at trial and will not be recorded unless the judge orders that the conference be recorded in chambers or conducted and recorded in open court. If settlement of the case cannot be achieved within a reasonable time, the judge will discuss with those attending the conference the pretrial filings of the parties and such of the matters set forth in paragraph (c) hereof as may be pertinent and will set a trial date for the case.

(g) Pretrial order.

After the pretrial conference, an order shall be entered reciting the action taken. Insofar as possible, the Court will resolve all pending disputes in the pretrial order. With respect to some matters, it may be necessary to reserve ruling until the time of trial or to require additional briefing by the parties prior to trial. Exhibits, the authenticity of which is not genuinely in dispute, will be deemed authentic and the offering party will not be required to authenticate these exhibits at trial. The pretrial order may set limits with respect to the time for voir dire, opening statement, examination of witnesses, and closing argument and may also limit the number of lay and expert witnesses who can be called by each party. The pretrial order shall control the further course of the action unless modified by a subsequent order. The pretrial order may be modified at the discretion of the Court for good cause shown and shall be modified if necessary to prevent manifest injustice.

(h) Establishment of trial dates.

On any date for which the case has been set for trial, the parties and their counsel must be prepared to commence the trial on that date or on any of the two succeeding court days in the event that their case must trail completion of the preceding [preceding] trial on the judge's calendar.

(i) Other scheduling or status conferences.

In addition to the initial scheduling and settlement conference and the pretrial and settlement conference, the Court may in its discretion order the attorneys for the parties and any unrepresented parties to appear before it for other conferences for such purposes as

(1) Expediting the disposition of the action;

(2) Establishing continuing control so that the case will not be protracted because of lack of management;

- (3) Discouraging wasteful pretrial activities;
 - (4) Improving the quality of the trial through more thorough preparation;
 - (5) Facilitating the settlement of the case; and
 - (6) Addressing any other matters appropriate in the circumstances of the case.
- (j) Authority of counsel; attendance of parties and principals.

At least one of the attorneys for each party participating in any conference before trial, or in the meeting described in paragraph (c) hereof, must have authority to enter into stipulations, to make admissions regarding all matters that the participants may reasonably anticipate may be discussed, and to participate fully in all settlement discussions. Unless excused by the judge for good cause shown, all parties and any person not a party whose authority may be needed to settle the case must attend any pretrial conference conducted pursuant to paragraph (f) of this Rule and any alternative dispute resolution session ordered by the Court.

(k) Continuances.

No conference provided for in this Rule shall be continued except by order of the judge upon a showing of specific and sufficient reasons why the applicant cannot attend the conference as scheduled or will not be able by the scheduled date to report to the Court the information required by this Rule. Except for applications based on circumstances arising thereafter, application for such continuance must be made to the judge not less than 30 days before the conference sought to be continued. Until an order granting a continuance is docketed, the case shall remain set for conference on the original date.

(l) Sanctions.

If a party or a party's attorney fails to obey a scheduling or pretrial order, or fails to appear at a scheduling or pretrial conference, or is substantially unprepared to participate in the conference, or fails to participate in good faith or has otherwise not complied with the requirements of this Rule, the Court, upon motion or its own initiative, may make such orders with regard thereto as are just, including any of the orders provided in Rule 37(b)(2)(B), (C), and (D). In lieu of or in addition to any other sanction, the court shall require the party or the attorney representing the party, or both, to pay the reasonable expenses, including attorneys' fees, incurred because of any noncompliance with this Rule unless the Court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

COMMENT

Federal Rule of Civil Procedure 16 has been substantially revised to reflect several new procedures instituted by the Superior Court to reduce delay in civil litigation.

Thus, Section (b) requires that all unrepresented parties and counsel must attend a conference early in the case at which the judge will explore the possibilities of settlement or alternative dispute resolution and will then establish a firm schedule for completion of the litigation. The scheduling order thus set may be modified with court approval and for good cause shown or the parties may, under certain circumstances, agree to a modification in the order without first obtaining approval from the Court.

Section (c) provides for a meeting three weeks before the pretrial conference at which counsel and any unrepresented parties shall endeavor to settle the case and to simplify and shorten the trial. The meeting may be held at any location agreed to by the participants; failing agreement, it will be held at the Courthouse. This Section also provides for the exchange of exhibits.

Section (d) provides that pretrial motions will be made two weeks before the pretrial conference, and Section (e) requires that pretrial statements, suggested voir dire questions, suggested jury instructions and a suggested verdict form be submitted jointly along with responses to these suggestions and to the exhibits one week before pretrial. Note that Section (a) permits the court to exempt appropriate cases, such as pro se prisoner cases, from any or all of the provisions contained in this rule.

The last paragraph of Section (e) provides that the only witnesses allowed to testify at a trial whose names were not listed in the pretrial statement of the parties will be those called as rebuttal or impeachment witnesses. See *R. & G. Orthopedic Appliances and Prosthetics, Inc. v. Curtin*, 596 A.2d 530 (D.C. 1991), and *Cooper v. Safeway Stores, Inc.*, 629 A.2d 31, (D.C. 1993).

Section (f) governs the conduct of the pretrial and settlement conference.

This Rule does not preclude the judge to whom a case is assigned from modifying particular requirements of Sections (d), (e) and (f), either by a standing order made available at the Initial Scheduling and Settlement Conference or otherwise as the judge finds appropriate and efficient in any particular case.

Section (g) provides for the entry of a pretrial order which shall control the subsequent course of the action.

Section (h) provides that parties and counsel must be prepared to commence trial on any trial date set by the Court or on any of the two succeeding court days if the case must "trail" completion of an earlier trial. If a case is thus trailed, the Court will generally permit greater flexibility in the order in which witnesses may be called in each party's case in order to accommodate any rescheduling of witnesses which may be necessary.

Section (i), like *Federal Rule of Civil Procedure 16(b)*, provides that the Court may schedule other conferences beyond those called for by Sections (b) and (f). It is expected that such additional conferences will generally be reserved for more complex cases.

Section (j) requires that, at any conference prior to trial, counsel must have authority to participate fully in discussion of settlement and other matters. Parties must attend any pretrial and settlement conference and any alternative dispute resolution session unless excused by the Court, and any person who must authorize settlement shall either attend such conference or session or be available by telephone.

Section (k) establishes a strict continuance policy and provides that, except for circumstances arising thereafter, any application for continuance of a conference must be made at least 30 days before the scheduled conference and must set forth specific and sufficient reasons why the applicant cannot attend the conference or cannot provide the information required by the Rule by the date of the conference. If the judge grants the application, the applicant shall secure a new date from the Clerk's Office but the case will remain set on the original conference date until the applicant advises the Clerk that the new date is acceptable to all parties and the Clerk enters the new date on the docket.

Section (l), providing for sanctions, is identical to *Federal Rule of Civil Procedure 16(f)*.

Rule 16-I. [Abrogated].

Rule 16-II. Failure to appear for conference.

If counsel or a party proceeding pro se fails to appear at a pretrial, settlement, or status conference, the Court may enter a default, a dismissal of the case with or without prejudice, or take such other action, including the imposition of penalties and sanctions, as may be deemed appropriate.

Rule 17. Parties plaintiff and defendant; capacity.

(a) Real party in interest.

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when an applicable statute so provides, an action for the use or benefit of another shall be brought in the name of the United States or the District of Columbia. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity to sue or be sued.

The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the District of Columbia, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of the District of Columbia, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued is governed by Title 28, *U.S.C.* §§ 754 and 959(a).

(c) Infants or incompetent persons.

Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

COMMENT

Identical to *Federal Rule of Civil Procedure 17* except for 4 changes: (1) Revision of the 2nd sentence in section (a) thereof to comprehend statutes authorizing suits by the District of Columbia for the use or benefit of another; (2) substitution of "District of Columbia" for "state in which the district court is held" in section (b); (3) substitution of "District of Columbia" for "such state" in the 1st exception clause of section (b); and (4) deletion of the limiting phrase "in a court of the United States" from the 2nd exception clause in section (b). This last modification was effected so as to insure that the suing or suable capacity of federally appointed receivers, who may sue and be sued in state courts, shall be determined as nearly as possible in conformity with applicable federal law under 28 *U.S.C.* §§ 754 and 959(a).

Rule 18. Joinder of claims and remedies.

(a) Joinder of claims.

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or 3rd-party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party.

(b) Joinder of remedies; fraudulent conveyances.

Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the 2 claims may be joined in a single action; but the Court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

COMMENT

Identical to *Federal Rule of Civil Procedure 18*.

Rule 19. Joinder of persons needed for just adjudication.

(a) Persons to be joined if feasible.

A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the Court shall order that the person be made a party. If the person should join as a plaintiff but refuse to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. Service of process under this Rule shall be accomplished in the manner and within the time limits prescribed by Rule 4.

(b) Determination by Court whenever joinder not feasible.

If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court include: First, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; 2nd, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; 3rd, whether a judgment rendered in the person's absence will be adequate; 4th, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading reasons for nonjoinder.

A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined and the reasons why they are not joined.

(d) Exception of class actions.

This Rule is subject to the provisions of Rule 23.

COMMENT

Identical to *Federal Rule of Civil Procedure 19* except for the deletion of the inapplicable last sentence in section (a) thereof relating to venue and for the addition of the provision that service of process under the Rule must be accomplished in accordance with Rule 4, including the time limit imposed by Rule 4(j). For discussion of service of process on Rule 19 parties, see Rule 4(f) and *D.C. Code § 11-943(b)* (1981).

Rule 20. Permissive joinder of parties.

(a) Permissive joinder.

All persons may join in 1 action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons (and any property subject to process in rem) may be joined in 1 action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for 1 or more of the plaintiffs according to their respective rights to relief, and against 1 or more defendants according to their respective liabilities.

(b) Separate trials.

The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

COMMENT

Identical to *Federal Rule of Civil Procedure 20* except for deletion of reference to admiralty process in the 2nd sentence of section (a) thereof.

Rule 21. Misjoinder and nonjoinder of parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

COMMENT

Identical to *Federal Rule of Civil Procedure 21*.

Rule 22. Interpleader.

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. Service of process under this Rule shall be accomplished in the manner and within the time limits prescribed by Rule 4. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted in SCR Civil 20.

(2) [Deleted].

COMMENT

Identical to *Federal Rule of Civil Procedure 22* except for deletion of section (2) thereof which deals with sections of Title 28, United States Code relating only to interpleader actions in federal district courts and for the addition of the provision that service of process under the Rule must be accomplished in accordance with Rule 4, including the time limit imposed by Rule 4(j).

Rule 23. Class actions.

(a) Prerequisites to a class action.

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class actions maintainable.

An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of

(A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The Court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) The interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by order whether class action to be maintained; notice; costs; judgment; actions conducted partially as class actions.

(1) After the commencement of an action brought as a class action, the Court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional and may be altered [altered] or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the Court shall direct to the members of the class the best notice practicable under this circumstances including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the Court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through the member's counsel. The cost of notice shall be paid by the plaintiff unless the Court, upon conducting a hearing pursuant to Rule 23-I(c)(3), concludes (1) that the plaintiff class will more likely than not prevail on the merits and (2) that it is necessary to require the defendant to pay some or all of that cost in order to prevent manifest injustice.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the Court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the Court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this Rule shall then be construed and applied accordingly.

(d) Orders in conduct of actions.

In the conduct of actions to which this Rule applies, the Court may make appropriate orders: (1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the Court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or compromise.

A class action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the Court directs.

(f) Appeals.

The Court of Appeals may in its discretion permit an appeal from an order of the Superior Court granting or denying class action certification under this Rule if application is made to it within ten days after entry of the order. An appeal does not stay proceedings in the Superior Court unless the trial judge or the Court of Appeals so orders.

Rule 23-I. Class actions; procedure for determining whether action may be maintained as a class action; procedure for determining notice requirements.

(a) Class action allegations.

In any case sought to be maintained as a class action, the complaint shall contain under a separate heading styled "Class Action Allegations":

(1) A reference to the portion or portions of Rule 23 under which it is claimed that the suit is properly maintainable as a class action.

(2) Appropriate allegations justifying such claim, including, but not necessarily limited to:

(i) The size (or approximate size) and definition of the alleged class;

(ii) The basis upon which the plaintiff or plaintiffs claim to be adequate representatives of the class, or if the class is comprised of defendants, that those named as parties are adequate representatives of the class;

(iii) The alleged questions of law and fact claimed to be common to the class; and

(iv) In actions claimed to be maintainable as class actions under Rule 23 (b) (3), allegations supporting the findings required by that subdivision.

(b) Certification.

(1) Motion.

Within 90 days after the filing of a complaint in a case sought to be maintained as a class action, the plaintiff shall move for a certification under Rule 23(c)(1) that the case be maintained as a class action. Such motion shall be supported by a statement of facts which demonstrates that the action meets the requirements for a class action prescribed in Rule 23(a) and (b). With the motion, the plaintiff may file affidavits or other evidence of any or all of the facts stated and may submit that all or certain specified facts are not in genuine dispute.

(2) Opposition.

If any party wishes to oppose the request for class action certification, the party shall file within 10 days an opposition to the motion stating the reasons why the action is not properly maintainable as a class action. Such opposition may be supported by a statement of facts disputing any facts alleged in the plaintiff's statement or setting forth other facts relevant to certification of the action as a class action, and the opponent may submit affidavits or other evidence of the facts contained in the opponent's statement. In determining any motion for certification, the Court may assume that the facts as claimed by the plaintiff are admitted to exist without controversy except as and to the extent that such facts are asserted to be actually in good faith controverted in a statement filed in opposition to the motion.

(3) Action by the Court.

Whether or not the motion to certify is opposed, the Court shall promptly act upon the motion. If any party has requested an opportunity to be heard on the motion or upon its own initiative, the Court may schedule a hearing thereon. The Court may allow the action to be so maintained, may deny the motion, or may order that a ruling be postponed pending discovery or such other preliminary procedures as appear appropriate and necessary in the circumstances. Nothing in this section shall be construed to preclude a motion by a defendant at any time to strike the class action allegations or to dismiss the complaint.

(c) Provisions as to notice.

(1) Plaintiff's statement.

In an action maintained under Rule 23(b)(3), the plaintiff shall include in the plaintiff's motion for certification a statement proposing (1) how, when, by whom, and to whom the notice required by Rule 23(c)(2) shall be given, (2) how and by whom payment therefor is to be made, and (3) by whom the response to the notice is to be received. In lieu of such a statement the plaintiff may state reasons why a determination of these matters cannot then be made and offer a proposal as to when such a determination should be made. The plaintiff may file with the motion affidavits or other evidence of any or all of the facts stated or may submit that all or certain specified facts are not in genuine dispute.

(2) Opposition.

If any party wishes to oppose the plaintiff's proposal for notice or the reasons stated for postponing a determination of the notice requirement, the party shall file an opposition containing a contrary proposal for compliance with the notice requirements of Rule 23(c)(2). Such opposition shall be combined with any opposition to the certification motion and may be supported by a statement of facts disputing any facts alleged in plaintiff's statement or setting forth other facts which are inconsistent with plaintiff's notice proposal or which support the opposing notice proposal. Such party may submit affidavits or other evidence of any and all facts contained in the party's statement.

(3) Action by the Court.

Upon consideration of the statements and accompanying material, if any, the Court may set the matter of notice for hearing at which time the Court may require the claimant upon adequate notice to make out a prima facie case on the merits of the claim. The Court may, either with or without a hearing, postpone the notice determination until after the parties have had an opportunity for discovery, which the Court may limit to those matters relevant to the notice determination, or until such other time as may be just. As soon as practicable, the Court shall determine how, when, by whom, and to whom the notice shall be given, how and by whom payment therefor is to be made, and by whom the response to the notice is to be received.

(4) Other notices.

The Court may follow these procedures for any notice under Rule 23(d)(2).

(d) Applicability to counterclaims and cross-claims.

The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or crossclaim alleged to be brought for or against a class.

COMMENT

Rule 23 is identical to *Fed. Rule of Civil Procedure 23* except for certain changes in subsections (c)(1) and (c)(2) which specifically authorize the judge to shift the costs of notice to the defendant, in whole or in part, under limited circumstances. In order to make this determination relating to costs of notice, the judge is further authorized to conduct a hearing, pursuant to Rule 23-I(c)(3), at which all relevant factors, including the likelihood of success on the merits, can be considered. The amendment, while essentially retaining the previous Superior Court procedure, was made necessary by *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) which held that under the language of *Fed. R. Civ. P. 23*, the costs of notice could not be shifted to the defendant, except perhaps in cases involving a fiduciary, and, the Court could not make a preliminary determination of the merits of a case. The specific changes are the deletion of the phrase, "As soon as practicable..." in the 1st sentence of subsection (c)(1) and the addition of the last sentence in subsection (c)(2).

Rule 23-I. Section (a) incorporates the substance of U.S. District Court for D.C. Rule 23.1 which requires specific allegations, relating to the class character of the suit, to be included in the complaint. Section (b) has been amended to incorporate certain other features in U.S. District Court Rule 23.1. Section (b) provides a clear and simple procedure for promptly securing a Court ruling on the class character of the suit. The amendment requires a motion for certification as a class to be made within 90 days. Ten days is provided for an opposition to be filed. The procedure is similar to the local requirements for handling a motion for summary judgment set forth in Rule 12-I. However, the certification motion necessarily comes much earlier in the action than does a motion for summary judgment. Accordingly, Rule 23(c)(1) permits the Court to "alter or amend" its order later if there should develop matters not apparent to the Court at the time the order was entered. Note that the motion for certification and any opposition thereto should also contain any material with respect to notice procedure which may be required by Rule 23-I(c). Section (c) included matters which were previously contained in Rule 23-II, which is now vacant. This section provides a procedure for the Court to determine the manner in which notice to the class members is to be provided. The procedure is substantially identical to that of former Rule 23-II. As noted above, the use of "mini-hearings" as a tool for determining who should pay for the notice, which was found to be contrary to the language of Federal Rule 23 in *Eisen*, is specifically authorized under the amendment to this Court's Rule 23. Section (d) is taken from U.S. District Court Rule 23-1. Accordingly, the word "claimant" is changed to "plaintiff" throughout the Rule.

Rule 23.1. Derivative actions by shareholders.

In a derivative action brought by 1 or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege, (1) that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law, and (2) that the action is not a collusive one to confer jurisdiction on the Court which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the Court directs.

COMMENT

Identical to *Federal Rule of Civil Procedure 23.1* except that reference to "a court of the United States" has been deleted from the clause describing the allegation of non-collusiveness.

Rule 23.2. Actions relating to unincorporated associations.

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the Court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

COMMENT

Identical to *Federal Rule of Civil Procedure 23.2*.

Rule 24. Intervention.

(a) Intervention of right.

Upon timely application anyone shall be permitted to intervene in an action: (1) When applicable law confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive intervention.

Upon timely application anyone may be permitted to intervene in an action: (1) When applicable law confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal, District of Columbia, or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure.

A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when applicable law gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the Court shall notify the Attorney General of the United States in the manner provided in Title 28, *U.S.C.* § 2403. When the constitutionality, or the validity under the District of Columbia Self-Government and Government Reorganization Act of 1973, of an order, regulation, or enactment of any type affecting the public interest of the District of Columbia is drawn into question in any action in which the District of Columbia or an officer, agency, or employee thereof is not a party, the Court shall notify the Corporation Counsel of the District of Columbia in a manner similar to that provided for notice upon the Attorney General of the United States in Title 28, *U.S.C.* § 2403. In an action of the type described in the two preceding sentences, any pleading alleging the unconstitutionality or invalidity under the Self-Government Act of such an act, order, regulation, or enactment shall bear immediately below the caption the inscription "RULE 24 NOTIFICATION REQUIRED".

When the constitutionality of any statute of a State affecting the public interest is drawn in question in any action in which that State or any agency, officer, or employee thereof is not a party, the Court shall notify the attorney general of the State as provided in Title 28, *U.S.C.* § 2403.

A party challenging the constitutionality or validity under the Self-Government Act of legislation should call the attention of the Court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

COMMENT

Rule 24 identical to *Fed. Rule of Civil Procedure 24* except for (1) addition of "District of Columbia" to the governmental jurisdictions specified in the 2nd sentence of section (b); (2) substitution of "applicable law" for "statute of the United States" in sections (a), (b), and (c) so as to comprehend reference to appropriate statutory or case law relating to intervention rights in the District of Columbia; and (3) addition to section (c) of a notification provision for acts, orders regulations, or enactments exclusively applicable to the District of Columbia so that this Court will follow as nearly as possible the notification procedure prescribed for courts of the United States in 23 *U.S.C.* § 2403. In order to assist the Court in fulfilling its notification responsibilities under this section, the Rule requires an alerting inscription on every pleading the filing of which makes such notification necessary.

The District of Columbia Self-Government and Governmental Reorganization Act of 1973, Public Law 93-198, is reported in its entirety in Volume 1 of the 1981 Michie Edition of the D.C. Code (1991 Replacement Volume, pp. 173-255). Individual sections of the Act are codified throughout the D.C. Code, and a listing of those sections and references to their counterparts in the D.C. Code can be found in the Disposition Table in Volume 11 of the 1981 (1990 Replacement Volume, pp. 216-218).

Rule 24-I. Intervention by the United States or the District of Columbia.

In any case in which the Court has sent a notification to the Attorney General of the United States or the Corporation Counsel of the District of Columbia pursuant to Rule 24(c), the Court shall permit the United States or the District of Columbia, respectively, to intervene for the presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States, or the District of Columbia, as appropriate, shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

COMMENT

Rule 24 identical to *Fed. Rule of Civil Procedure 24* except for (1) addition of "District of Columbia" to the governmental jurisdictions specified in the 2nd sentence of section (b); (2) substitution of "applicable law" for "statute of the United States" in sections (a), (b), and (c) so as to comprehend reference to appropriate statutory or case law relating to intervention rights in the District of Columbia; and (3) addition to section (c) of a notification provision for acts, orders, regulations, or enactments exclusively applicable to the District of Columbia so that this Court will follow as nearly as possible the notification procedure prescribed for courts of the United States in *23 U.S.C. § 2403*. In order to assist the Court in fulfilling its notification responsibilities under this section, the Rule requires an alerting inscription on every pleading the filing of which makes such notification necessary.

Rule 25. Substitution of parties.

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of 1 or more of the plaintiffs or of 1 or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency.

If a party becomes incompetent, the Court upon motion served as provided in subdivision (a) of this Rule may allow the action to be continued by or against the party's representative.

(c) Transfer of interest.

In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this Rule.

(d) Public officers; death or separation from office.

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who sues or is sued in an official capacity, may be described as a party by the officer's official title rather than by name; but the Court may require the officer's name to be added.

COMMENT

Identical to *Federal Rule of Civil Procedure 25*, except for deletion of inapplicable reference to notice of hearing in subsection (a)(1). In connection with this Rule, see D.C. Code (1967 Edition, Supplement IV) § 12-102.

Rule 26. General provisions governing discovery.

(a) Discovery methods.

Parties may obtain discovery by 1 or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery scope and limits.

Unless otherwise limited by order of the Court in accordance with these Rules, the scope of discovery is as follows:

(1) In general.

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the Court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

By order, the Court may alter the limits in these rules on the number of depositions and interrogatories or length of depositions under Rule 30. By order the Court may also limit the number of requests under Rule 36.

The frequency or extent of use of the discovery methods set forth in paragraph (a) shall be limited by the Court if it determines that: (i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources and the importance of the issues at stake in the litigation. The Court may act upon its own initiative or pursuant to a motion under paragraph (c).

(2) Insurance agreements.

A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial preparation: Materials.

Subject to the provisions of subdivision (b)(4) of this Rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this Rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a Court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparations: Experts.

Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this Rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the Court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this Rule, concerning fees and expenses as the Court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the Court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this Rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A) (ii) of this Rule the Court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this Rule the Court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Protective orders.

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, this Court or alternatively, on matters relating to a deposition, the Court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including 1 or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Court; (6) that a deposition after being sealed be opened only by order of the Court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and timing of discovery.

Unless the Court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery. Time limitations for completion of discovery will be set by Court order. The Court may order an enlargement of the time limitations for the completion of discovery contained herein, pursuant to paragraph (e) of this Rule.

(e) Motion to enlarge time for discovery.

Upon reasonable notice to all other parties, a party may apply for an order enlarging time for discovery where:

(1) Good cause is shown to exist for granting additional time for discovery; and

(2) The moving party accompanies the motion with a detailed discovery plan which lists the specific methods of discovery to be conducted, the persons and materials to be examined and the date within which all further discovery shall be completed.

(f) Supplementation of responses.

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matter, and (B) the identity of each person

expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(g) Discovery conference.

At any time after commencement of an action the Court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The Court may do so upon motion by the attorney for any party if the motion includes:

- (1) A statement of the issues as they then appear;
- (2) A proposed plan and schedule of discovery;
- (3) Any limitations proposed to be placed on discovery;
- (4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

The Court may enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

The Court may combine the discovery conference with the scheduling conference or the pretrial conference authorized by Rule 16.

(h) Signing of discovery requests, responses, and objections.

Every request for discovery or response or objection thereto shall be signed by at least 1 attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response or objection and state his or her address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) Consistent with these Rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of this Rule, the Court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(i) Meeting to resolve discovery disputes.

