

## **Rule 1. Scope and Purpose**

These rules govern the procedure in all proceedings regarding intrafamily offenses, as defined in *D.C. Code § 16-1001 et seq.*, and criminal, domestic relations and paternity and support proceedings assigned to the Domestic Violence Unit (hereinafter, "the Unit"). The purpose of these rules is to provide for the just determination of every such proceeding in as fair, speedy and inexpensive a manner as possible within the principles of law and equity and to effectuate the statutory intent of eliminating domestic and family violence. These rules may be known and cited as Rules Governing Proceedings in the Domestic Violence Unit and may be cited as SCR-DV.

Criminal proceedings assigned to the Unit are governed by the Superior Court Rules of Criminal Procedure. Domestic relations proceedings assigned to the Unit are governed by the Superior Court General Rules of the Family Division and the Domestic Relations Rules when such rules are not inconsistent with these rules. Except when inconsistent with these rules or with the expeditious nature of intrafamily proceedings, the following Superior Court Rules of Civil Procedure are deemed applicable to intrafamily proceedings: 2, 5, 5-I, 6, 9, 11, 43 (as modified by SCR-Dom Rel 43 (a)), 43-I, 44, 44-I, 44.1, 46, 59, 60, 61, 63, 63-I, 77, 79, 79-I, 80, 82, 84, 86-I and 101.

The institution of a criminal charge by the United States Attorney shall not preclude the issuance of a temporary protection order or civil protection order based on the same conduct of the respondent as alleged in the criminal proceeding.

The Clerk's Office of the Unit with the Clerk or deputy in attendance shall be open to the public from 9:00 a.m. to 4:00 p.m. on all days except Saturday, Sunday and legal holidays.

## **COMMENT**

The second to last section of this rule is derived in part from *D.C. Code § 16-1002(c)*. Should the respondent face contempt proceedings based upon conduct occurring after a temporary protection order or civil protection order has been entered, which conduct may also be subject to the institution of criminal proceedings, the Court may wish to provide notice of the conduct and/or the contempt hearing to the United States Attorney's Office in order for that office to determine whether to proceed on the criminal charge.

## **Rule 2. Commencement of Action**

(a) Petition. Filing a petition pursuant to *D.C. Code § 16-1003(a)* shall commence an intrafamily proceeding. The petition shall be signed under oath and shall recite the facts and circumstances upon which the petitioner(s) believe(s) that one or more intrafamily offense(s) are threatened or have been committed. If more than one respondent is named in the pleadings, petitioner shall file an additional copy of the petition for each respondent named. A petitioner filing for a temporary protection order also shall file a proposed temporary protection order, either completed or in blank.

(b) Amendment or supplementation. The petition may be amended or supplemented at any time prior to the conclusion of the hearing on the merits. Such amendments or supplements shall be under oath. Written amended or supplemental petitions shall be served pursuant to Domestic Violence Unit Rule 3, provided that such service shall be accomplished prior to the date set for hearing the petition. Oral motions to amend or supplement the petition made during the hearing shall be granted in the absence of a showing of prejudice to the respondent. When prejudice is shown the Court may grant the motion but allow respondent a continuance pursuant to Domestic Violence Unit Rule 4 in order to allow time to prepare a defense.

(c) Consolidation with other matters. In any criminal, family, or intrafamily case filed in the Domestic Violence Unit, the Clerk will identify (1) any other civil, family, probate or intrafamily case involving the same parties, and (2) any other criminal or intrafamily domestic violence case involving either party. The Clerk will note the existence of all such cases on the front of each separate case jacket. At every hearing in a civil, family, probate or intrafamily case, the Clerk also will provide all identified case jackets or electronically-generated equivalent to the presiding judicial officer. The Clerk will continually update these case references. When there is a finding of an intrafamily offense, or when, in a criminal case, the defendant and victim have an intrafamily relationship as defined by *D.C. Code § 16-1001(5)(A)(B)*, all divorce, custody, paternity, and child support cases involving parties to cases in the above categories shall be consolidated and heard in the Domestic Violence Unit. However, a judge in the Domestic Violence Unit may certify a matter to another appropriate division of the Court for trial or hearing, with the concurrence of the presiding judge of the Unit and the presiding judge of the division to which the case is certified, to avoid undue delay or when another judicial officer is handling or has handled a related matter.

### **COMMENT**

The phrase "signed under oath" as used in these rules means either signed before a notary or other appropriate officer or signed under the penalty of perjury.

### **Rule 3. Service of Process**

(a) Issuance. Upon the filing of the petition, the Clerk shall issue a notice of hearing and order directing appearance, which shall bear the name and seal of the Court and the title of the action. It shall direct the respondent, petitioner and, if appropriate, the family members(s) endangered (or if a child, the person then having physical custody of the child) to appear in court on a date and at a time certain for hearing, which shall be scheduled by the Clerk for the earliest return date possible. An original of the petition and copy for each person named in the petition or other individual whose presence is required shall be presented to the Clerk for issuance.