Before filing any motion relating to discovery except a motion pursuant to Rule 37(b) for sanctions for failure to comply with a court order, the affected parties or counsel must meet for a reasonable period of time in an effort to resolve the disputed matter. Any motion relating to discovery, except a motion pursuant to Rule 37(b), must contain, im-

mediately below the signature of the attorney or party signing the motion, a certification that despite a good faith effort to secure it, the relief sought in the motion has not been provided. The certification shall set forth specific facts describing the good faith efforts, including a statement of the date, time, and place of the meeting required by this Rule. The requirement of a meeting is waived if (1) the motion concerns a failure to serve any response whatever to a Rule 33, 34 or 36 discovery request or a failure to appear for a deposition or a Rule 35 examination and the motion is accompanied by a copy of a letter, sent at least 10 days before the motion was filed, asking that the opposing counsel or party respond to the discovery request or that the deponent or examinee appear for a rescheduled deposition or examination; or (2) the movant certifies that, despite having sent to the opposing counsel or party, at least 10 days before the motion was filed, a letter (a copy of which shall be attached to the motion) proposing a time and place for such a meeting, and despite having made two telephone calls to the office of the opposing counsel or party (the date and time of which calls shall be specified in the motion), the movant has been unable to convene a meeting to resolve the disputed discovery matter.

COMMENT

SCR Civil 26 modifies *Federal Rule of Civil Procedure 26* in several respects.

Paragraph (c) has been modified to reflect applicability only to cases pending in this Court.

Under paragraph (d) the time limitations for completion of discovery will be set by Court order.

Paragraph (e) has been added to permit a party to move to enlarge the time period for the completion of discovery. The Court will not be receptive to such motions unless they are made at the earliest practicable time.

Because of the addition of paragraph (e) former paragraph (e) has been redesignated as paragraph (f).

Paragraph (g) has been changed to give the Court discretion as to whether a discovery conference should be held, when it should be held, and if an order should be issued prescribing how discovery should proceed in a particular case.

Added to SCR Civ. 26 is paragraph (i) which makes it mandatory that the parties or counsel meet to resolve issues related to discovery before a motion concerning such matters (e.g., motion for protective order, motion for medical examination, motion to regulate discovery, motion to set deposition fee of expert witness, etc.) is filed. Exceptions are made in certain specified circumstances. Note that under SCR Civ. 37(a) a meeting is required before a motion to compel discovery is filed and that the same exceptions listed under paragraph (i) also appear under that Rule.

Rule 27. Depositions before action or pending appeal.

(a) Before action.

(1) Petition.

A person who desires to perpetuate testimony regarding any matter that may be cognizable in this Court may file a verified petition in this Court or in the United States District Court in the district of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (1) That the petitioner expects to be a party to an action cognizable in this Court but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and the petitioner's interest therein, (3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, (4) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and service.

At least 20 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the district or state in the manner provided in Rule 4. If that service cannot be made with due diligence on an expected adverse party, the Court may order service by publication or otherwise. The Court must appoint an attorney to represent persons not served in the manner provided by Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. Rule 17(c) applies if any expected adverse party is a minor or is incompetent.

(3) Order and examination.

If the Court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these Rules; and the Court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these Rules to depositions for perpetuating testimony, each reference therein to this Court shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of deposition.

If a deposition to perpetuate testimony is taken under these Rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in this Court, in accordance with the provisions of Rule 32(a).

(b) Pending appeal.

If an appeal has been taken from a judgment of the Court or before the taking of an appeal if the time therefor has not expired, the Court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the Court. In such case the party who desires to perpetuate the testimony may make a motion for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the Court. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which the party expects to elicit from each; (2) the reasons for perpetuating their testimony. If the Court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these Rules for depositions taken in pending actions.

(c) Perpetuation by action.

This Rule does not limit the power of a court to entertain an action to perpetuate testimony.

COMMENT

Identical to *Federal Rule of Civil Procedure 27* except for changes in court designations in sections (a)(1), (a)(3), (a)(4), and (b) to reflect applicability to this Court.

Rule 28. Persons before whom depositions may be taken.

(a) Within the United States.

Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the Court. A person so appointed has power to administer oaths and take testimony. The term officer as used in Rules 30, 31 and 32 includes a person appointed by the Court or designated by the parties under Rule 29.

(b) In foreign countries.

Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the Court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for interest.

No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Rule 28-I. Depositions outside the forum jurisdiction.

(a) Actions in this Court.

Any party to a civil action pending in this Court may file with the Court a motion for appointment of an examiner to take the testimony of a witness who resides outside the District of Columbia. The motion shall state the name and address of each witness sought to be deposed and the reasons why the testimony of such witness is required in the action. The motion shall be served on all other parties to the action who may within 5 days file opposition to the motion as prescribed in Rule 12. If the motion is granted, the Court shall appoint an examiner to take the testimony of such witnesses as are designated in the order of appointment and shall issue a commission to the examiner who shall take the testimony in the manner prescribed in these Rules.

(b) Actions in other jurisdictions.

When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in court of a state, territory, commonwealth, possession, or place under the jurisdiction of the United States, the party seeking that testimony may file with this Court a certified copy of the commission or notice. If the commission or notice is in order, the Clerk shall, upon approval by the judge in chambers of the commission or notice and the proposed subpoena, issue a subpoena compelling the designated witness to appear for deposition at a specified time and place. Testimony taken under this section shall be taken in the manner prescribed in these Rules and the Court may entertain any motion, including motions for quashing service of a subpoena and for issuance of protective orders, in the same manner as if the action were pending in this Court.

COMMENT

Rule 28 is identical to *Federal Rule of Civil Procedure 28* except for deletion from paragraph (a) of the superfluous Court designation "in which the action is pending". Paragraphs (a) and (b) of Rule 28-I implement the authority conferred on the Superior Court by § 14-103 and § 14-104, respectively.

Rule 29. Stipulations regarding discovery procedure.

Unless otherwise directed by the Court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify other procedures governing or limitations placed upon discovery, except that the parties may stipulate to extend any deadline set by the Court only to the extent permitted by Rule 16(b).

COMMENT

Identical to *Federal Rule of Civil Procedure 29* except for the reference to Superior Court Rule 16(b) with respect to deadlines.

Rule 30. Depositions upon oral examination.

(a) When depositions may be taken; when leave required.

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(1), if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(A) a proposed deposition would result in more than ten depositions being taken under this Rule or Rule 31 by the plaintiffs, or by the defendants, or by third party defendants;

(B) the person to be examined already has been deposed in the case, or

(C) the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or 70 days in any case involving the District of Columbia or its officer or agency, or the United States or its officer or agency, except that leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (ii) if the notice states that the person to be examined is about to go out of the District of Columbia and more than 25 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless the person's deposition is taken before the expiration of the 30-day period, and sets forth facts to support the statement.

(b) Notice of examination; general requirements; method of recording; production of documents and things; deposition of organization; deposition by telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included, in the notice. If the deposition is to be recorded by videotape or audiotape, the notice shall specify the method of recording. If a videotape deposition is to be taken for use at trial pursuant to Rule 32(a)(4), the notice shall so specify.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the Court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the Court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate 1 or more officers, directors, or manag-

ing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these Rules.

(7) The parties may stipulate in writing or the Court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this Rule and Civil Rules 28(a), and 37(b)(1), a deposition taken by such means is taken in the District and at the place where the deponent is to answer questions.

(c) Examination and cross-examination; record of examination; oath; objections.

Examinations and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43(b). The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this Rule.

All objections made at time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and duration; motion to terminate or limit examination.

(1) Any objection during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the Court, or to present a motion under Rule 30(d)(4).

(2) Unless otherwise authorized by the Court or stipulated by the parties, a deposition is limited to one day of seven hours. The Court must allow additional time consistent with Rule 26(b)(1) if needed for a fair examination of the deponent or if the deponent or another person or other circumstance impedes or delays the examination.

(3) If the Court finds that any impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(4) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, this Court or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it may be resumed thereafter only upon the order of this Court. Upon demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Review by witness; changes; signing.

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and delivery by officer; exhibits; copies.

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the Court, the officer must securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and must comply with the requirements of

Rule 5(d) for the processing of such materials. If the deposition is recorded by other than stenographic means, the cassette or tape must be clearly marked with the name of the deponent, the date of the deposition, and the title of the action.

Documents and things produced for inspection during the examination of the witness must, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the Court, pending final disposition of the case.

(2) Unless otherwise ordered by the Court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to attend or to serve subpoena; expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(h) Filing of transcription of deposition taken by nonstenographic means.

If a party intends to use in the proceeding a deposition recorded by other than stenographic means, the person shall have prepared a typewritten, verbatim transcript of testimony. The original transcription shall not be filed with the Court unless otherwise ordered. If so ordered, a copy shall be served upon all parties, at least 30 days before such proceeding.

COMMENT

Largely identical to *Federal Rule of Civil Procedure 30* except that there is no cross-reference in subparagraph (a)(2)(C) to Rule 26, since the changes in that Rule have not been adopted herein, and that subparagraph provides additional time to the District of Columbia and the United States after service of summons and complaint before the taking of testimony is allowed without leave of Court because the District of Columbia and the United States have 60 days to answer a complaint under Rule 12(a). Subparagraph (a)(2)(C) has also been modified to reflect the 25 mile subpoena range of the Court. Subparagraph (b)(1) has been amended to provide notice if the deposition is to be recorded by audio or videotape. In addition, paragraph (c) refers to Rule 43(b) rather than to the Federal Rules of Evidence. Paragraphs (b), (d), and (f) are revised to show reference only to cases pending in this Court. Subparagraph (f)(1) comports with Rule 5(d), which provides, among other things, that depositions shall not be filed with the Court unless their filing is pursuant to Court order or they are appended to a motion or opposition to which they are relevant. Paragraph (h) requires the preparation, filing and serving of a transcription of a deposition recorded by other than stenographic means if a party intends to use the deposition in the proceeding.

Rule 31. Depositions upon written questions.

(a) Serving questions; notice.

(1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

(2) A party must obtain leave of Court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(1), if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(A) a proposed deposition would result in more than ten depositions being taken under this Rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined has already been deposed in the case; or

(C) the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or 70 days in any case involving the District of Columbia or its officer or agency, or the United States or its officer or agency, except that leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (ii) if the notice states that the person to be examined is about to go out of the United States, or is bound on a voyage at sea, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and sets forth facts to support the statement.

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 7 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The Court may for cause shown enlarge or shorten the time.

(b) Officer to take responses and prepare record.

A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions. The deposition shall not be filed except as provided in Rule 5(d).

(c) [Deleted].

COMMENT

SCR Civil 31 is largely identical to *Federal Rule of Civil Procedure 31* except that there is no cross-reference in subparagraph (a)(2)(C) to Rule 26, since the changes in that Rule have not been adopted herein, and that subparagraph restricts the taking of depositions within 30 days of the service of the summons and complaint or within 70 days after service of the summons and complaint in the case of the United States or the District of Columbia. Additionally, paragraph (b) provides that the deposition shall not be filed and paragraph (c) has been deleted in its entirety.

Rule 32. Use of depositions in Court proceedings.

(a) Use of depositions.

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds: (A) That the witness is dead; or (B) that the witness is at a greater distance than 25 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(C) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) Videotape deposition of expert.

A videotape deposition of a treating or consulting physician or of any expert witness may be used for any purpose, unless otherwise ordered by the Court for good cause shown, even though the witness is available to testify, if the notice of that deposition specified that it was to be taken for use at trial.

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Civil Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in this Court or in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) Objections to admissibility.

Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of taking or using depositions.

A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision (a)(2) of this Rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

(d) Effect of errors and irregularities in depositions.

(1) As to notice.

All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer.

Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to completion and return of deposition.

Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(e) Form of presentation.

Except as otherwise directed by the Court, a party offering deposition testimony pursuant to this Rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the Court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the Court for good cause orders otherwise.

COMMENT

Largely identical to *Federal Rule of Civil Procedure 32* except that subparagraph (a)(3) refers to a 25 mile rather than 100 mile distance. Subparagraph (a)(4) is an amendment and covers the videotape depositions of expert witnesses. It is intended that such depositions will not be taken until after opposing parties have had the opportunity to obtain relevant discovery. Subparagraph (a)(5) parallels (a)(4) of the Federal Rule, but is revised so as to refer explicitly to previous actions either in the Superior Court or in any other state or federal court. Reference to the Federal Rules of Evidence has been deleted from paragraph (a). In addition, paragraph (c) was retained by this Court after its federal counterpart was eliminated upon the adoption of the Federal Rules of Evidence. Paragraph (e) is identical to paragraph (c) of *Federal Rule of Civil Procedure 32*.

Rule 33. Interrogatories to parties.

(a) Availability; procedures for use; limitation on number served.

Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and the complaint upon that party.

No party shall serve upon another party, at 1 time or cumulatively, more than 40 written interrogatories, including parts and subparts, unless otherwise ordered by the Court upon motion for good cause shown or upon its own motion, or unless the parties have agreed between themselves to a greater number.

In answering interrogatories, the responding party shall in writing:

(1) Copy seriatim each interrogatory;

(2) Immediately following each interrogatory, give the answer thereto fully or, if objected to, the grounds therefor.

(b) Answers and objections.

(1) Each interrogatory shall be answered separately and fully in writing, under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant or within 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency. A shorter or longer time may be directed by the Court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the Court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer in an interrogatory.

(c) Scope; use at trial.

Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(d) Option to produce business records.

Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(e) Filing.

Except as provided for in Rule 5(d), interrogatories and responses thereto shall not be filed with the Court.

COMMENT

Similar to *Federal Rule of Civil Procedure 33* except that Federal Rule 33 limits the number of interrogatories to 25, whereas the above paragraph (a) limits parties to 40 interrogatories, and there is no cross-reference in paragraph (a) to Rule 26(d), since the changes in that Rule have not been adopted herein. Subparagraph (a)(2) adds a requirement that a party answering interrogatories shall copy each interrogatory and set forth his answer or grounds for objection immediately thereafter. Additionally, subparagraph (b)(3) provides additional time for the service of answers or objections when the defendant is the District of Columbia or the United States. Paragraph (e) indicates that interrogatories and the responses thereto shall not be filed unless relevant to a motion or opposition or authorized to be filed by order of the Court.

A list of model interrogatories appears in the Appendix to these Civil Rules.

Rule 34. Production of documents and things and entry upon land for inspection and other purposes.

(a) Scope.

Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure.

The request may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth, either by individual item or by category, the items to be inspected, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant or within 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency. A shorter or longer time may be directed by the Court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Civil Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons not parties.

A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

COMMENT

This Rule is substantially identical to *Federal Rule of Civil Procedure 34* except that paragraph (b) grants 75 days to the District of Columbia or the United States, after service of the summons and complaint upon them, to respond to a request for production of documents, etc., and there is no cross-reference in paragraph (b) to Rule 26(d), since the changes in that Rule have not been adopted herein.

Rule 35. Physical and mental examinations of persons.

(a) Order for examination.

When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the Court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or person by whom it is to be made.

(b) Report of examiner.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that such a party is unable to obtain it. The Court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the Court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other Rule.

COMMENT

Identical to *Federal Rule of Civil Procedure 35* except for deletion from section (a) thereof of the phrase "in which the action is pending".

Rule 36. Requests for admission.

(a) Request for admission.

A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the Court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the Court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant or before the expiration of 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of admission.

Any matter admitted under this Rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the Court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

COMMENT

This Rule is substantially identical to *Federal Rule of Civil Procedure 36* except that paragraph (a) does not cross-reference Rule 26(d), since the changes in that Rule have not been incorporated herein, and grants additional time to the District of Columbia and the United States to serve answers or objections to requests for admissions.

Rule 37. Failure to make or cooperate in discovery: Sanctions.

(a) Motion for order compelling discovery.

Before any motion to compel discovery is filed, the affected parties or counsel must meet for a reasonable period of time in an effort to resolve the disputed matter. The movant shall accompany any motion to compel discovery with a certification that despite a good faith effort to secure it, the discovery material sought has not been provided. This certification shall set forth specific facts describing the good faith effort, including a statement of the date, time and place of the meeting required by this Rule, and shall be placed immediately below the signature of the attorney or party signing the motion. The requirement of a meeting is waived if (i) the motion concerns a failure to serve any response whatever to a Rule 33, 34 or 36 discovery request or a failure to appear for a deposition or a Rule 35 examination and the motion is accompanied by a copy of a letter, sent at least 10 days before the motion was filed, asking that the opposing counsel or party respond to the discovery request or that the deponent or examinee appear for a rescheduled deposition or examination; or (ii) the movant certifies that, despite having sent to the opposing counsel or party, at least 10 days before the motion was filed, a letter (a copy of which shall be attached to the motion) proposing a time and place for such a meeting, and despite having made two telephone calls to the office of the opposing counsel or party (the date and time of which calls shall be specified in the motion), the movant has been unable to convene a meeting to resolve the disputed discovery matter. Any motion to compel discovery must set forth verbatim the question propounded and the answer given, or a description of the other discovery requested and the response to this request. The motion must also set forth the reason or reasons the answer or response is inadequate.

(1) Appropriate court.

An application for an order to a party shall be made to this Court, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a person who is not a party shall be made to the court in the district where discovery is being, or is to be, taken.

(2) Motion.

If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Evasive or incomplete answer or response.

For purposes of this subdivision an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

(4) Expenses and sanctions.

If the motion is granted or if requested discovery is provided after the motion was filed, the Court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the Court finds that the requirements of subparagraph (a) were not met or the opposition to the motion was substantially justified, or that other circumstances make an award of expenses unjust.

If the motion is denied, the Court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the Court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order.

(1) Sanctions by court in district where deposition is taken.

If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by this Court.

If a party or an officer, director, or managing agent of a party or a person designated under Civil Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subparagraph (a) of this Rule or Civil Rule 35, or if a party fails to obey an order entered under Civil Rule 26(f), the Court may make such orders in regard to the failure as are just, including among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of Court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Civil Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraph[s] (A), (B), and (C) of this subparagraph, unless the party failing to comply shows that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the Court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on failure to admit.

If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the Court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the Court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this Rule. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).

(e) [Vacant].

(f) Expenses against United States or District of Columbia.

Except to the extent permitted by statute, expenses and fees may not be awarded against the United States or the District of Columbia under this Rule.

(g) Failure to participate in the framing of a discovery plan.

If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Civil Rule 26(g), the Court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

COMMENT

SCR Civil 37 differs from *Federal Rule of Civil Procedure 37* in several respects. There is no cross-reference in subparagraph (a)(2) to disclosure under Rule 26(a), since the changes in that Rule have not been adopted herein.

In addition, paragraph (a) requires that the affected parties or counsel meet in an effort to resolve the disputed matter and that the moving party must certify in writing that a good faith effort has been made to obtain informally the discovery material sought and must certify as to the date, time and place of the meeting held in an effort to resolve the dispute. The requirement of a meeting is waived where the opposing counsel or party makes no response to the discovery request or does not respond to requests to convene a meeting to resolve the disputed discovery matter. This paragraph also requires that the motion to compel specify verbatim the questions asked and answers given, an accurate description of documents or other discovery sought and the responses thereto, and reasons why the answers or responses are not adequate. If the motion to compel concerns a discovery request to which no response has been received, it shall be sufficient to attach the interrogatories or other discovery request to the motion and state that no response thereto has been provided.

Rule 38. Jury trial of right.

(a) Right preserved.

The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by an applicable statute shall be preserved to the parties inviolate.

(b) Demand.

Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue, and (2) filing the demand as required by Rule 5(d). Such demand may be endorsed upon a pleading of the party.

(c) Same: Specification of issues.

In this demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver.

The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury. Subject to the provisions of Rule 38-II, a demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(e) [Deleted].

COMMENT

Rule 38 is substantially similar to *Federal Rule of Civil Procedure 38* except for the deletion of section (e) thereof pertaining to admiralty and maritime claims and the substitution of "applicable statute" for "statute of the United States" in section (a).

Rule 38-I. [Reserved]

Rule 38-II. Failure to appear for trial as consent to trial without jury.

Failure of a party to appear for trial, in person or through counsel, shall be deemed by the Court to constitute a consent by that party that the case be tried without a jury.

Rule 39. Trial by jury or by the Court.

(a) By jury.

When trial by jury has been demanded as provided in Rule 38, 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 38 shall be tried by the Court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the Court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) Advisory jury and trial by consent.

In all actions not triable of right by a jury the Court upon motion or of its own initiative may try any issue with an advisory jury or, except in actions as to which an applicable statute provides for trial without a jury, the Court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

COMMENT

Identical to *Federal Rule of Civil Procedure 39* except that "statutes of the United States" in section (a) has been changed to "applicable law" and the exception clause in section (c) has been rephrased so as to comprehend any applicable statute.

Rule 39-I. Appearance at trial.

(a) When no response by any party.

When an action is called for trial and no party responds, the Court may dismiss the same, with or without prejudice, or take such other action as may be deemed appropriate.

(b) When no response by party seeking relief.

When an action is called for trial and the party seeking affirmative relief fails to respond, an adversary may have the claim dismissed, with or without prejudice as the Court may decide, or the Court may, in a proper case, conduct a trial or other proceeding.

(c) When no response by party against whom relief is sought.

When an action is called for trial and a party against whom affirmative relief is sought fails to respond, in person or through counsel, an adversary may where appropriate proceed directly to trial. When an adversary is entitled to a finding in the adversary's favor on the merits, without trial, the adversary may proceed directly to proof of damages.

COMMENT

See *District of Columbia Transit System v. Young*, 293 A.2d 488 (1972).

Rule 39-II. Number of counsel.

Except by permission of the Court only one attorney for each party shall examine a witness or address the Court on a question arising in a trial. With the approval of the Court, 2 attorneys for each party may address the Court or jury in final arguments on the facts.

Rule 40. [Deleted].

Rule 40-I. Assignment of cases.

(a) Assignment of cases.

All civil actions may be assigned for all purposes by the Chief Judge of the Superior Court to (1) a specific calendar or (2) a single judge. All proceedings in a case after its assignment shall be scheduled and conducted by the judge to whom the case is assigned in accordance with provisions in these Rules. Upon termination of an assignment of a judge to the Civil Division, the Chief Judge may designate the judge or judges to whom the cases on the calendar of the former judge shall be reassigned. The Chief Judge's authority under this Rule may be delegated to the Presiding Judge of the Civil Division to make special assignment of cases only to a judge currently assigned to the Civil Division.

(b) Distribution of cases.

The Civil Clerk's Office shall randomly distribute all cases assigned pursuant to paragraph (a)(1) of this Rule to the judges assigned to the Civil Division.

(c) Notice of new trial date.

The assigned judge shall have sole responsibility for the assignment of trial dates for cases on the judge's calendar.

(d) Trial continuances.

No trial shall be continued except by order of the assigned judge upon a showing of specific and sufficient reasons why the applicant cannot attend the trial as scheduled or cannot try the case on the date scheduled. Applications for continuance shall be made to the assigned judge. Except for applications based on circumstances arising thereafter, application for such continuance must be made to the assigned judge not less than 30 days prior to scheduled trial date and must show by certificate of counsel or affidavit that all other parties were given reasonable notice of the applicant's intent to make application.

(e) Nothing in this Rule shall preclude the assignment of civil actions to hearing commissioners under Rule 73.

COMMENT

Federal Rule of Civil Procedure 40 which authorized the establishment of local systems for the assignment and calendaring of cases has been deleted. It has been replaced by SCR Civil 40-I which describes the Superior Court's Assignment System. Note that the second and third sentences of paragraph (a) contain essentially the same provisions as appeared in former Rule 40-II(d) and that language of the last sentence of paragraph (a) is essentially the same as that which formerly appeared in paragraph (f) of Rule 40-I.

Paragraph (b), on random distribution of cases among the judges, is derived from former Rule 40-II(c). Its purpose is to insure equitable allocation of the caseload to all judges assigned to the Division and to preclude any potential for litigants to predetermine the judge to whom the case will be assigned.

Rule 40-II. Certification and assignment of cases to Civil I Calendars.

(a) Designation of Civil I cases.

All cases involving claims for relief based upon exposure to asbestos or asbestos products shall be designated to a Civil I calendar. All other cases, if assigned to a specific calendar or a single judge pursuant to Rule 40-I(a), may be designated to a Civil I calendar upon motion by any party or joint motion of the parties, subject to approval by the judge assigned to the case and by the Presiding Judge of the Civil Division, or cases may be so designated upon recommendation of the assigned judge sua sponte if the designation is approved by the Presiding Judge.

(b) Factors considered.

In certifying a case to a Civil I calendar, the Presiding Judge may consider the estimated length of trial, the number of witnesses that may appear, the number of exhibits that may be introduced, the nature of the factual and legal issues involved, the extent to which discovery may require supervision by the Court, the number of motions that may be filed in the case, or any other relevant factors.

(c) Distribution of Civil I cases.

The Presiding Judge shall assign cases designated to a Civil I calendar on a rotational basis.

(d) Assignment to judge.

All proceedings in a case after its assignment to a Civil I calendar shall be scheduled and conducted by the judge to whom the case is assigned, except as otherwise provided in these Rules. Upon the termination of an assignment of a judge to a Civil I calendar, the Chief Judge or the Presiding Judge shall designate the judge or judges to whom the cases on the calendar of the former Civil I judge shall be reassigned.

(e) Procedure.

After a case has been assigned to a Civil I calendar, the calendar number or judge's name shall appear below the civil action number on all papers filed in the case. The filing of pleadings and other papers in cases designated to a Civil I calendar shall be accomplished in accordance with the provisions of Rule 5(d) and (e).