(b) Service of process.

(1) Persons authorized to serve process. The Clerk shall deliver the notice of hearing and order directing appearance to the petitioner for service by the District of Columbia Metropolitan Police Department, the United States Marshal or his/her deputy, or any competent person not less than eighteen (18) years of age who is not a party to the action. The service to be made upon the respondent or other person(s) named shall be any form of service authorized by these rules.

(2) Manner of service. The petition, notice of hearing and order directing appearance shall be served together. Except as provided by paragraph (3) of this subsection, service shall be made upon an individual, other than an infant or an incompetent person, by delivering a copy of the petition personally to the individual, or to the individual's dwelling house or usual place of abode. Delivery of a copy within the context of this rule means handing it to the individual, or leaving it at the individual's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Service upon an infant or incompetent person shall be made by serving the petition and notice of hearing and order directing appearance in the manner prescribed by the law of the District of Columbia or the law of the state in which service is made.

(3) Alternative service. If at the time of the hearing on the petition the Court determines that, after diligent effort, petitioner has been unable to accomplish service in the manner prescribed in paragraph (2) above, the Court may permit an alternative method of service designed to give reasonable notice of the action to respondent. Alternative service may be accomplished by: (A) delivering a copy to the individual's employer by leaving it at the individual's place of employment with a clerk or other person in charge; (B) mailing a copy of the petition and notice of hearing and order directing appearance to respondent by registered or certified mail, return receipt requested; or (C) such other manner as the Court, in its discretion, may deem just and reasonable. Service by mail shall be deemed made as of the date the return receipt is signed.

(c) Return of service. Proof of service shall be made to the Court promptly, and in any event by the date respondent must appear in court. The person making service shall submit a declaration signed under oath stating the date, place, and manner of service, including the name of the person served and specific facts from which the Court can determine that the person meets the qualifications for receipt of process set out in sections (b)(2) or (b)(3) of this rule. If service is made by registered or certified mail, the signed return receipt shall be attached to a declaration signed under oath which shall specifically state the following: the caption and number of the case; the date upon which the petition and notice of hearing and order directing appearance were mailed and by whom they were mailed; and, if the return receipt does not purport to be signed by the

party named in the petition, specific facts from which the Court can determine that the person meets the qualifications for receipt of process set out in sections (b)(2) or (b)(3) of this rule. Court forms provided by the Clerk may be used for return of service but are not required. Failure to make proof of service does not affect the validity of the service. If the person making service is a law enforcement official, said declaration need not be under oath and may be transmitted by facsimile copy from a court of competent jurisdiction to the Clerk of this Court.

(d) Amendment of return of service. At any time in its discretion and upon such terms as it deems just, the Court may allow any proof of service of process to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

**Rule 4. Continuance**

(a) Request by attorney. Any party seeking a continuance shall file a motion for continuance 48 hours in advance of the hearing. An attorney seeking a continuance in a case when, before filing the motion, he or she knows that the other party is represented by counsel, shall first ascertain whether the opposing attorney will consent to the continuance sought. Only if the movant certifies in writing that despite diligent efforts consent could not be obtained will the Court consider the motion a contested matter.

(b) Determination by the court. Continuance requests shall be granted or denied by a judicial officer assigned to hear intrafamily matters. If the Court grants a continuance, the Court may condition that continuance on the granting of a protection order as is justified under the circumstances to cover the continuance period.

## **Rule 5. Failure to Appear**

(a) Bench warrants. The Court may issue a bench warrant if any party fails to appear in accordance with a (1) notice of hearing and order directing appearance which has been served on that party in accordance with Domestic Violence Unit Rule 3, or (2) notice to return to court signed by that party.

(b) Execution of bench warrants.

(1) Hearing following execution of a bench warrant. Upon execution of a bench warrant issued pursuant to section (a) of this rule, the Court shall hold a hearing no later than the next available court day. If a temporary protection order or civil protection order has previously been issued by the Court but not served upon the party, the party shall be served with a copy of the order in open court. The Court shall notify the respondent, in writing, of any subsequent hearing date and shall require the respondent to sign a notice to return to court.

(2) Release of respondent following execution of bench warrant. The Court may release the respondent after setting any non-monetary conditions of release deemed necessary to protect the safety or welfare of the petitioner and the petitioner's family, including, but not limited to the issuance of a temporary protection order requiring the respondent to avoid any contact with the petitioner or the petitioner's family. The subsequent hearing will be scheduled on or before the expiration date of any temporary protection order. The Court may release the respondent upon execution of a secured or an unsecured appearance bond, which will be set in an amount which will reasonably assure the appearance of the respondent.