Rule 40-III. Collection and subrogation cases.

(a) Applicability.

This Rule applies to all civil actions in which the complaint seeks collection of a liquidated debt of greater than the maximum amount set under *D.C. Code Sec. 11-1321* for jurisdiction of actions in the Small Claims and Conciliation Branch or recovery as subrogee of damages of greater than the maximum amount set under *D.C. Code Sec. 11-1321* for jurisdiction of actions in the Small Claims and Conciliation Branch.

(b) Time allowed for service of process.

Notwithstanding the provisions of Rule 4(m), proof of service of the summons and any complaint embraced within section (a) of this Rule must be made no later than 180 days after the filing of the complaint. Failure to comply with the requirements of this Rule shall result in the dismissal without prejudice of the complaint. The Clerk shall enter the dismissal and shall serve notice thereof on the parties entitled thereto.

(c) Extension of time for service of process.

Notwithstanding the provisions of Rule 6(b), the time allowed for service of process of complaints covered by this Rule will not be extended unless a motion for extension of time is filed within 180 days after the filing of the complaint. The motion must set forth in detail the efforts which have been made, and will be made in the future, to obtain service. An extended period for service will be granted only if exceptional circumstances, detailed in the motion, demonstrate that additional time is required in order to prevent manifest injustice.

(d) Plaintiff's consent to hearing commissioner calendar.

Upon filing any complaint covered by this Rule, plaintiff may file a written consent to have the complaint assigned to a hearing commissioner calendar. If such consent is filed, the hearing commissioner may rule on any motion, and take any other judicial action (including conducting ex parte proof of damage hearings), as to any defendant who has not answered or otherwise responded to the complaint.

(e) Initial status hearing.

As soon as practicable after the filing of any defendant's response to a complaint covered by this Rule, the Court shall notify the parties to appear for an initial status hearing. If all appearing parties so consent, the case, including all claims therein, shall be assigned to the hearing commissioner calendar. If the parties have thus consented, the hearing commissioner will ascertain the status of the case, rule on any pending motions, explore the possibilities for early resolution through settlement or alternative dispute resolution techniques, and determine a reasonable time frame for bringing the case to conclusion. After consulting with the attorneys for the parties and with any unrepresented parties, the hearing commissioner will schedule future events in the case.

(f) Withdrawal of consent to hearing commissioner calendar.

If a party has consented to the assignment of the case to the hearing commissioner calendar, such consent may be withdrawn only for good cause shown upon leave of the presiding judge of the Civil Division or that judge's designee.

(g) Copies of papers to magistrate judge.

In any case assigned to the magistrate judge calendar, the party filing any motion or any paper relating to a motion (i.e., an opposition to a motion, memorandum of points and authorities, exhibits related thereto or proposed order) shall, unless the filings are designated as ones which may be electronically filed, hand-deliver (or if the original paper has been mailed, may mail), on the date the original is filed or mailed, a copy thereof to the court mail depository of the magistrate judge currently assigned to the collection/subrogation calendar. No other pleading or paper shall be so delivered unless so ordered.

(h) Assignment to a judge's calendar.

In any case embraced within section (a) of this Rule, if the plaintiff does not file a consent as provided in section (d) of this Rule, the case shall be assigned to a judge's individual calendar pursuant to Rule 40-I. A complaint covered by this rule shall also be promptly assigned to a judge's individual calendar pursuant to Rule 40-I if any party makes a jury demand or fails at the Initial Status Hearing to consent to assignment of the case to the hearing commissioner calendar.

Rule 41. Dismissal of actions.

(a) Voluntary dismissal: Effect thereof.

(1) By plaintiff; by stipulation.

Subject to the provisions of Rule 23(e), of Rule 66, and of any applicable statute, an action may be dismissed by the plaintiff without order of Court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) By order of Court.

Except as provided in paragraph (1) of this subdivision of this Rule, an action shall not be dismissed at the plaintiff's instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary dismissal: Effect thereof.

For failure of the plaintiff to prosecute or to comply with these Rules or any order of Court, a defendant may move for dismissal of an action or of any claim against the defendant or the Court may, sua sponte, enter an order dismissing the action or any claim therein. Any order of dismissal entered sua sponte, including a dismissal for failure to effect service within the time prescribed in Rule 4(m), shall not take effect until fourteen (14) days after the date on which it is docketed and shall be vacated upon the granting of a motion filed by plaintiff within such 14 day period showing good cause why the case should not be dismissed. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of counterclaim, cross-claim, or 3rd-party claim.

The provisions of this Rule apply to the dismissal of any counterclaim, cross-claim, or 3rd-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this Rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of previously dismissed action.

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

COMMENT

SCR Civil 41 is identical to *Federal Rule of Civil Procedure 41* except for the substitution of "applicable statute" for "statute of the United States" in section (a) and deletion of venue reference in section (b). Language has also been added to paragraph (b) of this Rule making it clear that the Court or Clerk may, sua sponte, dismiss an action when a plaintiff fails to prosecute or to comply with the Rules or any order of Court.

Rule 41-I. Dismissal for failure to prosecute.

(a) Dismissal without prejudice; notice of.

Any time after April 1, 1991, if a party seeking affirmative relief shall have failed for 90 days from the time action may be taken to comply with any law, Rule or order requisite to the prosecution of that party's claim, to avail of a right arising through the default or failure of an adverse party, or take other action looking to the prosecution of the claim, the complaint, counterclaim, crossclaim, or 3rd party complaint of said party, as the case may be, shall stand dismissed without prejudice, whereupon the Clerk shall make entry of that fact and serve notice thereof by mail upon every party not in default for failure to appear, of which mailing the Clerk shall make an entry.

(b) [Deleted].

(c) Referral to the Disciplinary Board.

When a case has been dismissed because of inexcusable neglect or other dereliction of counsel and is reinstated by the Court to prevent unfairness to a litigant, the Court granting the motion to reinstate may refer the matter involving the delinquent or offending counsel to the Disciplinary Board of the District of Columbia Court of Appeals for appropriate action, citing the circumstances of the dismissal and subsequent reinstatement.

(d) Applicability.

This Rule shall only be applicable to cases filed before January 1, 1991 which have not been assigned to a specific judge or a specific calendar.

COMMENT

Rule 41-I provides a mechanism for dismissal for want of prosecution of cases not assigned to a particular calendar or judge.

Rule 42. Consolidation; separate trials.

(a) Consolidation.

When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Any motion to consolidate two or more civil actions shall be decided by the judge on whose calendar appears the oldest assigned case covered by the motion. If the motion is granted, all the consolidated cases shall be placed on the calendar of the judge who granted the motion.

(b) Separate trials.

The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or 3rd-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, 3rd-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by an applicable statute.

(c) Related cases.

(1) Civil cases are deemed related when the earliest is still pending on the merits in the Superior Court and they (i) involve common property; or (ii) involve common issues of fact; or, (iii) grow out of the same event or transaction; or, (iv) involve common and unique issues of law which appear to be of first impression in this jurisdiction.

(2) The parties shall notify the clerk of the existence of related cases as follows: At the time of filing a civil case, the plaintiff or his attorney shall indicate on a form provided by the clerk, the name, docket number and relationship of any related cases pending in the Superior Court or in the D.C. Court of Appeals. The plaintiff shall serve a copy of this form on the defendant with the complaint. The defendant shall serve a statement with the first responsive pleading either objecting or concurring with the related case designation.

(3) Whenever an attorney or party becomes aware of the existence of a related case, he or she shall immediately notify, in writing, the judges on whose calendars the cases appear.

COMMENT

Rule 42 differs from *Federal Rule of Civil Procedure 42* in several respects. Added to paragraph (a) is a provision that the judge on whose calendar appears the oldest assigned case will make the determination as to whether or not other related actions will be consolidated with the case on that judge's calendar. In paragraph (b) the phrase "an applicable statute" is substituted for "a statute of the United States." Also added is paragraph (c) which defines what is meant by "related cases." This substantially tracks the definition used by the United States District Court for the District of Columbia.

Rule 43. Evidence.

(a) Form and admissibility.

In every trial the testimony of witnesses shall be taken in open court unless otherwise provided by these Rules. The Court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location. All evidence shall be admitted which is admissible under applicable statutes, or under the rules of evidence applied in the District of Columbia. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statute or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

(b) Scope of examination and cross-examination.

A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate the witness by leading questions and contradict and impeach the witness in all respects as if the witness had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of the examination in chief.

(c) Record of excluded evidence.

In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the Court, the examining attorney may make a specific offer of what the attorney expects to prove by the answer of the witness. The Court may require the offer to be made out of the hearing of the jury. The Court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the Court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(d) Affirmation in lieu of oath.

Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on motions.

When a motion is based on facts not appearing of record the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Interpreters.

The Court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by 1 or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court.

Rule 43-I. Record made in regular course of business; photographic copies.

(a) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility. The term "business", as used in this section, includes business, profession, occupation, and calling of every kind.

(b) If any business, institution, member of a profession or calling or any department or agency of government, in the regular course of business or activity, has kept or recorded any memorandum, writing, entry, print, representation or combination thereof of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which appears to accurately reproduce or form a durable medium for so reproducing the original, the reproduction, when satisfactorily identified, is as admissible in evidence as the original itself, whether the original is in existence or not, and an enlargement of such reproduction is likewise admissible in evidence. The introduction of a reproduced record or enlargement does not preclude admission of the original.

Rule 43-II. [Omitted].

COMMENT

Rule 43 is substantially different from *Federal Rule of Civil Procedure 43*. It does not refer to the Federal Rules of Evidence or to rules adopted by the Supreme Court, and it contains its own evidentiary rules.

Rule 43-I(a) is substantially identical to former *28 U.S.C. § 1732(a)* -- the so-called "federal shopbook rule" -- which was previously applicable in any court established by an act of Congress, including the Superior Court, but was repealed by Pub. L. No. 93-595 (Jan. 2, 1975) which establishes Federal Rules of Evidence for courts of the United States effective July 1, 1975. Rule 43-I(b), which deals with admissibility of copies of business records, is substantially identical to present *28 U.S.C. § 1732* which was formerly subsection (b) of that statute. (See Pub. L. No. 93-595, Sec. 2 (b)).

The subject matter of former Rule 43-II is now treated in Rule 7-1.

Rule 44. Proof of official record.

(a) Authentication.

(1) Domestic.

An official record kept within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign.

A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice consul, or consular agent of the United States or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of record.

A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this Rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this Rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other proof.

This Rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

Rule 44-I. Proof of statutes, ordinances, and regulations.

Printed books or pamphlets purporting on their face to be the statutes, ordinances, or regulations, of the United States, or of any state or territory thereof, or of any foreign jurisdiction, which are either published by the authority of any such state, territory, or foreign jurisdiction or are commonly recognized in its courts, shall be presumptively considered by the Court to constitute such statute, ordinance, or regulation. The Court's determination on such a matter shall be treated as a ruling on a question of law.

COMMENT

Rule 44 is identical to *Federal Rule of Civil Procedure 44*.

Rule 44.1. Determination of foreign law.

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The Court's determination shall be treated as a ruling on a question of law.

COMMENT

Identical to *Federal Rule of Civil Procedure 44.1* except that it refers to Rule 43 of the Civil Rules of this Court rather than to the Federal Rules of Evidence.

Rule 45. Subpoena.

(a) Form; issuance.

(1) Every subpoena shall

(A) state the name of the Court; and

(B) state the title of the action, and its civil action number and individual calendar number; and

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (c) and (d) of this rule.

(E) and where the subpoena is to attend a deposition, state the method for recording deposition testimony.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(2) A subpoena for a deposition, production, or inspection shall specify a place for the deposition, production, or inspection which is within the District of Columbia, unless the parties and person subpoenaed otherwise agree or the Court, upon application, fixes another convenient location.

(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena.

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or the District of Columbia or an officer or agency thereof, fees and mileage need not be tendered. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b).

(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this Rule, a subpoena for a hearing or trial may be served at any place within the District of Columbia, or at any place without the District of Columbia that is within 25 miles of the place of the hearing or trial; a subpoena for a deposition, production, or inspection may be served at any place which is within the District of Columbia or within 25 miles of the District of Columbia. When an applicable statute provides therefor, the Court upon proper application and cause shown may authorize the service of a subpoena at any other place. A subpoena directed to a witness in a foreign country who is a national or resident of the United States shall issue under the circumstances and in the manner and be served as provided in Title 28, *U.S.C.* § 1783.

(3) Proof of service when necessary shall be made by filing with the clerk of the court a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(2)(B) Subject to paragraph (d)(2) of this Rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall

not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the Court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the Court shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 25 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this Rule, such a person may in order to attend trial be commanded to travel from any such place to the place of trial, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 25 miles to attend trial, the Court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.

(d) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Contempt.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the Court. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

COMMENT

Pursuant to the Congressional mandate set forth in *D.C. Code § 11-946*, Rule 45 has been completely revised to conform as closely as possible to the version of *Federal Rule of Civil Procedure 45* which became effective December 1, 1991. References to 100 mile limits in that federal rule have been changed to 25 miles in the Superior Court rule in order to preserve the geographic proportionality originally expressed by Congress in *D.C. Code § 11-942*. This Rule provides a means for issuing deposition subpoenas for non-residents of the District of Columbia in cases which qualify under this Rule, but does not preclude the alternatives of filing with the Court a motion for appointment of an examiner under Rule 28-I or resorting directly to the courts of another jurisdiction under its rules and statutes.

Subpoenas issued by attorneys under subdivision (a)(3) of this Rule shall be substantially in the format of Civil Action Form 14.

Rule 46. Exceptions unnecessary.

Formal exceptions to rulings or orders of the Court are unnecessary; but 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 Court is made or sought, makes known to the Court the action which the party desires the Court to take or the party's objection to the action of the Court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

COMMENT

Identical to *Federal Rule of Civil Procedure 46*.

Rule 47. Selection of jurors.

(a) Examination of jurors.

The Court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the Court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

(b) Excuse.

The Court may for good cause excuse a juror from service during trial or deliberation.

COMMENT

Identical to *Federal Rule of Civil Procedure 47*.

Rule 47-I. Peremptory challenges.

In civil cases, each party shall be entitled to 3 peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the Court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the Court.

COMMENT

Identical to 28 *U.S.C.* § 1870.

Rule 48. Number of jurors.

In all jury cases the jury shall consist of six jurors plus such number of additional jurors as the Court may deem necessary.

The Court shall seat a jury of not fewer than six and not more than twelve members and all jurors shall participate in the verdict unless excused from service by the Court pursuant to Rule 47(b). Unless the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six members.

COMMENT

Identical to *Federal Rule of Civil Procedure 48* except that a jury demand under SCR Civ 38 is conclusively presumed to be to a jury of 6 persons unless the demand expressly [expressly] states otherwise.

Rule 49. Special verdicts and interrogatories.

(a) Special verdicts.

The Court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the Court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The Court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the Court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the Court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General verdict accompanied by answer to interrogatories.

The Court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon 1 or more issues of fact the decision of which is necessary to a verdict. The Court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the Court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but 1 or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the Court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and 1 or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the Court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

COMMENT

Identical to *Federal Rule of Civil Procedure 49*.

Rule 50. Judgment as a matter of law in jury trials; alternative motion for new trial; conditional rulings.

(a) Judgment as a matter of law.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the Court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) Renewing motion for judgment after trial; alternative motion for new trial.

If, for any reason, the Court does not grant a motion for judgment as a matter of law made at the close of all the evidence, the Court is considered to have submitted the action to the jury subject to the Court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment -- and may alternatively request a new trial or join a motion for a new trial under Rule 59. In ruling on a renewed motion, the Court may:

(1) if a verdict was returned:

(A) allow the judgment to stand,

(B) order a new trial, or

(C) direct entry of judgment as a matter of law; or

(2) if no verdict was returned:

(A) order a new trial, or

(B) direct entry of judgment as a matter of law.

(c) Granting renewed motion for judgment as a matter of law; conditional rulings; new trial motion.

(1) If the renewed motion for judgment as a matter of law is granted, the Court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered shall be filed no later than 10 days after entry of the judgment.

(d) Same: Denial of motion for judgment as a matter of law.

If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this Rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

COMMENT

Identical to *Federal Rule of Civil Procedure 50*.

Rule 51. Instructions to jury: Objection; preserving a claim of error.

(a) Requests.

(1) A party may, at the close of the evidence or at an earlier reasonable time that the court directs, file and furnish to every other party written requests that the court instruct the jury on the law as set forth in the requests.

(2) After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated at an earlier time for requests set under Rule 51(a)(1), and

(B) with the court's permission file untimely requests for instructions on any issue.

(b) Instructions.

The court:

(1) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(2) must give the parties an opportunity to object on the record and out of the jury's hearing to the proposed instructions and actions on requests before the instructions and arguments are delivered; and

(3) may instruct the jury at any time after trial begins and before the jury is discharged.

(c) Objections.

(1) A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds of the objection.

(2) An objection is timely if:

(A) a party that has been informed of an instruction or action on a request before the jury is instructed and before final jury arguments, as provided by Rule (51)(b)(1), objects at the opportunity for objection required by Rule 51(b)(2); or

(B) a party that has not been informed of an instruction or action on a request before the time for objection provided under Rule 51(b)(2) objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Assigning error; Plain error.

(1) A party may assign as error:

(A) an error in an instruction actually given if that party made a proper objection under Rule 51(c), or

(B) a failure to give an instruction if that party made a proper request under Rule 51(a), and -- unless the court made a definitive ruling on the record rejecting the request -- also made a proper objection under Rule 51(c).

(2) A court may consider a plain error in the instructions affecting substantial rights that has not been preserved as required by Rule 51(d)(1)(A) or (B).

COMMENT

Identical to *Federal Rule of Civil Procedure 51*.

Rule 52. Findings by the court; judgment on partial findings.

(a) Effect.

Unless expressly waived by all parties, the Court shall state findings of fact specially and state separately its conclusions of law in every action tried upon the facts without a jury or with an advisory jury and judgment shall be entered pursuant to Rule 58. In granting or refusing interlocutory injunctions the Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Such findings of fact and conclusions of law may be in writing or may be stated orally in open court if recorded stenographically or by other means permitted by these Rules and shall be sufficient if they state the controlling factual and legal grounds of decision. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the Court adopts them, shall be considered as the findings of the Court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this Rule.

(b) Amendment.

On a party's motion filed no later than 10 days after entry of judgment, the Court may amend its findings -- or make additional findings -- and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may be later questioned whether or not the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

(c) Judgment on partial findings.

If during a trial without a jury a party has been fully heard on an issue and the Court finds against the party on that issue, the Court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the Court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this Rule.

COMMENT

Identical to *Federal Rule of Civil Procedure 52* except that section (a) has been revised to eliminate the requirement of stating findings of facts and conclusions of law in non-jury actions where the necessity of making the same is expressly waived by the parties and to indicate that such findings and conclusions may be written or oral and need only state the controlling grounds of decision. These provisions are necessitated by the time demands of a massive volume of litigation and are designed to insure that all litigants who desire it receive a fair and adequate statement of the grounds of decision applied in their case while at the same time making clear that such statements of fact and law need not be unduly lengthy nor presented in written form if the Court prefers to dictate them from the bench.

Rule 53. Masters.

(a) Appointment.

(1) The term "master" also refers to the Auditor-Master as established by *D.C. Code § 11-1724*, et seq. unless otherwise noted.

(2) Unless a statute provides otherwise, the court may appoint a master only to:

(A) perform duties consented to by the parties; or

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided by the court without a jury if appointment is warranted by

(i) some exceptional condition, or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and post-trial matters that cannot be addressed effectively and timely by an available judge or magistrate judge.

(3) A master must not have a relationship to the parties, counsel, action, or court that would require disqualification of a judge under Civil Rule 63-I unless the parties consent with the court's approval to appointment of a particular person after disclosure of any potential grounds for disqualification.

(4) In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) Order appointing master.

(1) Notice.

The court must give the parties notice and an opportunity to be heard before appointing a master. A party may suggest candidates for appointment.

(2) Contents.

The order appointing a master must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);

(B) the circumstances--if any--in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(h).

(3) Entry of Order.

The court may enter the order appointing a master only after the master has filed an affidavit disclosing whether there is any ground for disqualification under Civil Rule 63-I and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification.

(4) Amendment.

The order appointing a master may be amended at any time after notice to the parties, and an opportunity to be heard.

(c) Master's authority.

Unless the appointing order expressly directs otherwise, a master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently the assigned duties. The master may by order impose upon a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) Evidentiary hearings.

Unless the appointing order expressly directs otherwise, a master conducting an evidentiary hearing may exercise the power of the appointing court to compel, take, and record evidence.

(e) Master's orders.

A master who makes an order must file the order and promptly serve a copy on each party. The clerk must enter the order on the docket.

(f) Master's reports.

A master must report to the court as required by the order of appointment. The master must file the report and promptly serve a copy of the report on each party unless the court directs otherwise.

(g) Action on master's order, report, or recommendations.

(1) Action.

In acting on a master's order, report, or recommendations, the court must afford an opportunity to be heard and may receive evidence, and may: adopt or affirm; modify; wholly or partly reject or reverse; or resubmit to the master with instructions.

(2) Time To Object or Move.

A party may file objections to--or a motion to adopt or modify--the master's order, report, or recommendations no later than 20 days from the time the master's order, report, or recommendations are served, unless the court sets a different time.

(3) Fact Findings.

The court must decide de novo all objections to findings of fact made or recommended by a master unless the parties stipulate with the court's consent that:

(A) the master's findings will be reviewed for clear error, or

(B) the findings of a master appointed under Rule 53(a)(2)(A) or (C) will be final.

(4) Legal Conclusions.

The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) Procedural Matters.

Unless the order of appointment establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(h) Compensation.

(1) Fixing Compensation.

The court must fix the master's compensation, including recovery of costs, before or after judgment on the basis and terms stated in the order of appointment, but the court may set a new basis and terms after notice and an opportunity to be heard.

(2) [Auditor-Master.].

The Auditor-Master shall not be compensated, but shall be entitled to recover costs.

(3) Payment.

The compensation fixed under Rule 53(h)(1) must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(4) Allocation.

The court must allocate payment of the master's compensation among the parties after considering the nature and amount of the controversy, the means of the parties, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

(i) Appointment of magistrate judge.

A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge expressly provides that the reference is made under this rule.

COMMENT

A master may also recommend the institution of contempt proceedings by the Court against a nonparty under SCR Civ. 53(c). The service requirement in SCR Civ. 53(e) refers to orders issued out of the presence of the parties.

Rule 53-I. Auditor-Master fees.

(a) In general.

Fees for work performed by the Auditor-Master shall bear a reasonable relation to the value of the service thus rendered.

(b) Exceptions.

In appropriate cases, the Court, in its discretion, may order that a party or parties shall be charged no fee or only a reduced fee for work performed by the Auditor-Master.

Rule 53-II. Deposit for expenses.

The Auditor-Master or a special master may require the deposit of funds sufficient to defray the expenses of a reference, including a stenographic report of the testimony.

COMMENT

Rule 53 identical to *Fed. Rule of Civil Procedure 53* except that section (a) has been modified to recognize the existence of the office of Auditor-Master and to allow the Court to fix fees for the work performed by the Auditor-Master as well as compensation for services rendered by special masters. For the statutory description of the appointment and duties of the Auditor-Master see D.C. Code (1967 Edition, Supplement IV) §§ 11-1724 and 11-1725.

Rule 53-I. This Rule makes clear that normally parties shall be required to bear the cost of services rendered in their cases by the Auditor-Master's office but that in exceptional instances the Court may order the Auditor-Master to perform work in cases in which the parties cannot afford to pay the full, or perhaps any fee. In all cases the Auditor-Master shall, upon completion of the work performed, furnish to the parties and the Court a brief statement of the work done and a recommendation as to the fee to be charged. The Court will consider this recommendation, and any objections thereto filed by the parties, and will then order that fees in a specified amount be charged to specified parties. For litigants or attorneys who wish to secure an estimate of what fees might be charged for performance of certain prospective work, the Auditor-Master is available on appointment to render an informal opinion.

Rule 54. Judgments; costs.

(a) Definition; form.

"Judgment" as used in these Rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment upon multiple claims or involving multiple parties.

When more than 1 claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or 3rd-party claim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to 1 or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for judgment.

A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Costs; attorneys' fees.

(1) Costs other than attorneys' fees.

Except when express provision therefor is made either in an applicable statute or in these Rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the Court otherwise directs; but costs against the United States, the District of Columbia, or officers and agencies of either shall be imposed only to the extent permitted by law. Such costs may be taxed by the Clerk on one day's notice. On motion served within five days thereafter, the action of the Clerk may be reviewed by the Court.

(2) Attorneys' fees.

(A) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(B) Unless otherwise provided by statute or order of the Court, the motion must be filed and served no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the Court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(C) On request of a party or class member, the Court shall afford an opportunity for adversary submissions with respect to the motion in accordance with Rule 43(e). The Court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the Court. The Court shall find the facts and state its conclusions of law as provided in Rule 52(a), and a judgment shall be set forth in a separate document as provided in Rule 58.

(D) The Court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings. In addition, the Court may refer issues relating to the value of services to a special master under Rule 53 without regard to the provisions of Rule 53(a)(2) and may refer a motion for attorney's fees to a magistrate judge as if it were a dispositive pretrial matter.

(E) The provisions of subparagraphs (2)(A) through (D) do not apply to claims for fees and expenses as sanctions for violations of these rules.

Rule 54-I. Witness fees; costs of depositions, transcripts, and bonds.

(a) Witness fees.

Proof of the attendance of witnesses shall be by certificate of the attorney of record in the form prescribed in CA Form 104. The certificate must be served upon the opposing party or counsel and filed within 5 days after the entry of any final order or judgment, otherwise witness fees shall not be taxed or recovered as costs. Within 5 days after the certificate is served any party may move to amend or strike the same.

(b) Costs of depositions, transcripts, and bonds.

Costs of depositions, reporters' transcripts on appeal, and premiums on bonds may be taxed at the discretion of the trial court.

Rule 54-II. Waiver of costs.

The Court may waive the prepayment of costs or the payment of costs accruing during any action upon the presentation of an affidavit in the form prescribed in CA Form 106 or other satisfactory evidence, and a finding that the party is unable to pay such costs. When costs are so waived the notation to be made on the records of said action shall be "Prepayment of costs waived", or "Costs waived". The officers of the Court shall issue and serve all process, and perform all duties in such cases. Witnesses shall be subpoenaed without prepayment of witness fees, and the same remedies shall be available as are provided for by law in other cases.

COMMENT

Rule 54 is substantially identical to *Fed. Rule of Civil Procedure 54*.

Rule 55. Default.

(a) Entry.

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules, the Clerk or the Court shall enter the party's default. Any order of default entered sua sponte, including a default for failure to respond to the complaint within the time prescribed in Rule 12(a), shall not take effect until fourteen (14) days after the date on which it is docketed and shall be vacated upon the granting of a motion filed by defendant within such 14 day period showing good cause why the default should not be entered. Before an order of default is issued, the time to plead or otherwise defend may be extended by one of the following:

(1) An order granting a motion which shows good cause for such an extension.

(2) A praecipe, signed by the plaintiff(s) and defendant(s) in question or their attorneys of record and filed with the Court, which provides for a one-time extension of not more than 20 days within which to plead or otherwise respond.

(b) Judgment.

Judgment by default may be entered as follows:

(1) By the Clerk.

When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, and the plaintiff shall have filed a complaint verified by the plaintiff or by the plaintiff's agent, or shall have thereafter filed and served on the defendant in the manner prescribed in Rule 5 an affidavit executed by the plaintiff or the plaintiff's agent verifying the complaint, and such verified complaint or affidavit shall have set out the sum claimed to be due exclusive of all set-offs and just grounds of defense, and a copy of said verified complaint or affidavit shall have been served upon the defendant at least 20 days prior to the request for judgment, the Clerk, upon request of the plaintiff or the plaintiff's attorney made no more than 60 days after default is entered, shall enter judgment for that amount and costs against the defendant if the defendant is in default for failure to appear as provided in Rule 12, and if the plaintiff or the plaintiff's attorney shall have filed at the time of requesting the judgment a proposed order setting forth the sum claimed to be due exclusive of all set-offs and just grounds of defense and an affidavit in compliance with the Soldiers and Sailors Civil Relief Act of 1940, as amended; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or such representative who has appeared therein. Failure of plaintiff to comply with the provisions of this paragraph shall result in the dismissal without prejudice of plaintiff's complaint.

(2) By the Court.

In all other cases the party entitled to a judgment by default shall apply by motion to the Court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any applicable statute. If the party against whom judgment by default is sought has not appeared in the action, an affidavit in compliance with the Soldiers and Sailors Civil Relief Act of 1940, as amended, must be filed before judgment by default may be entered by the Court.

(c) Setting aside default.

For good cause shown, and upon the filing of a verified answer setting up a defense sufficient if proved to bar the claim in whole or in part, the Court may set aside an entry of default. No answer need be filed if the movant accompanies the motion with a settlement agreement or a proposed consent judgment signed by both parties. In addition, an answer shall not be required when the movant asserts a lack of subject-matter or personal jurisdiction or when the default was entered after the movant had filed an answer.

(d) Plaintiffs, counterclaimants, cross-claimants.

The provisions of this Rule apply whether the party entitled to the judgment by default is a plaintiff, a 3rd-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment against the United States or the District of Columbia.

No judgment by default shall be entered against the United States or the District of Columbia, or an officer or agency of either, unless the claimant establishes a claim or right to relief by evidence satisfactory to the Court.

COMMENT

Paragraph (b)(1) has been revised to conform to the prior practice in the Court of General Sessions of requiring a verified complaint or affidavit stating the amount due before entry of default by the Clerk. Paragraph (b)(1) has been modified to add the requirement that plaintiff provide a proposed order with the request for judgment within 60 days after default is entered. An affidavit in compliance with the Soldiers and Sailors Civil Relief Act of 1940 must be filed in all cases, whether the default judgment is to be entered by the clerk or the Court, where defendant has failed to appear. A request for judgment under paragraph (b)(2) must now be made by way of a motion. Moreover, paragraph (c) has also been revised to conform to the prior practice in the Court of General Sessions of requiring a verified and sufficient answer before setting aside a default except in those cases in which the parties have entered into a settlement agreement or consent judgment or where either the movant asserts a lack of subject matter or personal jurisdiction or when the default was entered after the movant has filed an answer. In addition, paragraph (e) has been revised to reflect reference to the District of Columbia as well as the United States and paragraph (b)(2) has been revised to refer to any "applicable statute" in place of "statute of the United States".

Rule 55-I. Withdrawal of jury demand after default.

If a default is entered against any party, any opposing party may withdraw the opposing party's jury demand.

Rule 55-II. Ex parte proof of pecuniary losses; deficiency judgment.

(a) Ex parte proof of pecuniary losses.

In any action for property damage or other pecuniary losses or any action in which there is filed a praecipe withdrawing all claims other than those for such property damage or such pecuniary losses, wherein a default has been noted, judgment may be entered upon the filing, within 60 days of the default, of a motion for judgment along with an affidavit meeting the requirements of Rule 56(e) and setting forth: (1) The specific pecuniary loss sustained, (2) its causal relationship to the factual situation set forth in the complaint and (3) that a copy of the motion was sent to defendant at the defendant's last known address notifying the defendant that any objections thereto must be received by the Clerk within 20 days. The affidavit provided with the motion shall be accompanied by (1) a paid bill for the work done or an estimate of value from a person, firm or company regularly engaged in the business of doing such work or in the event of total loss, regularly engaged in the estimation of such losses, or a sworn statement from plaintiff's employer setting forth plaintiff's rate of compensation and the days and hours plaintiff was unable to work on account of the matters alleged in the complaint, or a statement of account from a health care provider or facility setting forth the reasonable and necessary charges incurred by plaintiff for treatment of injuries received as a result of the occurrence alleged in the complaint, and where applicable, (2) an affidavit in compliance with the Soldiers and Sailors Civil Relief Act of 1940. Thirty days after the filing of such motion, the Clerk shall forward to the judge assigned to the case the motion, the affidavit, supporting papers, and any objection received by the Clerk. The judge may enter judgment for the amount alleged in the affidavit or for such lesser sum as may be warranted by all materials of record, including defendant's objection, if any, or may schedule the matter for an ex parte proof hearing, as appropriate.

(b) Deficiency judgment.

A deficiency judgment after repossession of personal property may be granted as provided in paragraph (a) of this Rule. However, the motion, affidavit and supporting documents must set forth a basis on which the Court can reasonably conclude that said plaintiff complied with applicable law and that said property was resold for a fair and reasonable price.

COMMENT

Rule 55-II provides an optional method for proving the amount of pecuniary losses in cases of defaults governed by Rule 55(b)(2). In cases to which Rule 55-II is applicable, plaintiff may elect to proceed under that Rule or may await the scheduling of an ex parte proof hearing in the normal course. Since the reach of Rule 55-II has been expanded to cover not only property damage claims but also claims involving other types of pecuniary losses (e.g. wage losses, medical bills, deficiency judgments, repair costs incurred to make good work improperly performed by a home repairman or contractor), the time for defendant to object to plaintiff's affidavit of loss has been enlarged from 10 to 20 days. This amendment also makes Rule 55-II consistent with amended Rule 55(b) which effectively affords defendants 20 days to object to any newly filed affidavit concerning the sum to be entered in a default judgment pursuant to that Rule.

Rule 55-III. Vacating default by consent.

The Clerk may vacate a default or default judgment, within 60 days of its entry, upon filing of a praecipe signed by the claimant and the defaulted party, or their attorneys, if such praecipe bears evidence of its service on all parties that have appeared and is accompanied by a verified answer when required by Rule 55(c).

COMMENT

Rule 55-III provides a procedure, alternative to that of a Rule 55(c) motion, for vacating defaults by consent in specified situations. The procedure is applicable to a default or default judgment entered on any claim, whether that claim is contained in a complaint, counterclaim, cross-claim, or 3rd-party claim.

Rule 56. Summary judgment.

(a) For claimant.

A party seeking to recover upon a claim, a counterclaim, or cross-claim or to obtain a declaratory judgment may, after the expiration of 20 days from service of a pleading on the adverse party or after service of a motion for summary judgment by the adverse party, but within the time prescribed by Court order, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For defending party.

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, within the time prescribed by Court order, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and proceedings thereon.

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case not fully adjudicated on motion.

If on motion under this Rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of affidavits; further testimony; defense required.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When affidavits are unavailable.

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith.

Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, the Court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

COMMENT

Identical to *Federal Rule of Civil Procedure 56* except for the provision in paragraphs (a) and (b) of Rule 56 that the time period for filing the motion shall be set by Court order. For further requirements with respect to summary judgment procedure, see Rule 12-I(k).

Rule 57. Declaratory judgments.

The procedure for obtaining a declaratory judgment pursuant to Title 28 *U.S.C.* § 2201 or otherwise shall be in accordance with these Rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

COMMENT

Identical to *Federal Rule of Civil Procedure 57* except for addition of the words "or otherwise" following reference to 28 *U.S.C.* § 2201 so as to comprehend also authority for issuance of declaratory judgments founded on the Congressional grant to the Superior Court of general equity powers and the related prescription that the Court conduct its business according to the Federal Rules of Civil Procedure wherever possible. See *D.C. Code* §§ 11-921 and 11-946 (1973 Ed.). Note, however, that a declaratory judgment, like any other remedy, may only be granted in cases properly within the Court's jurisdiction.

Rule 58. Entry of judgment.

Subject to the provisions of Rule 54(b): (1) Upon a general verdict of a jury, or upon a decision by the Court that a party shall recover only a sum certain or costs or that all relief shall be denied, the Clerk, unless the Court or Administrative Order otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the Court; (2) upon a decision by the Court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the Court shall promptly approve the form of the judgment, and the Clerk or as otherwise directed by administrative order shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except that, when a timely motion for attorneys' fees is made under Rule 54(d)(2), the Court, before a notice of appeal has been filed and has become effective, may order that the motion have the same effect under Rule 4(a)(4) of the District of Columbia Court of Appeals as a timely motion under Rule 59. Attorneys shall not submit forms of judgment except upon direction of the Court, and these directions shall not be given as a matter of course.

COMMENT

Identical to *Federal Rule of Civil Procedure 58*.

Rule 59. New trials; amendment of judgments.

(a) Grounds.

A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States or of the District of Columbia; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States or of the District of Columbia. On a motion for a new trial in an action tried without a jury, the Court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for motion.

Any motion for a new trial shall be filed no later than 10 days after entry of the judgment.

(c) Time for serving affidavits.

When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the Court for good cause or by the parties' written stipulation. The Court may permit reply affidavits.

(d) On Court's initiative; notice; specifying grounds.

No later than 10 days after entry of judgment the Court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the Court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the Court shall specify the grounds in its order.

(e) Motion to alter or amend judgment.

Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

COMMENT

Identical to *Federal Rule of Civil Procedure 59* except for insertion in section (a) thereof of reference to courts of the District of Columbia as well as courts of the United States.

Rule 60. Relief from judgment or order.

(a) Clerical mistakes.

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.

On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis and audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these Rules or by an independent action.

COMMENT

Identical to *Federal Rule of Civil Procedure 60* except for deletion from section (b) of the inapplicable reference to 28 U.S.C. § 1655 dealing with lien actions in the United States District Courts. With respect to motions made under this Rule for reinstatement of actions previously dismissed through inexcusable neglect or dereliction of counsel, see also Rule 41-I. See Rule 55-III for procedure governing the vacating of defaults by consent.

Rule 61. Harmless error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

COMMENT

Identical to *Federal Rule of Civil Procedure 61*.

Rule 62. Stay of proceedings to enforce a judgment.

(a) Automatic stay; exceptions -- Injunctions, receiverships.

Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the Court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this Rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on motion for new trial or for judgment.

In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction pending appeal.

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay upon appeal.

When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this Rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the Court.

(e) Stay in favor of the United States, the District of Columbia, or agency of either.

When an appeal is taken by the United States or the District of Columbia or an officer or agency of either or by direction of any governmental department of either and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) [Deleted].

(g) Power of appellate court not limited.

The provisions in this Rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of judgment as to multiple claims or multiple parties.

When a court has ordered a final judgment under the conditions stated in Rule 54(b), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Rule 62-I. Supersedeas bond.

(a) Whenever an appellant entitled thereto desires a stay on appeal, the appellant may present to the Court for its approval a supersedeas bond or an undertaking which shall have such surety or sureties as the Court may require. The bond or undertaking shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the appellate court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond or undertaking shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the Court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the marshal or when the proceeds of such property or a bond for its value is in the custody or control of the Court, the amount of the supersedeas bond or undertaking shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. A separate supersedeas bond need not be given, unless otherwise ordered, when the appellant has already filed in the trial court security including the event of appeal, except for the difference in amount, if any. When the defendant in an action to recover possession of real estate seeks such review, the undertaking shall also provide for the payment of all intervening damages to the property sought to be recovered and compensation for its use and occupation from the date of the judgment to the date of the satisfaction thereof if the judgment is not reversed.

(b) Before the Court approves any such bond or undertaking, the party offering the bond or undertaking shall furnish to the Court such evidence establishing the financial ability of the surety or sureties to discharge the financial obligations of the bond as might be required by the Court.

COMMENT

Rule 62 identical to *Fed. Rule of Civil Procedure 62* except for addition of the District of Columbia to section (e), which exempts the government from the requirement of posting security to stay enforcement of a judgment on appeal; and deletion of inapplicable references to patent accountings, 3 judge District Courts, and state law on stay of judgments in sections (a), (c) and (f) of the Federal Rule respectively.

This Rule contemplates that although the party securing the bond must make diligent efforts to provide adequate security, the ultimate burden is on prevailing parties to assure themselves that the surety is solvent and to bring any issues to the Court's attention.

Rule 62-II. Application for termination of stay or for entry of judgment.

If either entry of judgment or execution thereon has been stayed upon condition that the defendant make certain periodic payments to plaintiff or perform other acts, and the defendant at any time fails to make such payments or perform such acts, the plaintiff may apply for termination of the stay or entry of judgment by mailing to the defendant and the defendant's attorney, if any, a copy of CA Form 110 appropriately completed and verified by plaintiff under oath or by the plaintiff's attorney, accompanied by proof of service as provided therein or in Rule 5-I. Upon failure of the defendant to oppose such termination, the Clerk may terminate the stay and issue execution or enter judgment in accordance with said notice given by CA Form 110, in the manner provided in Rule 55(b)(1) with respect to defaults. If opposition is filed, the notice shall be treated as an opposed motion pursuant to Rule 12.

Rule 63. Inability of a judge to proceed.

If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

Rule 63-I. Bias or prejudice of a judge.

(a) Whenever a party to any proceeding makes and files a sufficient affidavit that the judge before whom the matter is to be heard has a personal bias or prejudice either against the party or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned, in accordance with Rule 40-I(b), to hear such proceeding.

(b) The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists and shall be accompanied by a certificate of counsel of record stating that it is made in good faith. The affidavit must be filed at least 24 hours prior to the time set for hearing of such matter unless good cause is shown for the failure to file by such time.

COMMENT

Rule 63 is identical to *Federal Rules of Civil Procedure 63*. Rule 63-I is substantially identical to 28 *U.S.C. § 144*.

Rule 64. Seizure of person or property.

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the District of Columbia existing at the time the remedy is sought, subject to the following qualifications: (1) Any existing statute of the United States governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted pursuant to these Rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated.

Rule 64-I. Attachment before judgment.

(a) Application and notice to defendant.

An application for a writ of attachment before judgment, shall set forth, by affidavit, specific facts meeting the requirements of *D.C. Code* §§ 16-501(c) and (d) (1981). The application shall be accompanied by a prepared Notice to Defendant on a CA Form 105 supplied by the Clerk. The Clerk shall send such notice to the defendant by first class mail at the address shown on the notice, or in case of a foreign corporation to its registered agent, if any, and shall note on the docket the date of such mailing. If defendant's address is listed on the notice as unknown, the plaintiff shall file with the notice an affidavit setting forth his reasonable efforts to ascertain defendant's current mailing address.

(b) Issuance.

An application for a writ of attachment before judgment shall be submitted as provided in Rule 12-I(b) to the judge -- who may approve or deny issuance or may direct such further hearings before issuance as deemed appropriate.

(c) Answer of garnishee.

A garnishee shall file with the Clerk the answer to the interrogatories accompanying the writ of attachment within 10 days after service of the writ upon him, and shall serve a copy of the answer upon the defendant and upon the party at whose instance the garnishment was issued. If within 10 days after service of the answer to the interrogatories or such later time as the Court may allow, the party at whose instance the garnishment was issued shall not contest the answer to the interrogatories pursuant to *D.C. Code* § 16-522 (1981), the garnishee's obligations under the attachment shall be limited by his answer.

(d) Hearing.

If a hearing is held as a result of the filing of a traversing affidavit by the defendant or the garnishee pursuant to *D.C. Code* § 16-506 (1981), the plaintiff shall be required to establish the validity or probable validity of the underlying claim and the existence of the ground for issuing the attachment.

(e) Priority of liens.

For purposes of determining priority of successive liens, a writ of attachment issued under section (b) of this Rule shall be effective from the date of its delivery to the marshal.

(f) Expedition of motions to quash.

All motions to quash attachments shall be heard by the Court on an expedited basis. Upon at least 3 days' notice to all parties, the Court may in appropriate cases order that the action in which the motion was filed be tried on the merits at the same time the motion is heard.

(g) Discovery.

For good cause shown, the Court may in its discretion permit discovery in attachment before judgment proceedings in the manner provided in Rule 69-I.

COMMENT

Rule 64 identical to *Fed. Rule of Civil Procedure 64* except for substitution of "District of Columbia" for "state in which the district court is held" and deletion of 2 inapplicable phrases relating to state procedure and proceedings.

In connection with Rule 64-I, see *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) and *Fuentes v. Shevin*, 407 U.S. 67 (1972).

Rule 64-II. Replevin actions.

(a) Upon filing any action in replevin and before process therefor is placed in the hands of the U.S. Marshal or other process server, the plaintiff, personally or by his attorney, will bring the action to the attention of the judge as provided in Rule 12-I(b).

(b) At that time the plaintiff may request that the judge set a date for a hearing at which plaintiff will be required to establish the probable validity of his claim and defendant will be given an opportunity to appear and be heard with respect to whether a writ of replevin should issue. If, upon such application, the judge determines that the plaintiff has filed a verified complaint alleging that defendant is wrongfully detaining certain specified property which plaintiff is entitled to possess, he may issue an order directing the defendant to preserve the property which is the subject of the action in his possession or under his control so as to keep it amenable to the process of the Court pending further order of the Court. The order will also indicate the date on which plaintiff's application for a writ of replevin will be brought on for hearing and will inform the defendant that he may be heard at that time, with or without witnesses, on whether the writ should issue.

(c) The order shall direct plaintiff to cause a copy of the summons, complaint, and order to be served upon the defendant at least 5 Court days prior to the date set for the hearing. If they are not served by that time, the plaintiff shall apply to the judge to whom the case is assigned to set a later hearing date which will provide the defendant with sufficient time to make adequate preparation therefor. In any order entered under this Rule, the judge may include such requirements with respect to the method as to accomplish prompt and expeditious notice to the defendant.

(d) At the conclusion of the hearing, the judge may authorize the issuance and execution of a writ of replevin or may, if it appears just, permit all or part of the property to remain in the possession of the defendant pending further order of the Court. In the latter event, he may require the defendant to post an appropriate surety bond or other undertaking or may otherwise provide for the protection of the property pursuant to *D.C. Code § 16-3708* (1981).

(e) The Civil Clerks Office will not accept for filing any action of replevin unless said complaint is accompanied by an appropriate surety bond, approved by the Clerk.

(f) In making the initial application to the judge to whom the case is assigned, counsel for a federal, District of Columbia, State or other governmental agency or official, upon showing (1) a direct necessity to secure an important governmental or general public interest and (2) a special need for prompt action under a specific statute or regulation authorizing seizure of property without opportunity for prior hearing, may apply for issuance of the writ without prior adversary hearing on the ground that there is an immediate danger that the defendant will destroy or conceal the property in dispute or on any other ground set forth in *D.C. Code § 16-501(d)(2), (3), (4), or (5)* (1981) as a basis for attachment before judgment. Upon such application, support by affidavit or sworn testimony reciting specific facts which tend to establish the grounds therefor, the judge may, if deemed appropriate, authorize the immediate issuance of the writ prior to the hearing. If the judicial officer authorizes such issuance, there shall be entered in the record findings of fact and conclusions of law which state the basis of the need for such immediate issuance. The defendant against whom a writ has been issued in this manner may, on not less than 24 hours notice to the plaintiff, apply to the Court to have the writ vacated. If such writ issues, a hearing shall take place on the 5th Court day after execution of the writ. It shall be the duty of plaintiff's counsel to notify the Civil Clerk's Office promptly of the execution of the writ.

(g) Trial of all actions in replevin, whether on the jury or nonjury calendar, shall be expedited.

(h) By consent of all parties, the judge conducting a hearing on the issuance vel non of a writ of replevin may try the entire proceeding on the merits in lieu of merely determining whether or not the writ should issue.

COMMENT

See *Fuentes v. Shevin*, 407 U.S. 67 (1972).

Rule 65. Injunctions.

(a) Preliminary injunction.

(1) Notice.

No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of hearing with trial on merits.

Before or after the commencement of the hearing of an application for a preliminary injunction, the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary restraining order; notice; hearing; duration.

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the Court finds that the applicant has made all reasonable efforts under the circumstances to furnish to the adverse party's attorney, if known, otherwise to the adverse party, at the earliest practicable time prior to the hearing on the motion for such order (a) actual notice of the hearing and (b) copies of all pleadings and other papers filed to date in the action or to be presented to the Court at the hearing. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the Clerk's Office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and take precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the Court shall dissolve the temporary restraining order. On 2 days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security.

No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of the District of Columbia, or of an officer or agency of either.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this Rule.

(d) Form and scope of injunction or restraining order.

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) Employer and employee.

These Rules do not modify any statute of the United States relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee.

COMMENT

Identical to *Federal Rule of Civil Procedure 65* except for (1) revision of the 2nd prerequisite clause in section (b) so as to replace the attorney's written certificate with a Court finding and to require the applicant to make reasonable efforts to furnish to the adverse party's attorney not only notice of the hearing but also copies of any papers filed to date or to be presented to the Court at the hearing; (2) addition of the District of Columbia to the provision in section (c) exempting the government and its agents from the requirement of posting security in the course of obtaining any restraining order or preliminary injunction; and (3) deletion from section (e) thereof of inapplicable references to 28 U.S.C. §§ 2361 and 2384 and substitution therein of "applicable statute" for "statute of the United States [sic]".

The 1st change described above was prompted by experience in this jurisdiction with a substantial number of emergency applications for temporary restraining orders, particularly against the District of Columbia. In the case of any application for a temporary restraining order against the District of Columbia, an agency thereof, or an employee acting or purporting to act in his official capacity, the adverse party's attorney is, of course, the Corporation Counsel of the District of Columbia. Because it is most desirable to have the adverse party's attorney present, if possible, at the hearing on the motion for temporary restraining order, the revised 2nd prerequisite requires the applicant to make all reasonable efforts to notify the adverse party's attorney of the hearing and furnish him with appropriate papers; naturally, furnishing such notice and papers to the adverse party himself would be the next best step if the applicant does not know who the adverse party's attorney is.

It should be noted, however, that the furnishing of pleadings and other papers called for in section (b) does not supplant the jurisdictional requirement of service of process on the defendant in accordance with Rule 4.

Rule 65.1. Security: Proceedings against sureties.

Whenever these Rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with 1 or more sureties, each surety submits to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court, who shall forthwith mail copies to the sureties if their addresses are known.

COMMENT

Identical to *Federal Rule of Civil Procedure 65.1* except for the deletion therefrom of the inapplicable reference to Supplemental Rules for Admiralty Cases in the federal District Courts.

Rule 66. Receivers appointed by the Superior Court.

An action wherein a receiver has been appointed shall not be dismissed except by order of the Court. The practice in the administration of estates by receivers or by other similar officers appointed by the Court shall be in accordance with the practice heretofore followed in the United States District Court for the District of Columbia or as provided in Rules promulgated by this Court. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these Rules.

COMMENT

Identical to *Federal Rule of Civil Procedure 66* except for change in title and change in designation on prior practice to be followed. The insertion of reference to practice heretofore followed in the United States District Court for the District of Columbia is designed to insure maximum possible continuity in the handling of District of Columbia receivership matters.

Rule 67. Deposit in Court.

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of Court, may deposit with the Court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the Court. Money paid into Court under this Rule shall be deposited and withdrawn in accordance with the provisions of *D.C. Code 1981, [§] 11-1723(a)(2)* or any like statute.

COMMENT

Substantially identical to *F. R. Civ. P. 67* except for the deletion of the requirement that all deposited funds be placed in an interest-bearing account or invested in an interest-bearing instrument. The decision to place funds in such an account or instrument and to disburse those funds with accrued interest is discretionary with the Court, after due consideration of the administrative burden imposed by the accounting of such funds.

Nothing in this rule is intended to restrict the authority of the Court, upon proper application, to appoint a trustee, escrow holder, or to establish some otherwise appropriate method to retain funds *pendente lite*.

Rule 67-I. Recording money paid to or by Clerk.

The Clerk shall receive and keep proper accounts of all moneys deposited or paid into or out of the Clerk's office and make such reports concerning same as may be required by law or ordered by the Court.

COMMENT

Rule 67 identical to *Federal Rule of Civil Procedure 67* except for deletion of inapplicable references to United States Code and substitution therefor of the appropriate reference to the District of Columbia Code.

Rule 68. Offer of judgment.

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the Clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

Rule 68-I. Judgment by confession or consent.

(a) Entry by the Clerk.

The Clerk shall have authority to enter judgment by confession without judicial approval upon the filing of a praecipe or equivalent form signed by the defendant and the plaintiff's attorney.

(b) Certification.

Application for judgment by confession pursuant to subdivision (a) of this Rule shall constitute a certification by the plaintiff's attorney:

- (1) That the confession of judgment was executed by the defendant after the complaint was filed;
- (2) That said attorney explained to the defendant the nature and consequences of the defendant's act.

(c) Consent of counsel.

The Clerk shall also have authority to enter judgment by consent without judicial approval by stipulation signed by the attorneys for all parties in any pending cases.

(d) Court approval; motions.

All other requests for entry of judgment by confession shall be submitted to the Court.

COMMENT

Rule 68 identical to *Federal Rule of Civil Procedure 68*.

Rule 69. Execution.

(a) In general.

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the Court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the District of Columbia, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in Rule 69-I.

(b) [Omitted].

Rule 69-I. Attachment after judgment in general.

(a) Discovery in general.

All discovery procedures authorized by Rules 26-37 are available to the judgment creditor in the manner prescribed by those Rules, except that a subpoena ad testificandum addressed to a person other than the judgment debtor and a subpoena duces tecum shall issue only upon order of the Court. The first subpoena ad testificandum or notice of deposition addressed to the judgment debtor may issue without Court order, but any subsequent subpoena or notice so addressed shall issue only upon order of the Court. Nothing contained herein shall be construed to require that a party to the action be paid a witness fee for attendance.

(b) Oral examination in Court.

The plaintiff may summon the defendant and, upon leave of court, any other person to appear in court on a date certain and submit to oral examination respecting execution of any judgment rendered. Any person so summoned may, upon leave of Court, be required to produce papers, records, or other documents at the examination. Any person summoned to appear for oral examination shall appear first in the Office of the Clerk. If the person summoned was personally served but fails to appear, the Court may, upon plaintiff's request, issue a bench warrant for the person's arrest. If the person summoned does appear, the Clerk shall present all pleadings and other documents in the case to the Court assigned to preside at the examination.

(c) Other claims to property.

Before the final disposition of the property attached or its proceeds (except where it is real property), any person may file a motion and affidavit setting forth a claim thereto or an interest in or lien upon the same. Without other pleadings, the Court shall try the issues raised by such claim and may make all orders necessary to protect any right of the claimant. Any party to such proceeding may demand trial by jury by filing such demand within 5 days of the filing of such motion and affidavit.

(d) Answer of garnishee.

A garnishee shall file with the Clerk the answer to the interrogatories accompanying the writ of attachment within 10 days after service of the writ upon the garnishee, and shall serve a copy of the answer upon the defendant and upon the party at whose instance the garnishment was issued. If within 10 days after service of the answer to the interrogatories or such later time as the Court may allow, the party at whose instance the garnishment was issued shall not contest the answer to the interrogatories pursuant to *D.C. Code 1973, § 16-522*, the garnishee's obligations under the attachment shall be limited by the garnishee's answer.

(e) Judgment against garnishee.

No judgment against a garnishee under *D.C. Code 1973, §§ 16-556* or *16-575* shall be entered except by order of Court. Applications for a judgment shall be filed (1) within 4 weeks after answer to the interrogatories are due and not filed, or (2) as to property other than "wages" as defined in *D.C. Code 1973, § 16-571*, within 4 weeks after the garnishee has filed answers to the interrogatories or (3) as to such "wages", within 15 weeks of the date on which a garnishee fails to make a payment due under the writ, or (4) within such later time as may be authorized by the Court upon a motion made within the applicable period. If no judgment of condemnation or of recovery has been applied for or entered within the time provided by this Rule, the garnishment and attachment shall stand dismissed. Upon oral or written request therefor, the Clerk shall enter such dismissal of the garnishment and attachment and shall furnish a certificate of such dismissal to the garnishee, the defendant, or any other person.

Rule 69-II. Particular provisions for attachments of wages after judgment.

(a) Applicability.

The provisions set forth in this Rule shall not supersede or repeal any other Rule of this Court unless in express conflict therewith and shall apply only to attachments issued pursuant to D.C. Code (1967 Edition) § 16-572 et seq.[] and 15 U.S.C. § 1601 et seq.

(b) Reporting credits against judgment.

It shall be the duty of a judgment creditor who is receiving payments on account of the judgment from an employer-garnishee and who shall receive credits upon said judgment from a source other than said employer-garnishee to notify said employer-garnishee and the Clerk in writing of such receipt within 10 days thereafter, including the date, amount, and source thereof.

(c) Schedule and receipt for payments.

Every judgment creditor receiving payments from an employer-garnishee pursuant to the issuance of a wage attachment shall be obligated to credit the payments first against the accrued interest on the unpaid balance of the judgment, if any, second upon the principal amount of the judgment, and third upon those attorney's fees and costs actually assessed in the cause, and shall send a receipt to the garnishee within 5 days after such payment, which receipt shall set forth the application of such payment pursuant to the schedule aforesaid.

(d) Noncompliance.

If any judgment creditor shall fail to comply with this Rule or with the statutory provisions cited in section (a) hereof, the Court may in its discretion on motion of any interested party enter an order vacating and setting aside the attachment and continuing levy of said judgment creditor then in force and effect, but without prejudice to the refiling and serving of another attachment, which shall follow prior attachment of wages of the judgment debtor in the hands of the same employer-garnishee, and may enter a judgment of a reasonable attorney's fee and tax costs in favor of the party filing the motion to vacate and set aside the attachment.

(e) Garnishment docket card.

Each writ of attachment for wages shall be accompanied by a garnishment docket card prepared by the judgment creditor or the judgment creditor's attorney. The judgment creditor or the judgment creditor's attorney shall supply the Social Security number of the judgment debtor-employee, if known. The Clerk shall furnish the said garnishment docket card on a form approved by the Court.

COMMENT

Rule 69 is identical to *Federal Rule of Civil Procedure 69* except for the substitution in section (a) of "District of Columbia" for "state in which the district court is held", and modification of the last sentence of section (a) to indicate that discovery in aid of judgment or execution may be had as provided in Rule 69-I. The writ of execution referred to in Rule 69 includes, of course, the writ of fieri facias provided for in *D.C. Code § 15-311* (1973 Ed.).

Rule 69-I states the local attachment procedures available in the Superior Court and comprehended by the Rule 69 phrase "shall be in accordance with the practice and procedure of the District of Columbia". Section 69-I(a) modifies the broad authorization of unlimited discovery by providing that a subpoena duces tecum, a subpoena ad testificandum addressed to a person other than the judgment debtor, or more than 1 subpoena ad testificandum or deposition notice addressed to the judgment debtor may issue only upon order of the Court. This provision was based on extensive experience in the Court of General Sessions with execution proceedings and the desire to provide a safeguard against harassment of the judgment debtor and other persons, especially the judgment debtor's employer. Section (e) has been amended in order to conform to *Household Finance Corporation v. Training Research and Development, Inc.*, 316 A. 2d 850 (D.C. App. 1973) which held that the time period within which a judgment of recovery must be applied for should not be measured from any act or requirement relating to the answering of interrogatories when the attachment is an attachment on wages, salary or commissions and the judgment of recovery is being sought for failure to remit a payment due under the writ. The section now provides that in such cases the time period should begin from the time that a payment is due and not paid. The length of the time period in such cases was made far longer than for other cases because of the Advisory Committee's recognition that in attachments on wages, salary and commissions, there are frequently uncertain intervals during which the debtor is temporarily laid off or does not appear for work. See *D.C. Code § 16-576* (1973 Ed.).

Rule 69-II contains certain specific provisions with respect to post judgment attachments.

Rule 70. Judgment for specific acts: Vesting title.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the Court may direct the act to be done at the cost of the disobedient party by some other person appointed by the Court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the Clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The Court may also in proper cases adjudge the party in contempt. If real or personal property is within the District of Columbia, the Court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the Clerk.

COMMENT

Identical to *Federal Rule of Civil Procedure 70* except for substitution of "District of Columbia" for "district".

Rule 70-I. Applications regarding proceedings under the Uniform Arbitration Act.

(a) Form and service of applications.

Applications to the Court under *D.C. Code 16-4315* shall be in the form of a motion and be accompanied by a proposed order. The motion and a summons shall be served in accordance with SCR Civil 4, except that service of the motion may be made in accordance with SCR Civil 5 on any party over whom the Court has already acquired jurisdiction.

(b) Confirmation of arbitration awards.

An arbitration award, the judicial confirmation of which is authorized by statute or other applicable principles of law may be confirmed as a judgment by filing a motion setting forth that (1) there was a written agreement or order to arbitrate, (2) there was an award rendered pursuant to the arbitration, and (3) there are annexed to the pleading copies of the following:

(A) The agreement or order to arbitrate;

(B) The selection or appointment, if any, of any arbitrator or umpire other than that designated in the agreement or order;

(C) Each written extension of time, if any, within which to make the award;

(D) The award;

(E) Each notice, affidavit or other paper used upon any application to confirm, modify, or correct the award; and

(F) A copy of each order upon such an application.

(c) Summary proceedings.

Proceedings upon such motion shall be summary with discovery permitted only upon a showing of good cause.

(d) All objections to the motion at law or in equity shall be in the form of an opposition to the motion and stated with particularity. The opposition shall be served within 20 days (60 days if opponent is the District of Columbia, the United States or an officer or agency of either) after service of the motion.

(e) Rehearing.

Where the Court vacates an award, it may in its discretion and upon a finding that such re-hearing is not contrary to law or equity, direct an arbitration re-hearing.

COMMENT

No change in substantive law is contemplated.

An application concerning an arbitration proceeding must be in the form of a motion. See *D.C. Code § 16-4315*.

The Rule also applies to motions to vacate, modify or stay arbitration awards. See *D.C. Code §§ 16-4311 and 16-4312*.

The Rule does not cover arbitration awards under Court-sponsored civil arbitration programs. For these awards, see Rules of the Civil Arbitration Program of the Superior Court.

The applicability of the Federal Arbitration Act in the District of Columbia has been considered in *John W. Johnson Inc. v. 2500 Wisconsin Ave., Inc.*, 98 U.S. App. D.C. 8, 231 F.2d 761 (D.C. Cir. 1956); *Coles v. Redskin Realty Co.*, 184 A.2d 923 (D.C. Mun. App. 1962). See also, *Robert Lawrence Co. v. Devonshire Fabrics, Inc.*, 271 F.2d 402 (2d Cir. 1959), cert. granted, 362 U.S. 909, 80 S. Ct. 682, 4 L. Ed. 2d 618, and dismissed, 364 U.S. 801, 81 S. Ct. 27, 5 L. Ed. 2d 37 (1960).

See CA Form 107 for a form of a motion to confirm an arbitration award.

Rule 71. Process in behalf of and against persons not parties.

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

COMMENT

Identical to *Federal Rule of Civil Procedure 71*.

Rule 71A. Condemnation of property.

(a) Applicability of other rules.

The Superior Court Rules of Civil Procedure govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this Rule.

(b) Joinder of properties.

The plaintiff may join in the same action 1 or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(c) Complaint.

(1) Caption.

The complaint shall contain a caption as provided in Rule 10(a) except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(2) Contents.

The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners." Process shall be served as provided in subdivision (d) of this Rule upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in subdivision (e) of this Rule. The Court meanwhile may order such distribution of a deposit as the facts warrant.

(3) Filing.

In addition to filing the complaint with the Court, the plaintiff shall furnish to the clerk at least 1 copy thereof for the use of the defendants and additional copies at the request of the Clerk or of a defendant.

(d) Process.

(1) Notice: Delivery.

Upon the filing of the complaint the plaintiff shall forthwith deliver to the Clerk joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons under Rule 4.

(2) Same: Form.

Each notice shall state the Court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of the defendant's property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the plaintiff's attorney an answer within 20 days after service of the notice, and that the failure so to serve an answer constitutes a consent to the taking and to the authority of the Court to proceed to hear the action and to fix the compensation. The notice shall conclude with the name of the plaintiff's attorney and an address within the District of Columbia where the attorney may be served. The notice need contain a description of no other property than that to be taken from the defendants to whom [whom] it is directed.

(3) Service of notice.

(A) Personal service.

Personal service of the notice but without copies of the complaint shall be made in accordance with Rule 4 upon a defendant whose residence is known and who resides within the United States or a territory subject to the administrative or judicial jurisdiction of the United States.

(B) Service by publication.

Upon the filing of a certificate of the plaintiff's attorney stating that the attorney believes a defendant cannot be personally served, because after diligent inquiry the defendant's place of residence cannot be ascertained by the plaintiff or, if ascertained, that it is beyond the territorial limits of personal service as provided in this Rule, service of the notice shall be made on this defendant by publication in a newspaper published in the District of Columbia, or if there is no such newspaper, then in a newspaper having a general circulation where the property is located, once a week for not less than 3 successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this Rule but whose place of residence is then known. Unknown owners may be served by publication in like manner by a notice addressed to "Unknown Owners".

Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of the plaintiff's attorney, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

(4) Return; amendment.

Proof of service of the notice shall be made and amendment of the notice or proof of its service allowed in the manner provided for the return and amendment of the summons under Rule 4.

(e) Appearance or answer.

If a defendant has no objection or defense to the taking of the defendant's property, the defendant may serve a notice of appearance designating the property in which the defendant claims to be interested. Thereafter the defendant shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of the property, the defendant shall serve an answer within 20 days after the service of notice upon the defendant. The answer shall identify the property in which the defendant claims to have an interest, state the nature and extent of the interest claimed, and state all the defendant's objections and defenses to the taking of the property. A defendant waives all defenses and objections not so presented, but at the trial of the issue of just compensation, whether or not the defendant has previously appeared or answered, the defendant may present evidence as to the amount of the compensation to be paid for the property, and the defendant may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

(f) Amendment of pleadings.

Without leave of court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by subdivision (i) of this Rule. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Rule 5(b), upon any party affected thereby who has appeared and, in the manner provided in subdivision (d) of this Rule, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the Clerk of the Court for the use of the defendants at least 1 copy of each amendment, and shall furnish additional copies on the request of the Clerk or of a defendant. Within the time allowed by subdivision (e) of this Rule a defendant may serve an answer to the amended pleading, in the form and manner and with the same effect as there provided.

(g) Substitution of parties.

If a defendant dies or becomes incompetent or transfers an interest after the defendant's joinder, the Court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in subdivision (d)(3) of this Rule.

(h) Trial.

The trial shall be conducted pursuant to applicable statutes.

(i) Dismissal of action.

(1) As of right.

If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in or taken possession, the plaintiff may dismiss the action as to that property, with-

out an order of the Court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(2) By stipulation.

Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the Court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and, if the parties so stipulate, the Court may vacate any judgment that has been entered.

(3) By order of the Court.

Except as otherwise provided by applicable statute, at any time before compensation for a piece of property has been determined and paid and after motion and hearing, the Court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The Court at any time may drop a defendant unnecessarily or improperly joined.

(4) Effect.

Except as otherwise provided in the notice, or stipulation of dismissal, or order of the Court, any dismissal is without prejudice.

(j) Deposit and its distribution.

The plaintiff shall deposit with the Court any money required by law as a condition to the exercise of the power of eminent domain; and, although not so required, may make a deposit when permitted by statute. In such cases the Court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to that defendant on distribution of the deposit, the Court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to that defendant, the Court shall enter judgment against that defendant and in favor of the plaintiff for the overpayment.

(k) [Omitted].

(l) Costs.

Costs are not subject to Rule 54(d).

Rule 71A-I. Proceedings for forfeiture of property.

(a) Libel of information.

In all cases involving forfeiture of property for violation of any provision of the District of Columbia Code, the cause, unless otherwise provided by statute, shall be commenced by the filing of a libel of information.

Said libel of information shall allege a description of the property seized, the date and place of the seizure, the person or persons from whom the property was seized, and that the property was used, or was to be used, in violation of the District of Columbia Code, specifying the applicable section(s).

(b) Process.

Process shall be issued only upon order of Court. Such order shall direct the issuance of a warrant of arrest with a return date addressed to the Chief of the Metropolitan Police Department or the Chief's designee directing the Metropolitan Police Department to seize the property described in the libel of information. It shall further direct that upon seizure, the Metropolitan Police Department shall cause public notice thereof and of the time assigned for return of such process to be given once in a legal newspaper or periodical of daily circulation as prescribed in SCR Civil 4-I and any other newspaper or periodical specifically designated by the Court. The date of return of process shall be at least 20 days from the date of publication. Publication shall be provided by an affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the order as published.

The libellant shall send a copy of the libel of information and of the warrant issued thereon by 1st class mail to any lienholder of record, to any person who has made written claim to the res to the office of the Attorney General of the District of Columbia, and to any other person who is known or in the exercise of reasonable diligence should be known to the Attorney General to have a right of claim to the res, at the person's last known address. Said envelope containing this material shall be marked "please forward to addressee".

(c) Default.

If no answer or claim is filed upon the return of the process, a default decree of forfeiture shall be entered against the property before the Court, and the Court shall order the condemnation and forfeiture of said property.

(d) Intervention.

The procedures set forth in Rule 24 of these Rules shall govern in all cases where there is a right to intervene in the forfeiture action. Where, however, all parties consent to the motion to intervene, such motion shall be entered by the Court as granted without formal hearing.

(e) Other matters.

Except as hereinabove provided, the Civil Rules of this Court shall govern, so far as practicable, actions for the forfeiture of property as set forth in this Rule.

COMMENT

The authority of the District of Columbia to acquire property by eminent domain is found in *Section 16-311 et seq.* D.C. Code 1967 Edition (transferred to Superior Court by *Section 11-921(a)(3)(A)(ii)* page 12 Public Law 91-358) and by *Section 7-202 et seq.* D.C. Code 1967 Edition (transferred to Superior Court by *Section 155(c)(1)(A)* page 98 Public Law 91-358).

The practice of eminent domain in the District Court has followed these statutory requirements as implemented by the Federal Rules of Civil Procedure. Thus, in adapting Federal Rule 71A to use by the Superior Court, only minor editorial changes have been made in the language of that Rule.

Rule 72. Enforcement of foreign judgments.

A copy of a judgment, decree or order of a court of the United States, or of any other court entitled to full faith and credit in the District of Columbia, may be filed with the Clerk by the judgment creditor or the judgment creditor's lawyer. The judgment sought to be filed shall be authenticated in accordance with District of Columbia law. The judgment creditor or counsel shall accompany the filing with the information called for in SCR Civil Action Form 112, "Request to File Foreign Judgment", and shall pay the filing fee established by the Court. A foreign judgment filed with the Clerk shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner, subject to the provisions of the Uniform Enforcement of Foreign Judgments Act of 1990, *D.C. Code §§ 15-351 through 15-357*.

COMMENT

Rule 72 is intended to implement the Uniform Enforcement of Foreign Judgments Act of 1990, (*D.C. Code §§ 15-351 -- 15-357*) which has been adopted by the District of Columbia. As a "Uniform Act," it should be construed to effectuate its general purpose to make consistent the law of all jurisdictions that enact it. Accordingly, where there are no interpretations of the Act's provisions in this jurisdiction, guidance may be found in the decisions of other jurisdictions that have adopted this Act. While the Act was intended to provide a simple and expeditious procedure to enforce a foreign judgment in the District of Columbia, it does not impair the right of a judgment creditor to resort to the cumbersome prior practice of bringing suit to enforce a foreign judgment.

Rule 73. Hearing commissioners.

(a) Powers; procedure.

When specifically designated to exercise such jurisdiction by the Chief Judge of the Superior Court and when all parties consent thereto, a hearing commissioner may exercise the authority provided by *D.C. Code § 11-1732(a)* and (j)(5) (1987 Supp.) and may conduct any or all uncontested or contested proceedings, determine nondispositive and dispositive pretrial matters, make findings and enter final judgments and orders in a civil case, except that a hearing commissioner may not preside at a jury trial or exercise the contempt power. The provisions of Rule 62 shall apply to judgments entered by a hearing commissioner. A record of the proceedings shall be made in accordance with Rule 201.

A party who fails both to file an answer, if an answer is required, and to otherwise appear in an action, shall be deemed to have consented that a hearing commissioner conduct all proceedings in the case.

The Court for good cause shown on its own motion or under extraordinary circumstances shown by a party, may vacate a reference of a civil matter to a hearing commissioner under this Rule.

(b) Judicial review and appeal.

Judicial review of a final order or judgment entered upon direction of a hearing commissioner is available (1) on motion of a party to the Superior Court judge designated by the Chief Judge to conduct such reviews or (2) on the initiative of the judge so designated. After that review has been completed, appeal may be taken to the District of Columbia Court of Appeals. The standard of review by the Superior Court judge of a hearing commissioner's final order or judgment shall be the same as applied by the Court of Appeals on appeal of a judgment or order of the Superior Court.

(c) Review of hearing commissioner's order or judgment.

(1) Upon motion.

A review of the hearing commissioner's final order or judgment, in whole or in part, shall be made by a judge designated by the Chief Judge upon motion of a party, which motion shall be filed and served within 10 days after entry of the order or judgment. The motion for review shall designate the order, judgment, or part thereof, for which review is sought, shall specify the grounds for objection to the hearing commissioner's order, judgment, or part thereof, and shall include a written summary of any evidence presented before the hearing commissioner relating to the grounds for objection. Within 10 days after being served with said motion, a party may file and serve a response, which shall describe any evidence or proceedings before the hearing commissioner which conflict with or expand upon the summary filed by the moving party. The judge designated by the Chief Judge shall review those portions of the hearing commissioner's order or judgment to which objection is made. The judge may decide the motion for review with or without a hearing and may affirm, reverse, modify, or remand, in whole or in part, the hearing commissioner's order or judgment.

(2) Review on initiative of the Court.

Not later than 30 days after entry of a hearing commissioner's final order or judgment, the judge designated by the Chief Judge may sua sponte review said order or judgment in whole or in part. After giving the parties due notice and opportunity to make written submissions on the matter, the judge, with or without a hearing, may affirm, reverse, modify, or remand, in whole or in part, the hearing commissioner's order or judgment.

(3) Termination of time for filing motion for review.

The running of the time for filing a motion for review or for a judge to undertake review on the judge's own initiative is terminated as to all parties by the timely filing of any of the following motions with the hearing commissioner by any party, and the full time for review from the judgment entered by the hearing commissioner commences to run anew from entry of any of the following orders: (1) Granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (2) granting or denying a motion under Rule 59 to alter or amend the judgment; (3) denying a motion for a new trial under Rule 59.

(4) Interlocutory motion for review.

An interlocutory decision or order by a hearing commissioner which, if made by a judge of this Court, could be appealed under any provision of law, may be reviewed by the judge designated by the Chief Judge by filing a motion for review within 10 days after entry of the decision or order. Review of such interlocutory decisions or orders shall not

stay the proceedings before the hearing commissioner unless the hearing commissioner or the reviewing judge shall so order.

(5) Extension of time to file motion for review.

Upon a showing of excusable neglect and notice to the parties, the judge designated by the Chief Judge may, before or after the time prescribed by subparagraph (c)(1) or (c)(4) has expired, extend the time for filing a motion for review of a hearing commissioner's order or judgment for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this Rule.

(6) Stay pending review.

Upon a showing that the hearing commissioner has refused or otherwise failed to stay the judgment pending review under this Rule, the movant may, with reasonable notice to all parties, apply to the judge designated by the Chief Judge for a stay. The stay may be conditioned upon the filing of a bond or other appropriate security.

(7) Dismissal.

For failure to comply with this Rule or any other Rule or order, the judge may take such action as is deemed appropriate, including dismissal of the motion for review. The judge also may dismiss the motion for review upon the filing of a stipulation signed by all parties, or upon motion and notice by the movant.

(d) Contempt.

A hearing commissioner may order a person to show cause before the Presiding Judge of the Civil Division, or his or her designee, why the person should not be held in civil or criminal contempt for disobedience or resistance to any lawful order, process, or writ issued by the hearing commissioner or for any other act or conduct committed before a hearing commissioner which if committed before a judge would constitute contempt. An order to show cause why the person should not be held in contempt shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the contempt charged and describe it as such.

(e) Other duties.

The authority of a hearing commissioner in the Civil Division shall include the power to refer cases previously assigned to a hearing commissioner's calendar to the Civil Clerk's Office for redistribution pursuant to Rule 40-I(b). A hearing commissioner shall have the power to issue a bench warrant for parties who fail to appear in Court on a commissioner's calendar and may quash such a bench warrant. Hearing commissioners shall also have the power to conduct oral examinations and the power to rule on the following motions in cases assigned to any hearing commissioner's calendar: to continue trial or hearing dates, to extend any period of time prescribed or allowed by these rules or by order of the Court and to enter or withdraw appearances.

COMMENT

Although several of the provisions of this Rule are similar to provisions of *Federal Rules of Civil Procedure 73* and *74*, a number of changes have been made to this Court's Rule to reflect the requirements of *D.C. Code § 11-1732* and the procedural variances in the use of hearing commissioners and magistrates. Pursuant to *D.C. Code § 11-1732*, this Rule is applicable to proceedings in all branches of the Civil Division.

Paragraph (a). This paragraph has been modified to reflect the statutory authority of hearing commissioners in the Civil Division of the Superior Court. Unlike magistrates, hearing commissioners may not conduct jury trials. The written consent procedures contained in *Federal Rule of Civil Procedure 73(b)* have not been incorporated into the Superior Court Rule. Under this Rule, a party who neither files an answer nor otherwise appears will be deemed to have consented to having the matter heard by a hearing commissioner.

Paragraph (b). This paragraph modifies *Federal Rule of Civil Procedure 73(c)* and (d) to reflect the availability of judicial review and appeal of a hearing commissioner's decision pursuant to *D.C. Code § 11-1732(k)*. As with appeals to a district judge from decisions of magistrates exercising consensual civil jurisdiction under *Federal Rule of Civil Procedure 73*, reviews of decisions of hearing commissioners to Superior Court judges are governed by the same standards that obtain in an appeal from a judgment of a judge to the Court of Appeals. See *Federal Rule of Civil Procedure 74*, Notes of Advisory Committee on Rules, subdivision (a); *28 U.S.C. § 636(c)(4)*. In accordance with that standard, a hearing commissioner's findings of fact may not be set aside unless clearly erroneous; nor may the commissioner's judgment or order be set aside except for legal error or abuse of discretion.

Paragraph (c). This paragraph describes the procedure for review of a hearing commissioner's order or judgment by a judge pursuant to *D.C. Code § 11-1732(k)*. Subparagraphs (c)(1) and (c)(2) replace the appeal procedure set forth in *Federal Rules of Civil Procedure 74(a), 74(b), 75, and 76* with a procedure whereby review is conducted upon the motion of a party filed within 10 days of entry of the hearing commissioner's final order or judgment, or on the initiative of the reviewing judge within 30 days of entry of the hearing commissioner's final order or judgment. The term "final order or judgment" as used in this Rule embraces the final decision concept of *D.C. Code § 11-721(a)* and permits review of a hearing commissioner's decisions by a Superior Court judge in those situations in which an appeal from this Court to the Court of Appeals would lie. In lieu of the federal provisions for transcripts and briefs, the Superior Court Rule provides that the motion for review shall designate the grounds for the objection to a hearing commissioner's order, judgment, or part thereof, and shall include a written summary of any evidence presented before the hearing commissioner relating to the grounds for objection.

Subparagraphs (c)(3) and (4) modify the provisions for tolling of the time for appeal and interlocutory appeals contained in *Federal Rule of Civil Procedure 74(a)* to reflect their application to reviews of decisions of hearing commissioners by a judge upon motion of a party. Subparagraph (c)(4), permitting reviews of certain interlocutory orders, embraces the provisions of *D.C. Code § 11-721(d)*, providing for a certification procedure for otherwise unreviewable orders where "the ruling or order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate [review of the ruling or order] may materially advance the ultimate termination of the litigation...." Although no specific certification procedure is set forth, the Rule contemplates that a hearing commissioner may certify such a motion for review, and the Superior Court judge, in the judge's discretion, may allow the review. In the interest of expediting the trial, interlocutory reviews of any kind will not stay the proceedings unless the hearing commissioner or the judge finds that the nature of the review sought or its relation to the remaining proceedings requires a stay.

Subparagraph (c)(5) modifies the provision for extension of time to file a notice of appeal in *Federal Rule of Civil Procedure 74(a)* to provide that the time to file motions for review may be extended for a period not to exceed 20 days from the date otherwise prescribed by the Rule.

Subparagraphs (c)(6) and (7) modify the stay and dismissal provisions of *Federal Rule of Civil Procedure 74(c)* and (d) to reflect their application to reviews of a hearing commissioner's decision by a judge designated by the Chief Judge.

Paragraph (d). This paragraph has been added to the Superior Court Rule to provide a procedure for the adjudication of contempts committed before a hearing commissioner. Similar to *28 U.S.C. § 636(e)*, this provision allows a hearing commissioner to order a person to show cause before the Presiding Judge of the Civil Division, or his or her designee, why the person should not be held in contempt. For purposes of this Rule, the term "person" includes any person, corporation, or other entity.

Paragraph (e). *D.C. Code § 11-1732(a)* authorizes hearing commissioners to perform functions incidental to their authorized duties. Paragraph (e) lists these incidental functions in the Civil Division. Consent of the parties is not required for the exercise of these functions.

Rules 74 to 76. [Omitted]

Rule 77. Superior Court and Clerk.

(a) Superior Court always open.

The Superior Court shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Trials and hearings; orders in chambers.

All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the Clerk or other Court officials and at any place either within or without the District of Columbia; but no hearing, other than one ex parte, shall be conducted outside the District of Columbia without the consent of all parties affected thereby.

(c) Clerk's Office and orders by Clerk.

The Clerk's Office with the Clerk or a deputy in attendance shall be open during business hours on all days except Saturdays after 12:00 noon, Sundays, and legal holidays. All motions and applications in the Clerk's Office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the Court are grantable of course by the Clerk; but the Clerk's action may be suspended or altered or rescinded by the Court upon cause shown.

(d)(1) Notice of orders or judgments.

Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry in the manner provided for in Rule 5(b) upon each party who is not in default for failure to appear, and shall make a note in the docket of the service. Any party may in addition serve a notice of such entry in the manner provided in Rule 5(b) for the service of papers. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Court to relieve a party for failure to appeal within the time allowed, except as permitted in the Rules for the District of Columbia Court of Appeals.

(2) Nothing in this rule shall preclude a judicial officer or his or her authorized staff member from performing the function of the Clerk prescribed in paragraph (d) of this rule.

Rule 77-I. Business hours of the Clerk.

The Civil Division Clerk's Office shall be open for the transaction of business from 9:00 a.m. until 4:00 p.m. on all days except Sundays and legal holidays and from 9:00 a.m. to 12:00 noon on Saturdays.

Rule 77-II. Orders grantable by the Clerk.

(a) Authority to enter.

The Clerk is authorized to grant and enter the following orders without further direction by the Court, but the Clerk's action may be suspended, altered or rescinded by the Court for cause shown:

(1) [Deleted].

(2) To substitute attorneys.

Orders on consent or substitution of attorneys.

(3) To approve bonds, etc.

Orders approving bonds and undertakings, prepared on printed forms furnished by the Clerk, except supersedeas, and undertakings required by Title 40, Section 423, *District of Columbia Code (1967) [§ 50-1301.07, 2001 Ed.]*, required in any action or proceeding, when the order is consented to or when the surety is a corporation holding authority from the Secretary of the Treasury to do business within the District of Columbia and having a process agent therein pursuant to U.S.C.S., Title 6, §§ 6-13, or any similar statute.

(4) If grantable under these Rules or statute.

Any other orders grantable of course by the Clerk under the provisions of these Rules or any statute.

(b) Uncontested motions for security for costs.

The Clerk shall have authority to make appropriate entries granting uncontested motions for security for costs on the basis of \$ 100 cash or \$ 200 bond where the amount claimed is \$ 5,000 or over; \$ 50 cash or \$ 100 bond where the amount claimed is \$ 3,000 or more but less than \$ 5,000; \$ 25 cash or \$ 50 bond in all cases where the amount claimed is more than \$ 750 but less than \$ 3,000. The Clerk shall also have authority to accept a praecipe confessing judgment for costs in accordance therewith.

(c) Bonds under Motor Vehicle Owners' Financial Responsibility Act.

The Clerk shall also have authority to approve bonds required under the Motor Vehicle Owners' Financial Responsibility Act on the basis of \$ 500 where the amount claimed in suit is \$ 5,000 or over; \$ 300 where the amount claimed in suit is \$ 3,000 or more but less than \$ 5,000; \$ 100 in all cases where the amount claimed is more than \$ 750 but less than \$ 3,000.

COMMENT

Rule 77 identical to *Federal Rule of Civil Procedure 77* except for; (1) substitution of "Superior Court" for "district courts" and "District of Columbia" for "district" where appropriate; (2) addition of the phrase "after 12:00 noon" to section (c) to reflect the fact that the Clerk's Office will be open Saturday mornings; (3) deletion of the authorization in section (c) for promulgation of local rules; (4) substitution in section (d) for reference to the Rules for the District of Columbia Court of Appeals in place of reference to the Federal Rules of Appellate Procedure; and (5) modification of the 1st sentence of section (d) to require the Clerk to mail notice of the entry of an order or judgment only when the same was signed or decided out of the presence of the parties or their counsel. This last modification is intended to save the Clerk substantial time by eliminating the needless administrative burden of mailing notice of orders or judgments to parties who are already aware of those orders or judgments by virtue of their presence at the time the same were made.

Rule 78. [Repealed].

Rule 78-I. Hearings on motions.

Hearings on motions shall be scheduled in accordance with Rule 12-I.

COMMENT

Federal Rule of Civil Procedure 78 permitting District Courts to establish motions days has been replaced by a brief reference in Rule 78-I to the scheduling provisions set out in Rule 12-I which details the motions practice in this Court.

Rule 79. Books and records kept by the Clerk and entries therein.

(a) Civil docket.

The Clerk shall keep a "civil docket" and shall enter therein each civil action to which these Rules are made applicable. The "civil docket" may be kept solely by computer or electronic means. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the docket. All papers filed with the Clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically on the civil docket assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the Court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the Clerk shall enter the word "jury" on the docket.

(b) Civil judgments and orders.

The Clerk shall keep, a correct copy of every final judgment or appealable order, or order affecting title to or lien upon real or personal property, and any other order which the Court may direct to be kept. The Executive Officer shall, subject to the supervision of the Chief Judge, prescribe the form and manner in which such copies shall be kept.

(c) Indices; calendars.

Suitable indices of the civil docket and of every civil judgment and order referred to in subdivision (b) of this Rule shall be kept by the Clerk under the direction of the Court. There shall be prepared under the direction of the court calendars of all actions ready for trial, which shall distinguish "jury actions" from "court actions."

(d) Other books and records of the Clerk.

The Clerk shall also keep such other books and records as may be required from time to time by the Executive Officer of the District of Columbia Courts subject to the supervision of the Chief Judge.

(e) Entry on docket.

Nothing in these Rules shall preclude a judicial officer or his or her authorized judicial staff member from making entries on the docket.

Rule 79-I. Copies and custody of papers filed.

(a) Certified copies.

(1) Upon receiving and filing any paper the Clerk shall stamp the date of filing on the face of the paper next to the title of the cause and shall also stamp the date of filing separately upon any exhibit. If any person filing any paper requests a certification of such filing, a copy of the paper provided by such person shall be marked to show the time and date of the filing and initialed by the person with whom the paper was filed. Such certified copy shall be prima facie evidence in any proceeding that the original of the paper was filed as shown by the certification.

(2) Any filings made electronically as permitted by these rules or by Administrative Order shall be considered date stamped as specified by Administrative Order.

(b) Custody of documents.

The Clerk of the Civil Division or a designee shall be the custodian of all papers filed in CA actions. No original paper, document or record in any case shall be removed from its place of filing or custody, except under the following conditions:

(1) Except with approval of the Court, no paper, document, or record shall be taken from the courthouse by any person other than the custodian of the paper, document, or record, who shall retain possession thereof and shall return it to its place of filing immediately upon completion of the purpose for which it was removed.

(2) When required for use before a division of this Court or a person to whom the case has been referred for consideration, or when ordered by 1 of the judges of this Court, the custodian, the custodian's assistant, any attorney or party to the case, or any person designated by 1 of the judges may be permitted to remove such paper, document or record for the use required or ordered.

(3) In any case where the paper, document or record is removed by any person other than the custodian, or the custodian's assistant, a receipt shall be given to the custodian and the paper, document or record, shall be returned to its place of filing or custody immediately upon completion of the purposes for which it was removed.

COMMENT

Rule 79 identical to *Federal Rule of Civil Procedure 79* except for substitution of local administrative references throughout and deletion of the requirement in section (a) that the civil docket be in the form of a book.

Rule 80. Stenographer; stenographic report or transcript as evidence.

(a), (b) [Vacant].

(c) Stenographic report or transcript as evidence.

Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified in accordance with SCR Civil 201(c).

COMMENT

Identical to *Federal Rule of Civil Procedure 80* except for substitution of the word "vacant" in sections (a) and (b) in place of the titles and abrogation dates of those sections.

Rule 81. Applicability in general.

(a) To what proceedings applicable.

(1) [Deleted].

(2) These Rules are applicable to proceedings for habeas corpus, and quo warranto, to the extent that the practice in such proceedings is not set forth in applicable statutes or the rules governing proceedings under *D.C. Code § 23-110* and has heretofore conformed to the practice in civil actions. The writ of habeas corpus or order to show cause shall be directed to the person having custody of the person detained.

(3) In proceedings relating to arbitration, these Rules apply only to the extent that matters of procedure are not provided for in applicable statutes. These Rules apply to proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States or of the District of Columbia under any applicable statute except as otherwise provided by statute or by rules of the applicable court or by order of the court in the proceedings.

(4)-(6) [Deleted].

(7) [Vacant].

(b) Scire facias and mandamus.

The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these Rules.

(c) [Deleted].

(d) [Vacant].

(e) Law applicable.

When the word "state" is used, it includes, if appropriate, the District of Columbia. When the term "statute of the United States" is used, it includes any act of Congress locally applicable to and in force in the District of Columbia. When the law of a state is referred to, the word "law" includes the statutes of that state and the state judicial decisions construing them.

(f) References to officer of the United States.

Under any Rule in which reference is made to an officer or agency of the United States, the term "officer" includes a district director of internal revenue, a former district director or collector of internal revenue, or the personal representative of a deceased district director or collector of internal revenue.

(g) Substitutions.

(1) Whenever the name "Corporation Counsel" appears, the name "Attorney General" shall be substituted therefor; and

(2) Whenever the name "hearing commissioner" appears, the name "magistrate judge" shall be substituted therefor.

COMMENT

Federal Rule of Civil Procedure 81 has been modified considerably because of differences in the jurisdictions of the Superior Court and the United States District Courts.

Section (a) describing the proceedings to which these Rules are applicable has been extensively revised.

Subsection (a)(1) relating to prize proceedings in admiralty, bankruptcy, copyright, and District of Columbia mental health proceedings has been deleted. The Rules governing mental health proceedings are found in the Superior Court Rules of Procedure for Mental Health.

Subsection (a)(2) is identical to the Federal Rule counterpart except that "applicable statutes" has been substituted for "statutes of the United States" and the reference to citizenship admissions has been deleted.

Subsection (a)(3) has been modified to reflect appropriate applicability to arbitration cases, but the inapplicable reference to Title 9, U.S.C. (governing cases in the courts of the United States arising out of disputes over arbitration agreements) has been deleted. Also deleted from the Federal Rule is reference to *45 U.S.C. § 159* which deals with rail-

way labor cases in the United States District Courts. In conformity with these modifications, "those statutes" has been changed to "applicable statutes" in the 1st sentence of (a)(3). The 2nd sentence of subsection (a)(3) has been revised to comprehend all proceedings to compel whether based on a subpoena issued by a United States officer or agency or a District of Columbia officer or agency.

Subsection (a)(4) dealing with federal District Court review of orders of the Secretary of Agriculture, orders of the Secretary of the Interior, and orders of petroleum control boards is deleted.

Subsection (a)(5) dealing with proceedings in the federal District Courts for enforcement of National Labor Relations Board orders is deleted.

Subsection (a)(6) dealing with District Court proceedings under the Longshoremen's and Harbor Workers Compensation Act and provisions relative to cancellation of citizenship certificates is deleted.

Subsection (a)(7) of the Federal Rule has been abrogated and is thus left vacant in these Rules.

Section (b) of this rule is identical to *Federal Rule of Civil Procedure 81(b)*.

Section (c) of the Federal Rule dealing with the procedure in cases that have been removed from state courts to United States District Courts is thus inappropriate material for inclusion in Superior Court Rules and has been deleted.

Section (d) of the Federal Rule has been abrogated and that section is thus left vacant in these Rules.

Section (e) has been modified slightly in order to be appropriate for use in this Court. The 1st sentence of the Federal Rule section prescribes a principle of applicability for cases in the United States District Court for the District of Columbia and is thus deleted. (That applicability is, of course, properly secured by Rule 81 (e) of the Federal Rules as followed in the U.S. District Court for this District and is not affected by Rule 81 of the Superior Court.) The inclusive provision with respect to "statute of the United States" in the 2nd [3rd] sentence of the Federal Rule is made applicable to proceedings in the Superior Court by deletion of the phrase "so far as concerns proceedings in the United States District Court for the District of Columbia".

Section (f) is identical to *Federal Rule of Civil Procedure 81(f)*.

Rule 82. Jurisdiction unaffected.

These Rules shall not be construed to extend or limit the jurisdiction of this Court.

COMMENT

Identical to *Federal Rule of Civil Procedure 82* except for deletion of inapplicable references to venue and to admiralty and maritime claims.

Rule 83. Directives by judicial officer.

A judicial officer may regulate practice in any manner consistent with applicable law, these Rules and Administrative Order. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in applicable law or these Rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

COMMENT

This Rule is substantially similar to *Federal Rule of Civil Procedure 83(b)*. *Federal Rule of Civil Procedure 83(a)*, which addresses the promulgation, amendment, and enforcement of local rules by district courts, has been deleted. Substituted therefor is Rule 83-I which prescribes the rulemaking procedure for subsequent rules in accordance with *D.C. Code § 11-946*.

Rule 83-I. Amendments of or additions to Superior Court Rules of Civil Procedure.

Any amendments or additions to the Federal Rules of Civil Procedure promulgated after February 1, 1971, shall, upon their effective date, take effect as amendments of or additions to the Superior Court Rules of Civil Procedure unless the Superior Court by action of a majority of judges thereof shall adopt a resolution modifying such Federal Rule amendments or additions in whole or in part. Any such resolution shall be submitted to the District of Columbia Court of Appeals for approval. In addition, the Superior Court by action of a majority of the judges thereof may of its own initiative adopt additional rules or amendments to existing Superior Court Rules, provided that any such additions or amendments which modify the Federal Rules of Civil Procedure shall be submitted to the District of Columbia Court of Appeals for approval.

COMMENT

Federal Rule of Civil Procedure 83 which authorizes the promulgation of local rules by each District Court has been deleted. Substituted therefor is Rule 83-I which prescribes the rulemaking procedure for subsequent rules in accordance with D.C. Code (1967 Edition, Supplement IV) § 11-946.

Rule 84. Forms.

The Forms contained in the Appendix of Forms are sufficient under the Rules and are intended to indicate the simplicity and brevity of statement which the Rules contemplate.

COMMENT

Identical to *Federal Rule of Civil Procedure 84*.

Rule 85. Title.

These Rules may be known as the Superior Court Rules of Civil Procedure and may be cited as Superior Court Rules -- Civil or as SCR-Civil.

COMMENT

Federal Rule of Civil Procedure 85 has been deleted and a rule substituted therefor which provides a convenient way of describing and citing these Rules.

Rule 86. Effective date.

(a) These Rules will take effect on February 1, 1971. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending when the Rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(b)-(e) [Deleted].

Rule 86-I. Effective date of Rule amendments or additions.

Unless otherwise ordered by the Court, any amendments of or additions to these Rules take effect on their date of promulgation and govern all proceedings in actions brought thereafter and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending on such effective date would not be feasible or would work injustice, in which event the former procedure applies.

COMMENT

Rule 86(a) is identical to *Federal Rule of Civil Procedure 86(a)* except for substitution of the appropriate effective date and thus borrows the presumption of applicability to all proceedings except where such applicability is unfair or infeasible in cases filed prior to February 1, 1971. Sections (b)-(e) dealing with the effective date of various Federal Rule amendments have been deleted.

Rule 101. Appearance and withdrawal of attorneys.

(a) Who may practice.

(1) An attorney who is a member in good standing of the District of Columbia Bar may enter an appearance, file pleadings and practice in this Court.

(2) No person other than one authorized by this Rule shall be permitted to appear in this Court in a representative capacity for any purpose other than securing a continuance. No corporation shall appear in the Division except through a person authorized by this Rule. However, nothing in this Rule shall be construed to prevent any natural person from prosecuting or defending any action in the person's own behalf if the person is without counsel.

(3) An attorney who is a member in good standing of the bar of any United States court or of the highest court of any state but who is not a member in good standing of the District of Columbia Bar may enter an appearance, and file pleadings in this Court, and if granted permission by the Court may participate in proceedings in this Court, pro hac vice, provided that such attorney joins of record a member in good standing of the District of Columbia Bar who will at all times be prepared to go forward with the case, and who shall sign all documents subsequently filed and shall attend all subsequent proceedings in the action unless this latter requirement is waived by the judge presiding at the proceeding in question. An attorney seeking permission to appear under this section shall file a praecipe indicating the attorney's name, address, telephone number, the jurisdiction(s) where the attorney is a member of a bar and the number of times the attorney has previously sought to appear under this Rule. Any attorney seeking to appear on a pro hac vice basis must comply with the restrictions prescribed in District of Columbia Court of Appeals Rule 49(c). The attorney shall also serve a copy of the praecipe on the District of Columbia Court of Appeals' Committee on Unauthorized Practice in the manner provided in SCR Civil 5. Proof of service shall be made by the filing of a certificate of the attorney showing the date and manner of service. Any member of the District of Columbia Bar who joins the attorney seeking special permission to appear shall also sign the praecipe and the certificate.

(4) An attorney who is employed or retained by the United States or one of its agencies who wishes to enter an appearance shall conform to the provisions of Rule 49(c) of the General Rules of the District of Columbia Court of Appeals.

(5) A state attorney general or the attorney general's designee, who is a member in good standing of the bar of the highest court in any state or of any United States court, may appear and represent the state or any agency thereof, irrespective of (1)-(3) above.

(b) Entry of appearance.

(1) If, after the first pleading or other paper is filed on behalf of any party, any additional attorney wishes to enter an appearance for that party, such attorney must file a praecipe noting the entry of the attorney's appearance and listing the attorney's correct address, e-mail address, telephone number and Unified Bar number.

(2) The Clerk shall not accept any paper signed by an attorney for filing unless the attorney is eligible to appear and has entered the attorney's appearance as provided herein.

(c) Withdrawal of appearance.

(1) If a trial date has not been set, an attorney may withdraw the attorney's appearance in a civil action by filing a praecipe signed by the attorney and the attorney's client, noting such withdrawal, provided that another attorney enters or has entered an appearance on behalf of the client at that time.

(2) If a trial date has been set or if the client's written consent is not obtained, or if the client is not represented by another attorney, an attorney may withdraw the attorney's appearance only by order of the Court upon motion by the attorney served upon all parties to the case or their attorneys. Unless the client is represented by another attorney or the motion is made in open court in the client's presence, a motion to withdraw an appearance shall be accompanied by a certificate of the moving attorney listing the client's last known address and stating that the attorney has served upon the client a copy of the motion and a notice advising the client to obtain other counsel, or, if the client intends to represent himself or herself or to object to the withdrawal, to so notify the Clerk in writing within 10 days of service of the motion upon the client.

(3) Except where leave to withdraw has been granted in open court in the presence of the affected client, the clerk shall send to the affected client by 1st class mail, postage prepaid, a copy of any order granting leave to withdraw. In cases where (1) no new counsel has entered an appearance, and (2) the client has not notified the Clerk of the client's

intention to represent himself or herself, the Clerk shall include with a copy of the order a notice instructing the client to arrange for 1 of the 2 foregoing actions with respect to appearance to be promptly accomplished.

(4) The Court may deny an attorney's motion for leave to withdraw if the withdrawal would unduly delay trial of the case, be unduly prejudicial to any party, or otherwise not be in the interests of justice.

(d) Appearances by attorneys in pro bono cases.

An inactive member of the District of Columbia Bar who is affiliated with a legal services or referral program may appear, file pleadings and practice in any particular case that is handled without fee, upon filing with this Court, and the District of Columbia Court of Appeals' Committee on Unauthorized Practice a certificate that the attorney is providing representation in that particular case without compensation.

(e) Law students.

(1) Practice.

(A) Any law student admitted to the limited practice of law pursuant to Rule 48 of the General Rules of the District of Columbia Court of Appeals, and certified and registered as therein required, may engage in the limited practice of law in the Superior Court of the District of Columbia, in connection with any case arising in the Civil Division, on behalf of any indigent person who has consented in writing to that appearance, provided that a "supervising lawyer," as hereinafter defined, has approved such action and also entered an appearance, and provided that the case would not generally be undertaken by a member of the bar on a contingent fee or retained basis as may be determined by the Court at any point in the litigation.

(B) In each case, the written consent and approval referred to above shall be filed in the record of the case.

(2) Requirements and limitations.

(A) The law student must be enrolled in a clinical program. A clinical program for purposes of this Rule shall be a law school program for credit of at least 4 semester hours held under the direction of a full-time faculty member of such law school, or an adjunct professor for a consortium of law schools, whose primary duty is the conduct of such program in which a law student obtains practical experience in the operation of the District of Columbia legal system by participating in cases and matters pending before the courts or administrative tribunals. A student need not be so enrolled if that student has satisfactorily completed a clinical program and is continuing in the representation of a program's client.

(B) The law student must be registered and certified by the Admissions Committee of the District of Columbia Court of Appeals as eligible to engage in the limited practice of law as authorized by the District of Columbia Court of Appeals General Rule 48.

(C) Certified law students shall not schedule more than 1 trial for any single date except on notice to and with permission of the Court.

(3) Supervision.

The "supervising lawyer" referred to in this Rule shall:

(A) Be a lawyer whose service as a supervising lawyer for the clinical program is approved by the law school by which the law student is enrolled and who is an active practitioner of law in this Court.

(B) Assume full responsibility for guiding the student's work in any pending case or matter or any case-related activity in which he or she participates, and for supervising the quality of that student's work.

(C) Assist the student in his or her participation to the extent necessary in the supervising lawyer's professional judgment to insure that the student participation is effective on behalf of the person represented.

(D) Sign each pleading, memorandum, or other document filed by the student, and appear with the student at each court appearance, except that a supervisor need not be present for a non-adversary matter so long as he or she is available to the Court within one-half hour after such supervisor's presence is requested by the Court.

(E) Not schedule more than 3 cases for trial on any given day for law students being supervised by him or her.

(F) No fee shall be paid to any supervising lawyer or law student under this Rule. The Court shall be empowered, however, to permit clinical programs to receive fees, costs and penalties prescribed by law, so long as original eligibility requirements for representation are enforced.

Rule 102. Disciplinary proceedings against attorneys.

Any judge, attorney, or other person who believes that a member of the bar of this court should be censured, suspended, or expelled from the practice of law at the Bar of this Court for a crime, misdemeanor, fraud, deceit, malpractice, professional misconduct or conduct prejudicial to the administration of justice may proceed against such member of the Bar as provided in Rule XI of the Rules of the District of Columbia Court of Appeals Governing the Bar of the District of Columbia. Nothing herein shall be construed to deprive this Court of any inherent disciplinary powers possessed by it.

Rule 103. Employees not to practice law.

Neither the Clerk nor the Clerk's assistants, nor anyone serving as a law clerk or secretary to a judge of this Court, or employed in any other capacity in this Court, shall engage in the practice of law while continuing in such position.

Rule 104. Avoidance and resolution of conflicts in engagements of counsel among the courts in the District of Columbia.

The following provisions, which implement the "Procedures for Avoiding and Resolving Conflicts in Engagements of Counsel to Appear Before the Courts in the District of Columbia" dated April 18, 1973, adopted by and applicable to the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals, and the Superior Court of the District of Columbia, shall apply to matter scheduled in this Court:

(a) Priority to be accorded appellate courts.

Trial proceedings in this Court will yield, and if under way will be held in abeyance, during argument by trial counsel in an appellate court.

(b) Priorities in trial courts.

Actual trials of civil or criminal cases in this Court or in the U.S. District Court for the District of Columbia will be accorded priority over any nontrial matters in either Court. For the purpose of this Rule, a hearing on a preliminary injunction shall be regarded as a trial. A judge shall set a date for trial only after ascertaining that trial counsel have no conflicting trial or appellate engagement in any court within the District of Columbia. If, despite the foregoing and the obligations imposed on counsel by section (c) of this Rule counsel should have more than one trial set on 1 day, the following priorities will be recognized:

(1) That case which is first set to commence trial on a specific day will receive priority over cases which are later set to commence trial on that day. A continued case shall be treated as set as of the last setting date.

(2) Any trial in progress, including a trial in progress from day to day, shall take precedence over trial or nontrial engagements of counsel which are set for times during which the trial is still in progress.

(3) Nontrial matters in a trial court will yield to trials in any court.

(4) If a scheduled trial conflicts with a previously set nontrial matter and, because of the urgency or complexity of the nontrial matter or the number of persons involved, it would be difficult to reschedule the nontrial matter, counsel shall immediately advise the court in which or the judge before whom the conflicting trial is scheduled. The court or the judge will be receptive to counsel's application for a change of the trial date or an adjustment of the hours of trial, but shall retain discretion to grant or deny such an application.

(5) The judges of this Court, insofar as practical, will attempt to adjust their schedules to enable an attorney to attend to brief nontrial matters such as pleas, sentences, or status and pretrial conferences pending in another court. It is recognized that emergency situations will arise and that certain types of cases may require special consideration. The judges of this Court will attempt to accommodate these situations by recognizing the need to depart, on occasion, from rigid scheduling rules when such situations are brought to their attention by counsel.

(c) Responsibilities of counsel.

It is the professional responsibility of attorneys to avoid the setting of conflicting engagements in the courts, to inform the courts of expected difficulties or conflicts which may arise, and to achieve the resolution of such conflicts or problems at the earliest possible time. The following particular obligations are imposed upon counsel:

(1) Attorneys are expected to carry with them at all times they are in court a calendar of their future court appearances.

(2) Attorneys shall appear personally before the judge when a case is being set, reset, or continued except as otherwise specified below. They shall in every case inform the court fully as to any matters which may conflict with a setting, resetting, or continued date being considered by the court. Counsel shall not schedule engagements which they cannot reasonably expect to attend at the time scheduled. They shall observe such limitations on the number of matters they schedule as are imposed herein, or are imposed by the individual courts of this jurisdiction, or which arise by reason of their professional obligations to their clients. The sole exception to the requirement that counsel appear personally before the judge when a case is being reset or continued arises when counsel is physically unable to be present. In such event counsel should leave 3 open dates with the judge in question, and the trial may be reset in counsel's absence. It shall, however, be the attorney's duty to appear personally as soon as possible before the judge who reset the case to confirm the reset date.

(3) Attorneys are obliged to take action immediately upon becoming aware of any conflict and specifically to call the conflicting engagements to the attention of the judge being asked to yield, and to pursue the matter until the conflict is resolved. Such matters may be presented to the judge in open court as a preliminary matter, with advance notice to other counsel.

(4) If counsel cannot avoid being unexpectedly late for or absent from any scheduled appearance before any judge, they shall in advance of the scheduled appearance personally inform the judge of that fact, the reason therefor, and the nature and duration of the conflicting engagements.

(5) If an attorney has a felony case set for trial in any court on a given day, the attorney shall not schedule any other case for trial on that day or for any day thereafter during which that felony trial may reasonably be expected to continue. If an attorney has a misdemeanor case set for jury trial on a given date, the attorney shall not schedule more than 1 other misdemeanor case for trial on that day. These restrictions do not apply to cases as to which an attorney is certain there will be a nontrial disposition.

(6) This Court will take appropriate disciplinary action when an attorney fails to conduct himself or herself in accordance with the requirements and obligations imposed by this Rule.

Rule 201. Recording of Court proceedings; release of transcripts.

(a) All proceedings recorded.

All proceedings shall be simultaneously recorded verbatim by a reporter engaged by the Court, by shorthand or mechanical means, or when permitted by rule of court by an electronic sound recording device.

(b) Obtaining transcripts.

(1) Any person who has made suitable arrangements to pay the appropriate fee, shall be entitled to obtain a transcript of all or any part of any recorded proceedings in open court. As used in this Rule, proceedings in open court shall constitute all recorded judicial proceedings in a non-jury case, and in a case tried by a jury shall constitute all recorded judicial proceedings except discussions in which the jury does not participate.

(2) In a case tried to a jury, any party to the proceedings who has made suitable arrangements to pay the fee specified, or any judge of the District of Columbia Court of Appeals or any judge of this Court, shall be entitled to obtain a transcript of any part of the recorded proceedings, whether or not held in open court. In a case tried to a jury, prior to rendition of a verdict or discharge of the jury, any person other than a party to the proceedings shall apply to the judge presiding for permission to obtain a transcript of any part of the recorded proceedings not held in open court. In determining whether such an application should be granted in whole or in part, the presiding judge shall consider the parties' right to a fair trial and the public's interest in a free press. The presiding judge may condition the granting of such application upon such terms as may be appropriate, may sequester the jury, or may take such other approved procedures as seem necessary to insure a fair trial in the case. After rendition of a verdict or discharge of the jury, all recorded proceedings shall be treated as proceedings in open court.

(c) Endorsement on transcript.

Each transcript obtained in accordance with this Rule shall bear the following endorsement upon its cover page:

"This transcript represents the product of an official reporter or transcriber, engaged by the Court, who has personally certified that it represents the testimony and proceedings of the case as recorded."

(d) Transcript on appeal.

Upon the completion of any transcript in a matter to be brought before the appellate court, the reporter or transcriber shall notify the trial court and counsel that the transcript has been completed and will be forwarded to the Court of Appeals 5 days hence. The said notice shall inform counsel that any objections to the transcript must within the said 5 days be presented to the trial court and served on opposing counsel in the manner prescribed in Rule 5. Objections raised by the Court sua sponte shall be made known to the parties who shall be given an opportunity to make appropriate representations to the Court before the objections are resolved. All objections shall be resolved by the trial court on the basis of the best available evidence as to what actually occurred in the proceedings.

(e) Security of original transcript.

In a case in which a transcript is ordered by any person, the reporter or transcriber shall deliver to said person a carbon copy or copies of any transcript prepared. The original of the transcript bearing the required certificate, shall be filed by the reporter or transcriber with the Clerk of the Court and shall not be changed in any respect except pursuant to rule of court. No change in any transcript may be made by the presiding judge except on notice to the parties to the proceeding. Where any changes are made in the transcription of proceedings the corrections and deletions shall be shown.

(f) Private reporters.

Except as provided in paragraphs (g) and (h) of this Rule, only a court reporter who is a court employee, or who is under contract to the Court to provide reporting services, is permitted to record proceedings held before a judge or hearing commissioner.

(g) Electronic recording devices.

The use of court operated electronic recording devices may be permitted by the Chief Judge of the Superior Court for the perpetuation of a record in any court proceeding without the presence of a court reporter during such proceeding.

(h) Restriction on the use of electronic recording devices.

No electronic recording equipment, other than that in the custody and control of official court reporters or court personnel in the performance of their official duties, may be used to record proceedings held before a judge or hearing commissioner.

COMMENT

Section (b)(2) requires that during trial persons other than parties apply to the court for transcripts of those portions of jury trials not held in open court. In this connection, see A.B.A. Standards on Fair Trial -- Free Press § 3.1 and § 3.5.

For administrative rules concerning transcripts see Court Reporter Rules, District of Columbia Courts.

Rule 202. Fees.

(a) Court fees.

Court fees shall be as indicated below for actions in the Civil Division (CA), and for actions in the Small Claims and Conciliation Branch and the Landlord and Tenant Branch (SC & LT) (where fee is applicable).

	CA	SC & LT
(1) Initial Filing Fees		
Filing a new civil action	\$ 120	\$..
Filing a new landlord-tenant action	..	15
Filing a new small claims action	..	
For claims for damages for \$ 500 or less	..	5
For claims over \$ 500 and up to \$ 2500	..	10
For claims in excess of \$ 2500	..	45
Filing intervening petition	120	25
Filing arbitration agreement and entering award	120	25
Filing jury demand	..	75
Filing change of name case	60	..
Filing petition to change birth certificate	60	..
Filing petition to release mechanics' lien	60	..
Filing petition to enter administrative order as judgment	60	..
Filing for enforcement of foreign judgment..	60	..
Filing petition to perpetuate testimony (Rule 27)	60	..
Filing a Merit Personnel Action review	60	..
Filing an appeal from the Traffic Adjudication Appeals Board	30	..
Filing counterclaim, crossclaim, or 3rd party claim	20	10
Filing petition to serve subpoena (Rule 28-I)	10	..
(2) Miscellaneous Fees		
For issuing each alias summons or alias writ	10	5
For attachment before judgment (including issuing writ)	20	10
For filing motion (except motion under Rule 41-I)	20	10
For motion to reinstate after dismissal under Rule 41-I	35	25
For services of a judge as arbitrator	120/hr	..
For appointment of special process server	5	5
For each photocopy supplied by clerk, per page	.50	.50
For certified copy or true seal copy	5	5
For search of record, for each name searched	10	10
(3) Post Judgment Fees		
For issuing attachment on judgment	20	10
For issuing writ of fieri facias or writ of execution	20	10
For issuing writ of replevin	20	..
For writ of restitution	20	10
For oral examination of debtor	20	10
For issuing transcript of record	10	5
For making and comparing a transcript of record on appeal, per page	1	1
For issuing triple seal	20	10
For filing notice of appeal	5	5

(b) Marshal's fees.

The fees for services by the United States Marshals for processes issued by the Superior Court shall be the same as those service of processes issued by the United States District Court for the District of Columbia.

COMMENT

Attention is called to the provisions of *D.C. Code 1981, § 15-713* which prohibit in any class of case return of a jury fee if demand for jury trial is withdrawn less than 3 days before the trial date.

Rule 203. Free press -- Fair trial.

(a) No courthouse personnel, including among others, marshals, court clerks, law clerks, messengers, and court reporters, shall disclose to any person information relating to any civil proceeding that is not part of the public records of the Court without specific authorization of the Court, nor shall any such personnel discuss the merits or personalities involved in any such proceeding with any members of the public.

(b) No photographs, radio or television broadcasts, or tapes for public replay, shall be made inside the courthouse in connection with any civil proceeding, whether or not the Court is in session. Contents of official tapes that are made as a part of the record in a case will be treated in the same manner as official stenographic notes.

(c) No attorney who has undertaken the representation of a litigant in a civil case, whether that case is in progress or imminent, shall release or authorize the release of information not in the public record for dissemination by any means of public communication which is likely to interfere with a fair trial or otherwise prejudice the due administration of justice. No statement shall be disseminated which contains an attorney's opinion as to liability of the parties, credibility of witnesses, motives of the other party, or similar matters bearing on the conduct of the litigation.

(d) In any case which is or is likely to become widely publicized, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the parties to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

Rule 204. Administrative searches and inspections.

(a) Authority to issue warrants.

Administrative search warrants (hereinafter denominated "warrant(s)") authorized by this Rule may be issued by a judge of the Superior Court.

(b) Grounds for issuance.

A warrant may be issued authorizing the administrative inspection and search of any property or premises, private, commercial or public. Property (including premises) is subject to administrative inspection and search, if there is probable cause to believe that:

- (1) The property is subject to 1 or more statutes relating to the public health, safety or welfare;
- (2) Entry to said property has been denied to officials authorized by civil authority to enforce such statutes or regulations unless it be shown that special circumstances exist so that such prior denial of entry should not be required; and
- (3) Reasonable grounds exist for such administrative search and inspection.

(c) Application for warrants.

Application for a warrant shall be in writing upon oath to a judge. It shall include the name and title of the applicant and a statement of the facts demonstrating the prior inability of the applicant or other authorized official to enter said premises for purposes of administrative inspection; allegations of fact supporting such statements; and a request that a warrant be issued authorizing an inspection of said property. Depositions, affidavits, or other proof to support the allegations contained in the application shall be submitted. Such proof shall be on personal knowledge or in the absence thereof, shall demonstrate the reliability of the allegations and information.

Applications for warrants shall be filed with the Clerk and maintained in the Civil Miscellaneous Docket.

(d) Issuance and contents.

Upon application by a law enforcement officer, prosecutor, or person authorized to enforce laws or regulations relating to health, safety, or welfare, a judge may issue a warrant if the judge is satisfied that ground for its issuance exists or that there is probable cause to believe that it exists. A warrant shall contain:

- (1) The name and signature of the issuing judge and the date of issuance;
- (2) The names and affiliations or classifications of the persons to whom the warrant is addressed, at least one of whom shall be a member of the Metropolitan Police Department;
- (3) A description of the premises, property or objects to be searched, and, where authorized by law, the property or objects to be seized, if any, sufficient for certainty of identification;
- (4) The hours during which the warrant may be executed; and
- (5) A provision that the warrant be returned to the Court on the next court day after its execution.

(e) Execution; return.

(1) Time of execution.

A warrant shall not be executed more than 10 days after the date of issuance. A warrant may be executed on any day of the week except Sunday during the hours of daylight unless, for good cause shown, the Court specifies other hours.

(2) Place of execution.

A warrant may be executed anywhere within the District of Columbia.

(3) Manner of execution.

A person executing a warrant authorizing an administrative inspection and search of a dwelling, house, other building or vehicle may break and enter any of these premises. Such breaking and entry shall not be made until after such person makes an announcement of the person's identity and purposes and the person reasonably believes that admittance to the dwelling, house, other buildings, or vehicle is being denied or unreasonably delayed.

(4) Inventory and return.

A person executing a warrant shall write and subscribe a return, setting forth the time of its execution and any property seized concomitant with its execution. The return shall include the names and capacities of all persons participating in the inspection(s), the nature and scope of the inspection made by each, and the office or administrator from whom reports of the inspection(s) may be obtained. A copy of the warrant and return shall be given to the owner of the premises, if present, or if the owner is not, to an occupant, custodian, or other person present; or if no person is present, the person executing the warrant shall post a copy of the warrant and 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 Court on the next court day after its execution, together with a copy of the return. The warrant and return shall be maintained in the Civil Miscellaneous Docket. Property seized concomitant with the execution of the warrant shall be kept as provided by law governing the person who made said seizure.

(g) Scope and definition.

This Rule in no way limits the right of any person executing such warrant to seize property which the person may otherwise have a right to seize. As used in this Rule, the term property includes documents, books, papers and any other tangible objects. Nothing in this Rule is intended to limit the authority of a duly authorized official to enter and inspect premises in emergency situations without warrant.

COMMENT

See *Camara v. Municipal Court*, 387 U.S. 523 (1967); *See v. Seattle*, 387 U.S. 541 (1967) and *D.C. Code § 11-941* (1973 Ed.).

Rule 205. Change of name.

(a) Application.

Pursuant to *D.C. Code 1973, § 16-2501*, any person, being a resident of the District of Columbia and desiring a change of name, may file an application in the Superior Court of the District of Columbia seeking such relief. The application may include the applicant's spouse, if the spouse consents, the minor children of the applicant, and the minor children of the spouse, if the spouse consents. If the applicant is an infant, the application shall be filed by the infant's parent, guardian or next friend. An application shall be verified and shall include:

1. Applicant's present name, social security number, and date of birth;
2. The name desired to be assumed;
3. The reasons for the change of name;
4. Applicant's present residence and permanent domicile;
5. Applicant's place of birth;
6. The full names of applicant's parents;
7. Whether applicant's name has been previously changed and, if so, the dates, places, and reasons therefor;
8. Whether applicant has ever been known by or used any other name not stated in this application, and, if so, what name and the dates, places and reasons therefor;
9. Applicant's occupation;
10. Whether applicant has been the subject of a bankruptcy, receivership, or insolvency proceeding;
11. Whether applicant has been convicted of a felony;
12. Whether any unsatisfied judgment or decree has been entered against applicant;
13. The names and addresses of any creditors to whom the the [sic] applicant is presently indebted;
14. Certification by the applicant (i) that the application has not been filed for any fraudulent or undisclosed purpose, status, past or present, (ii) that the granting of the application will not infringe upon the rights of others relating to any partnership, corporation, patent, trademark, copyright, goodwill, privacy or otherwise.

(b) Presentation of application and preliminary hearing.

At the time of filing of an application for change of name, the Court shall (i) require the applicant to make a prima facie showing of the applicant's right to relief, (ii) set a date for the final hearing, and (iii) inquire who, if anyone, is entitled to notice of the application and of the final hearing. Notice of said hearing, together with a copy of the application shall within 10 days thereafter be served personally upon the persons designated by the Court or shall be sent by the applicant or the applicant's attorney, by registered or certified mail to said persons. Proof of said service of mailing shall be by an affidavit which shall set forth the names and addresses of each person to whom notice was given, and the date of said mailing. Said affidavit shall be supported by the certified letter receipt.

(c) Publication.

In addition to the notice prescribed pursuant to section (b) of this Rule, notice of the filing of the application, the substance and prayer thereof and the date of final hearing shall be published once a week for 3 consecutive weeks in a newspaper in general circulation in the District of Columbia. Publication shall be proved by affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the notice as published.

(d) Final hearing.

A final hearing shall be held on a date set by the Court. Upon proof of notice as required in sections (b) and (c), and after making inquiry as to whether all persons who appear to have an interest in the application have received proper notice, the Court may enter an order changing the name of the applicant. If the applicant has been convicted of a felony, the Court shall provide notice to appropriate law enforcement officials.

Rule 301. Compensation of conservators and guardians of infants.

(a) General matters.

(1) Assignment of commission.

Assignment of commission as used in this Rule shall refer to those instances in which an attorney has, pursuant to an agreement with the fiduciary, performed some or all of the services normally expected of the fiduciary in administering the estate and has obtained an assignment from or written consent of the fiduciary to receive part or all of the fiduciary's commission as compensation for the attorney's services.

(2) Compensation in probate matters.

Compensation of personal representatives and guardians ad litem and attorney fees in probate matters are governed by Probate Division Rules 122 and 124.

(3) Discretion reserved to court.

Nothing contained in this Rule shall be construed to prevent the Court from requiring a statement of services or otherwise determining an appropriate commission in any particular case.

(4) Court may modify or dispense with notice.

The Court may modify the requirements of notice under this rule when the parties and persons whose interest may be affected are very numerous and may dispense therewith when it appears that the time, labor, and expense of complying will be disproportionate to the distributive shares of those having an interest in the matter.

(b) Compensation to a conservator or guardian for ordinary services.

Compensation to a conservator or guardian for ordinary services shall be by commission which shall not exceed 5% of amounts disbursed from the estate. Ordinary services shall be those normally performed by a fiduciary in administering such an estate and shall include, but not be limited to, the following:

(1) Qualification as the fiduciary;

(2) Collection of the ward's assets and income;

(3) Payment of the ward's debts and costs of maintenance, as authorized or ratified by the Court;

(4) General supervision of the ward's investments and policy relating thereto, including safekeeping; and

(5) Preparation and filing of all inventories, accounts, and reports to the Court.

(c) Compensation to an attorney for ordinary services.

If an attorney performs on behalf of a conservator or guardian any of the above ordinary services in administering the estate, the Court may authorize the attorney to be compensated from the estate in the conservatorship or guardianship proceeding only by the conservator's or guardian's written assignment of the fiduciary's commission in whole or in part, which assignment shall be filed with the Court.

(d) Time and method for claiming compensation for ordinary services.

A claim for commission for ordinary services may only be made in an annual account and, except as otherwise provided in these rules, no statement of services is required. The amount or percentage of commission claimed need only be reflected in the account itself.

(e) Turnover commission.

The turnover commission shall be the commission to be paid upon the fiduciary's death, resignation, or incapacity or upon the death of the ward, restoration to competency, or attainment of the age of majority.

(1) On fiduciary's death, resignation, or incapacity.

If services by a conservator or guardian are terminated by the fiduciary's death, resignation, or incapacity, in addition to a commission on disbursements actually made, the fiduciary may be entitled to a commission on the net assets distributed to the successor fiduciary. The fiduciary shall file a statement of services in support of the turnover commis-

sion. That statement shall indicate what has been done by the fiduciary, what remains to be done by the successor and such other information as would justify the commission claimed.

(2) On the death of the ward, restoration to competency, or attainment of age of majority.

If a conservatorship or guardianship terminates within three (3) years of its commencement because of the death of the ward or other legal reason, the fiduciary shall either file a statement of services in support of the turnover commission claimed in estates exceeding \$ 100,000 or, in such estates apply for a waiver of the requirement for a statement of services by filing a simple written request with the Court.

(f) Compensation to fiduciary for extraordinary services.

At the time of filing an annual account, a conservator or guardian may petition the Court for compensation for extraordinary services rendered. Extraordinary services shall be in addition to those services set forth in paragraph (b). The petition shall include the following:

(1) Statement of jurisdiction and controlling Court Rule;

(2) Statement of services rendered sufficiently complete on its face to establish that the requested payment is reasonable and, as appropriate, that the services are in fact extraordinary;

(3) The time devoted thereto, if records are available;

(4) Evidence of the necessity or purpose of the services;

(5) Results achieved, including the benefit to the estate or ward, if any;

(6) Statement of all prior allowances from the estate to the claimant or other fiduciary or counsel, to the extent known, and;

(7) The ability of the estate to meet future needs of the ward and to compensate fairly the fiduciary.

(g) Attorney fees.

At the time of the filing of an annual account, an attorney may petition for allowance of reasonable attorney's fees for preparing pleadings filed with the Court and for other necessary legal services rendered to the fiduciary in the administration of the estate. A petition for fees for legal services in connection with the qualification of the fiduciary may be submitted at any time, however. The petition for fees shall be accompanied by a statement of services which shall include those matters set forth in paragraph (f) above with respect to a petition for compensation for extraordinary services.

(h) Notice required.

Notice of the filing of a petition for compensation for extraordinary services by the fiduciary or for attorney's fees shall be given to the fiduciary (if appropriate) and to all other persons affected by the allowance of the requested compensation or fee. The consents of those entitled to notice may be filed with the Court within twenty (20) days of the date of mailing of said notice.

(i) Reference to Auditor-Master or Deputy.

All petitions for attorney's fees (except those petitions requesting a fee for the appointment of a conservator or trustee) shall be referred to the Auditor-Master or Deputy Auditor-Master for appropriate recommendations.

COMMENT

No compensation shall be awarded for supervision of the ward's person.

With respect to turnover commissions as a result of the fiduciary's death, resignation or incapacity, pursuant to subparagraph (e)(1) of this rule, since ordinary commissions may not exceed five percent (5%) of disbursements and since the ward's funds will be disbursed again, the Court will be cautious and reserve a sufficient percentage commission to compensate fairly the successor fiduciary.

Although the amount of the commission for ordinary services will be considered in determining the appropriateness of compensation for extraordinary services under paragraph (f) of this rule, that amount alone will not be the determining factor.

Conservators and guardians serve as officers of the Court. There can be no assurance in any given case that a fiduciary will receive compensation or commissions which he or she considers adequate.

Payments for attorney's fees under paragraph (g) are independent of the fiduciary's commission for ordinary and extraordinary services and are designed to compensate the attorney for legal services consistent with the value of the services rendered and the ability of the estate to pay. The fact that the fiduciary is an attorney will in no way preclude the fiduciary from petitioning under this rule for payment for legal services to himself or herself.

Rule 302. Duties and compensation of a guardian ad litem in conservatorship proceedings.

(a) Appointment.

When the Court, in its discretion, appoints a guardian ad litem in a conservatorship proceeding, no person, other than a member of the District of Columbia Bar, shall be so appointed except for good cause shown.

(b) Duties.

A guardian ad litem shall appear and represent the best interests of the proposed ward and shall answer allegations set forth in the petition by filing a written report with recommendations not less than seventy-two (72) hours prior to the hearing date and shall serve a copy on the petitioner. The guardian ad litem should compile information sufficient to support the conclusions reached in the written report. The guardian ad litem shall:

(1) Investigate the allegations of the petition.

(2) Interview the proposed ward on at least one occasion, if feasible and appropriate. During the course of the interview the guardian shall ascertain, if possible, the views of the proposed ward toward a conservatorship over the ward's person and estate.

(3) Interview such other person or persons as may be necessary in the formulation of the report with respect to the necessity for a conservatorship and who should be appointed.

(4) Prepare a written report which shall make recommendations as to whether the petition should be granted, including when applicable, who should be appointed to serve as a conservator and the amount of bond required, if relevant.

(5) Attend the hearing for the appointment of a conservator.

(c) Expansion or limitation of duties.

Nothing in this Rule shall preclude the Court from expanding or limiting the duties of the guardian ad litem in any proceeding as may be appropriate.

(d) Termination of appointment.

The guardian ad litem shall serve until disposition by the Court of the petition for appointment of a conservator at which point the guardian shall automatically be discharged, unless discharged by prior Court order. Nothing in this rule, however, shall preclude the Court from considering at an appropriate time an application for fees and expenses of the guardian for services rendered upon proper application to the Court pursuant to paragraph (f) of this Rule.

(e) Reappointment of guardian ad litem.

As circumstances warrant, the Court may reappoint the guardian ad litem or appoint another member of the Bar to serve as guardian ad litem for a specified purpose at any time during the administration of the conservatorship.

(f) Compensation.

(1) Petition.

Allowance by the Court of compensation to a guardian ad litem shall be made only upon petition supported by a detailed statement of services describing the work undertaken in performing the duties prescribed under paragraph (b) of this Rule and containing a certification that the written report was filed not less than seventy-two (72) hours prior to the hearing or, if not so filed, an explanation for late filing.

(2) Notice.

When a claim is made by a guardian ad litem against any estate, notice need be given only to the conservator unless the Court directs that notice be given to others. When a claim is against a particular party to the suit, notice shall be given to the conservator and to that party and that party's attorney and to such others as the Court may direct. Persons entitled to notice shall have twenty (20) days from the date of mailing of said notice in which to file objections with the Court.

COMMENT

The appointment of a guardian ad litem under this rule is not intended to preclude the retention by the proposed ward of independent counsel to oppose the petition for conservatorship.

Performance of excessive services is not looked upon with favor. However, if special circumstances exist, such as inadequate records or apparent conflict of interest, the guardian ad litem may consider ascertaining the following:

- (a) Verification of names and addresses of heirs at law and next of kin;
- (b) Names, addresses, and telephone numbers of physicians involved in the care and treatment of the proposed ward, including references to substantive medical and psychological reports and tests, including dates of examination;
- (c) Description or verification of assets owned by the proposed ward and source of income, including the names, addresses and account numbers of financial institutions in which such assets and income are deposited;
- (d) Description of the information obtained from interviews with persons having knowledge of the proposed ward and any other person of importance to the proposed ward, including the name, address and telephone number of persons interviewed, the date of the interview, and a summary of the information obtained.

The petition for compensation should ordinarily be filed within sixty (60) days after entry of the order granting or denying appointment of a conservator.

Rule 303. Bonds and undertakings.

(a) Fiduciaries must give undertaking; how amount determined.

In trust estates under the supervision of the Court, where there is no specific statutory provision for the giving of an undertaking, all committees, trustees, and other fiduciaries appointed by the Court, except trust companies as provided in D.C. Code (1967 Edition) § 26-333 [§ 26-1333, 2001 Ed.] and national banks as provided in *12 U.S.C. § 92a(f)*, before entering upon the discharge of the duties as such fiduciary shall execute an undertaking with surety approved by the Court in a penalty equal to the amount of the personal property, the annual income therefrom and the yearly rents to be derived from the real estate of such trust estate, conditioned for the faithful performance of such trust. Should it become necessary to sell real estate of the trust estate, the fiduciary shall execute such additional undertaking as may be required by the Court before accepting in such fiduciary capacity the proceeds from the sale of real estate.

(b) Approval by Court: When.

Any bond or undertaking required in an action or proceeding, which is not approvable by the Clerk, must be approved by the Court. Two days written notice of an application to approve any such bond with the name and address of the surety shall be served on all parties to be secured.

(c) Persons not acceptable as surety.

No member of the bar in active practice or other officer of the Court will be accepted as surety.

COMMENT

Identical to USDCDC [District Court] Rule 20, except for typographical changes.

Rule 304. Trustees, conservators, guardians ad litem, and other fiduciaries.

(a) To report conflicting interest.

Whenever a trustee, conservator, guardian ad litem, or other fiduciary has occasion to sue or defend in behalf of an infant or incompetent person concerning a matter in which he or she has a possible conflicting interest, he or she shall report the facts in writing to the Court so that it may take appropriate action.

(b) Guardians ad litem: Members of Bar to be appointed.

Except for special cause shown no person other than a member of the Bar of this Court shall be appointed guardian ad litem.

(c) No guardian ad litem shall be required in the appointment of a successor fiduciary.

(d) Except for good cause shown, only a person residing within the area of the subpoena power of the Court or any bank or trust institution authorized to serve in a fiduciary capacity, or a member of the Bar authorized to practice law before this Court, shall be appointed by the Court as conservator, committee, or trustee of another.

(e) No fiduciary appointed by this Court shall, without prior Court approval, remove or maintain outside the District of Columbia any personal assets held in a fiduciary capacity.

COMMENT

Substantially identical to USDCDC [District Court] Rule 21.

Rule 305. Trust funds; fiduciaries.

(a) Accounts and reports.

A fiduciary charged with the care of administration of property, appointed by the Court or required to file bond with it for faithful discharge of the fiduciary's trust, or otherwise acting under the authority, supervision or direction of the Court, shall account and report as herein provided, unless said fiduciary be acting under the probate branch of the Court. An account and report, verified by the fiduciary's oath, shall be filed annually with the Clerk within 30 days after the anniversary date of the fiduciary's appointment, or if not appointed by the Court, within 30 days after the anniversary date of the order bringing the fiduciary under its authority, supervision or direction. The account shall contain an itemized statement of all receipts and disbursements for the preceding annual period. The report, to be made on a form furnished by the Clerk, shall list with detailed particularity (1) all real and personal assets of the estate, (2) where each item thereof is located, kept or deposited, (3) the name in which each is held, (4) the value of each, (5) any sale, transfer or other disposition of assets, (6) any investment or change in form of assets and the name in which it stands, (7) the penalty of the fiduciary's undertaking, (8) the date when the undertaking was filed, (9) the name of the surety, and (10) the value of the estate when the undertaking was filed. A similar report shall be filed by the fiduciary within 60 days after appointment by the Court or, if not so appointed, within 60 days after the order bringing the fiduciary under its authority, supervision or direction.

(b) Audit and examination.

Upon filing of an annual account and report the Clerk shall forthwith deliver the same to the Auditor-Master or his or her deputy, who shall promptly audit the account, examine all securities, (except as provided in subparagraph (1) hereof), check them with the report and ascertain the correctness of all reported deposits. Thereupon he or she shall file a report of the findings with the Clerk. However, the Auditor-Master or his or her deputy shall not file with the Clerk the transcript of proceedings and of the evidence and the original exhibits as prescribed by SCR-Civil 53(e)(1).

(1) In those fiduciary cases where a bank is serving as fiduciary, in lieu of exhibiting all securities the bank may submit an affidavit from an official of the bank, other than the officer signing the account, verifying the correctness of the securities and cash accounts as set forth in the fiduciary's account, and that same are being held in the custody of the fiduciary.

(c) Expenditures, irregularity or default: Auditor-Master or his or her deputy to report.

All expenditures from an estate by a fiduciary, except those provided by statute and court costs, shall be made only upon prior authorization of the Court. Failure of a fiduciary to obtain prior Court authority for expenditures, other than those provided by statute and court costs, shall constitute an irregularity in the administration of the estate and such expenditures shall be disallowed as a charge to the estate upon annual accounting except for good cause shown. Whenever in any case there comes to the Auditor-Master's or his or her deputy's attention an apparent irregularity or default in administration of a trust estate or an insufficiency in the amount or security of an undertaking he or she shall immediately advise the Court thereof, which upon a summary hearing, shall remove the fiduciary and appoint a successor, unless for good cause shown the irregularity or default in administration or the insufficiency in the amount or security of an undertaking is deemed excusable. The Court may also take such further summary action as the Court may seem [see] fit.

(d) Auditor-Master fees for review of fiduciary accounts.

The Clerk shall be paid a fee for all audits and examinations made pursuant to this Rule according to the fee schedules hereinafter set forth, and in every such case the fee prescribed herein shall be deemed a reasonable fee for the services rendered by the Auditor-Master.

(1) Audits and examinations under paragraph (b).

The fee to be assessed by the Deputy Auditor-Master for audit and examination of an account and report to the Court pursuant to paragraph (b) of this Rule is set forth in the schedule below.

Costs			
\$ 500	or less		No Cost
500.01	to	\$ 2,500	\$ 15
2,500.01	to	10,000	50
10,000	but less than	25,000	100

25,000	but less than	50,000	150	
50,000	but less than	75,000	250	
75,000	but less than	100,000	350	
100,000	but less than	500,000	575	
500,000	but less than	700,000	825	
700,000	but less than	1,000,000	1,275	
1,000,000	but less than	2,500,000	1,800	
2,500,000	but less than	5,000,000	2,300	
5,000,000	and over		2,300	plus 0.02/% of excess over \$ 5,000,000

In addition to the fee prescribed in the above schedule, in those instances where, during the course of the audit, the Auditor-Master finds it necessary to take testimony and/or obtain records, documents or other written instruments not furnished by the fiduciary, the Court may allow such additional fees and costs as it may deem proper.

(2) Examinations under paragraph (f).

In all cases where, pursuant to paragraph (f) of this Rule, the account of a fiduciary has been approved without audit the fee for examination of securities and verifying deposits upon the basis of their total value is in accordance with the following schedule:

Less than \$ 2,500	No Cost	
2,500 but less than 10,000		\$ 15
10,000 but less than 50,000		30
50,000 plus		60

Provided, that the fiduciary may require securities to be examined where they are kept, in which event there shall be an additional fee of \$ 25 but credit will not be allowed therefor unless in the Court's opinion the expenditure was justifiable.

(3) Court costs attributable to real estate in the District of Columbia.

Additional court costs in the amount of \$ 25 shall be assessed in all accounts wherein real property or properties in the District of Columbia, of whatever value, are carried as an account asset. If proceeds of the sale of real property are included, court costs shall be assessed in accordance with subparagraphs (d)(1) and (d)(2) of this Rule.

(4) Computation of court costs.

For the purposes of determining the initial costs under paragraph (d) of this Rule, the value of the account shall include: (1) The initial gross principal value of the assets of the account as determined by the Deputy Auditor-Master; (2) the gross value of any increase in the principal value of any account realized upon disposition (other than upon distribution to beneficiaries of the account) by the fiduciary; and (3) the gross value of any income reported by the fiduciary in periodic accounts to the Court, but shall exclude the value of real property in the account except as otherwise provided in subparagraph (d)(3) of this Rule. In determining the court costs upon the audit of subsequent accounts, allowance shall be made for costs previously assessed.

(5) Time of payment.

The costs to be collected by the Deputy Auditor-Master under this paragraph shall be paid at the time of filing the first account except as otherwise provided herein. Subsequent costs, if any, determined under paragraph (d) of this Rule shall be assessed and paid at the time of filing each subsequent annual account of the fiduciary.

(6) Review of fees.

Following the close of each fiscal year, the Auditor-Master shall review the fees assessed by the Auditor-Master's office during such year and shall file with the Chief Judge a report of fees assessed and collected so that the Court may make such changes, alterations or additions to the foregoing fee schedule as it considers appropriate.

(e) Failure to account and report; removal of fiduciary.

The Clerk for good cause shown may extend the time for filing an account or report. If an account or report is not filed within the prescribed time the Clerk shall promptly report the fact to the Court, which upon a summary hearing shall remove the fiduciary and appoint a successor, unless for good cause shown the failure is deemed excusable. The Court may also take further summary action to compel filing of the account or report.

(f) Account; approval without reference to Auditor-Master or his or her deputy.

An account of the fiduciary may, in the Court's discretion, be approved without reference to the Auditor-Master or his or her deputy upon the filing of a petition with the Court setting forth that all beneficiaries in being, including remaindermen, have consented thereto, and attaching to said petition their written consents. A guardian or committee may consent for his or her ward except when he or she is the accounting fiduciary. In no event shall examination of securities and deposits by the Auditor-Master or his or her deputy be excused. At the time of filing the petition, the fiduciary shall submit a proposed order. No account shall be approved without reference to the Auditor-Master or his or her deputy in any case in which a beneficiary or remainderman has died, until a suggestion of death has been filed supported by a certificate of death and until said deceased beneficiary or remainderman's estate's representative has appeared and consented thereto.

(g) Statement of distribution and settlement.

Promptly after full distribution and settlement of a trust estate the fiduciary shall file with the Clerk a verified statement to that effect, together with vouchers, receipts, or cancelled checks evidencing final distribution.

(h) Nonresident or absent fiduciary to file power of attorney.

A fiduciary who is or becomes a nonresident of the District of Columbia or is continuously absent therefrom for more than 60 days, shall within 10 days after qualifying as fiduciary or becoming such nonresident or absentee, file with the Clerk of the Court a like power of attorney to that provided by Title 20, Section 365 of the *District of Columbia Code (1967) [§ 21-110, 2001 Ed.]*, except that the same shall run in the name of the Clerk and the Clerk's successor in office. Failure to file the power of attorney within the time provided shall be cause for removal of the fiduciary from office.

(i) Upon the death of the person for whom the fiduciary is appointed, the fiduciary shall file a suggestion of death forthwith, and shall file a final account and report verified by the fiduciary within 60 days from the date of death.

(j) Unless otherwise ordered by the Court for good cause shown, this Rule shall not apply to any proceeding, the purpose of which is (i) the appointment of a trustee, substituted trustee or successor trustee under an instrument in which the fiduciary was not otherwise under the authority, supervision or direction of the Court, (ii) the judicial passing and approving of an accounting tendered to the Court by a resigning trustee or by the personal representative of a deceased trustee, or (iii) an acting trustee seeking instructions or construction of the governing instrument.

(k) Appraisal.

Within the period of 90 days from the date of appointment, a fiduciary shall engage the services of a qualified appraiser to inventory and appraise all tangible personal property in the ward's estate provided the value of said property, in the judgment of the fiduciary, exceeds the value of \$ 1,000. If said property, in the judgment of the fiduciary, is valued at \$ 1,000 or less, the fiduciary shall submit an affidavit setting forth the description and the value of the tangible personal property.

(l) Sale of property.

A conservator or committee shall not sell or otherwise dispose of estate property or encumber it without prior order of Court.

Rule 306. Investments by a fiduciary.

(a) A fiduciary subject to the supervision of this Court may make such investments as would be made by prudent persons of discretion and intelligence in such matters who are seeking a reasonable income and preservation of their capital; provided, however, that nothing in this Rule shall limit the effect of any will, agreement, court order or other instrument creating or defining the investment powers of a fiduciary, or shall restrict the authority of the court to instruct the fiduciary in the interpretation or administration of the express powers of any will, agreement or other instrument or in the administration of the property under the fiduciary's care. This Rule shall apply to any investment, made on or after July 1, 1973 by a fiduciary subject to the supervision of this Court at the time the investment is made.

(b) In all cases where a fiduciary is required to obtain Court authority prior to make [making] investments, an order of Court so authorizing investments under this Rule shall not constitute Court approval of the particular investments nor shall the fiduciary be relieved of any fiduciary responsibility for having made the investments.

(c) No fiduciary shall purchase for fiduciary's personal account or for any account in which the fiduciary is personally interested any asset held by the fiduciary, nor shall the fiduciary sell to himself or herself, as fiduciary, any asset in which the fiduciary has any personal or financial interest.

Rule 307. Dower; life estate.

(a) Commutation of dower.

The dower of a healthy person in land sold by judgment of the Court will, unless otherwise adjudged, be commuted according to the following schedule:

Under 30 years of age $\frac{1}{6}$ th

Above 30 and under 35 $\frac{2}{13}$ th

Above 35 and under 40 $\frac{1}{7}$ th

Above 40 and under 45 $\frac{2}{15}$ th

Above 45 and under 51 $\frac{1}{8}$ th

Above 51 and under 56 $\frac{1}{9}$ th

Above 56 and under 61 $\frac{1}{10}$ th

Above 61 and under 67 $\frac{1}{12}$ th

Above 67 and under 72 $\frac{1}{14}$ th

Above 72 and under 77 $\frac{1}{18}$ th

Above 77 $\frac{1}{20}$ th

(b) Allowance for life estate.

Allowance to a healthy tenant for life, unless otherwise adjudged, shall be 3 times the allowance in lieu of dower to a person of the same age.

COMMENT

Identical to USDCDC [District Court] Rule 24.

Rule 308. Court sales of real and personal property.

(a) Sale of real property.

Unless otherwise herein provided, a sale of real estate or any interest in land under an order of this Court shall be governed by the provisions of Title 28, Section 2001, U.S. Code in the same manner as if such provisions were, by the terms thereof, applicable to proceedings in this Court.

(b) Public sale: Procedure.

Except when the order of Court otherwise provides, the officer making a public sale shall proceed in the manner following:

(1) Publication.

The officer shall give previous notice of the sale by publication once a week for 4 weeks in a daily newspaper of general circulation in the District of Columbia. The notice shall describe the property substantially as in the order and shall state the time, place, manner and terms of sale and the deposit required.

(2) Terms of sale.

The terms shall be one-third of the purchase money in cash and the balance in 2 equal installments, payable on or before one and 2 years from date of settlement of sale, represented by the promissory notes of the purchaser with interest at 6 per cent per annum, payable semi-annually, secured by deed of trust on the property, or all cash at the option of the purchaser.

(3) Place; presence of officer.

The sale shall be held upon the premises, and the officer making the sale shall be present and personally receive the deposit. If there be more than 1 officer the presence of 1 will be sufficient.

(4) Report; ratification.

A verified report of the sale shall be promptly made to the Court. Thereupon on motion and notice the Court may, in its discretion, ratify the same with or without further notice. If the sale be ratified settlement shall be made and the real estate conveyed by proper deed.

(5) Form of order of sale.

The order of sale shall not contain detailed directions as to the manner of proceeding, but shall do so only by reference to this Rule.

(6) Compensation of auctioneer.

The compensation of the auctioneer shall be one and one-half percent of the 1st \$ 10,000 plus three-eighths of 1 per cent of any amount over \$ 10,000, of the value of the equity in the property being sold. In the event that the property is unencumbered by indebtedness, the auctioneer's compensation shall be computed and paid at the same rate upon the entire sales price. In no case shall the auctioneer's compensation be less than \$ 35 unless the property is withdrawn after being offered for sale, in which event the auctioneer's compensation shall be \$ 25.

(c) Private sale: Procedure.

(1) Order for.

A private sale may be ordered after a hearing of which notice to all interested parties is given by publication or otherwise as the Court may direct, if the Court finds the best interests of the estate will be conserved thereby.

(2) Appraisers.

Before confirmation of a private sale the Court shall appoint 3 disinterested persons to appraise the property, or different groups of 3 appraisers each to appraise properties of different classes or situated in different locations. Such appraisers are to be appointed from the list maintained by the Register of Wills pursuant to SCR-P.D. 113.

(3) Minimum sale price.

A private sale shall not be confirmed at less than two-thirds of the appraised value.

(4) Order nisi increased offer; confirmation.

At least 10 days before confirmation of a private sale the terms thereof shall be published in such newspaper or newspapers of general circulation in the District of Columbia as the Court may direct, and the sale shall not then be confirmed if a bona fide offer has been made, under such conditions as the Court may prescribe, which guarantees at least a 10 per cent net increase over the price specified in such published offer.

(d) Account; distribution of proceeds.

Promptly after the settlement of a private or public sale made under this Rule a full and detailed account shall be filed and presented to the Court and the proceeds distributed as the Court may direct.

(e) Compensation to officer making sale.

The compensation of the trustee or officer making a sale hereunder shall be 5 per cent on the 1st \$ 3,000, plus two and one-half percent on the next \$ 10,000, plus 1 percent on any amount in excess of \$ 13,000 dollars of the value of the equity in the property being sold. In the event that the property is unencumbered by indebtedness, the compensation of the trustee or officer making the sale shall be computed and paid at the same rate upon the entire sales price. The compensation may be increased or reduced by the Court for special cause shown in writing.

(f) Sale of personal property.

Unless otherwise herein provided, a sale of personal property under an order of this Court shall be governed by Title 28, Section 2004, U.S. Code, in the same manner as if such provisions were, by the terms thereof, applicable to proceedings in this Court. The officer making sale shall account and distribute as provided by paragraph (d) hereof. The officer shall be allowed such compensation and expenses as the Court may fix.

COMMENT

Identical to USDCDC [District Court] Rule 28, except for changes in (a) and (f) caused by analogical application of U.S. Code provisions.

Rule 309. Conferences.

The Court or the Auditor-Master or any special master may direct the attorneys for each party to meet with him or her to discuss the case informally, to entertain motions and, to the extent possible and desirable, to discuss settlement or to set a schedule for the case, including schedules for discovery, pretrial and trial.

COMMENT

Identical to USDCDC [District Court] Rule 78, except for omission of matter relating to pretrial, which is governed by SCR-Civil, Rule 16 and deletion of introductory time limitation.

Rule 310. Conservatorships.

(a) Petition.

A petition for appointment of conservator shall be filed in compliance with *D.C. Code 1981, §§ 21-1501 and 1502* and shall be typewritten and double spaced. The petition shall be sworn to by the petitioner, unless filed by the proposed ward. The petition shall set forth:

- (1) The residence and the fitness of the proposed conservator to serve;
- (2) The relationship of the petitioner to the proposed ward;
- (3) The name, date, and place of birth, if known, and residence of the proposed ward;
- (4) The names and addresses of the nearest known heirs-at-law, or the next-of-kin, if any, of the proposed ward;
- (5) The reason(s) for the appointment of a conservator;
- (6) Whether a conservator is sought for the person as well as the estate of the proposed ward;
- (7) To the extent known to the petitioner, the character, location, and estimated value of the real and personal estate to which the proposed ward is entitled, including annual income; and
- (8) A statement of the relief requested.

(b) Order.

At the time of filing, the petition shall be accompanied by a proposed order setting forth the following:

- (1) That a hearing be held before the Fiduciary Judge on (a date to be set by the Clerk), provided that notice thereof be given to the proposed ward, and to his or her heirs-at-law and next-of-kin, not less than 14 days prior thereto; and
- (2) That (name to be inserted by the Court) be appointed guardian ad litem to appear and represent the interests of the proposed ward and that a written report with recommendations be filed by the guardian ad litem not less than 72 hours before the hearing date, and served upon the petitioner.

(c) Order appointing conservator.

An order for the appointment of a conservator shall be presented promptly after the hearing, and shall include the following:

- (1) A finding that the person for whom the conservator is sought is incapable of caring for his or her property, and that his or her best interests would be best served by the appointment of a conservator, who shall have the charge and management of the property of the ward, subject to the direction of the Court;
- (2) That be appointed conservator of the estate of the ward upon filing of an undertaking in the amount of (to be set by the Court) and if a non-resident, the power of attorney required by law;
- (3) That..... be appointed conservator of the person of the ward.