(c) Failure of respondent to appear at hearing on petition for civil protection order.

When the respondent fails to appear at a hearing on a petition for a civil protection order, after being served pursuant to Domestic Violence Unit Rule 3 with a notice of hearing and order directing appearance, or having signed a notice to return to court, the Court shall enter the respondent's default and may take ex parte proof of the allegations in the petition that day or set the matter for proof of the allegations at a later date. If the Court sets the matter down for proof on another date, the Court shall send notice of this hearing to the respondent. The Court may also issue a temporary protection order pursuant to Domestic Violence Unit Rule 7A, in which case the date set for hearing shall be prior to expiration of the temporary protection order.

(d) Procedure for ex parte default hearing. If, after a default has been entered pursuant to section (c) of this rule and an ex parte hearing has been held, the Court determines that there is good cause to believe that an intrafamily offense has been committed as alleged in the petition, the Court shall enter a civil protection order as a final order by default. The default order shall not be set aside unless, no later than ten (10) days after service of the civil protection order, in accordance with Domestic Violence Unit Rule 3, the respondent files a motion to vacate the default order, signed under oath, showing both good cause for the failure to appear and grounds which, if proved, would be sufficient to prevent the issuance of the civil protection order in whole or in part. The respondent shall serve the motion on petitioner in accordance with Domestic Violence Unit Rule 3. A hearing may be held on the motion to vacate.

(e) Procedure upon failure of the petitioner to appear. When the petitioner fails to appear at a hearing, the Court may dismiss the petition without prejudice, or may continue the case for further hearing.

## COMMENT

Several factors may be considered in determining whether to hold a default hearing on the same day the default is entered or at a later date. These factors include, but are not limited to: (1) whether the relief sought is focused primarily on violence prevention, or whether it also includes more complex issues such as custody and child support; and (2) whether the Court has a reliable address for the respondent, or whether s/he is unlikely to actually receive the notice of a subsequent default hearing.

**Rule 6. Form of Pleadings**

(a) Pleadings. There shall be a petition and an answer. No other pleading shall be allowed unless authorized by the Court.

(b) Caption; names of parties. Every pleading and motion shall contain a caption setting forth the name of the court, the title of the action, the names of the parties, the file number and the type of pleading or motion.

(c) Stationary and locational information. Pleadings and motions may be filed on court forms or on plain white paper, approximately 11 inches long and 8 1/2 inches wide, and shall state under the caption the jurisdictional basis for the request, the nature of the pleading and the relief requested. Pleadings using court forms need not be typed, but shall be legible. All pleadings and other papers shall set forth in the caption the name and full residence address of the parties, if known. A petitioner shall not be required to state his or her residential address, provided that the name and address of his or her attorney or a third person willing to accept mailings for the petitioner is substituted. A paper which has a substituted address shall be clearly marked to indicate that the substitution has been made. If no substituted address is available, a petitioner may request that the Court retain his or her address under seal.

(d) Nonconformance with above. A pleading or other paper that does not meet the requirements of this rule shall not be accepted for filing.



## **Rule 7. Motions**

(a) Filing and service. All motions (including but not limited to those to adjudicate contempt, to modify, extend and/or dismiss civil protection orders) shall be filed with the Court. Motions shall be in writing, but need not be written on court forms. Upon the filing of a motion, the Clerk will issue a notice of hearing and order directing appearance that shall be served along with that motion. Statements of points and authorities and proposed orders need not accompany any motions filed in the Unit unless otherwise ordered by the Court.

(b) Service upon adverse party. A copy of any motion filed, other than a motion to adjudicate contempt and any response to such motion, shall be served upon the adverse party (or that party's attorney, if he or she is represented by counsel) either personally in accordance with Domestic Violence Unit Rule 3(b)(2), or by mail. A motion served by first class mail shall contain a certificate of service. When respondent is personally served, return of service in accordance with Domestic Violence Unit Rule 3(c) shall be filed with the Court. A motion to adjudicate contempt shall be served pursuant to Domestic Violence Unit Rule 3(b)(2).

(c) Motion to dismiss. Upon motion by any party, or on its own initiative, the Court may dismiss the petition at any time prior to the entry of a protection order. Such motion shall be in writing and signed under oath if made prior to the hearing date and shall be heard on the date set for the hearing on the petition prior to taking testimony. Oppositions, if any, shall be filed not later than one (1) day before the hearing and shall be signed under oath. Motions to dismiss during the hearing on the petition may be made orally. Upon dismissal of a petition all temporary protection orders based thereon shall be revoked.

(d) Motion for modification and/or extension. Upon motion of any party or on its own initiative, after a hearing, the Court may extend or modify a civil protection order at any time. Motions to extend or modify the civil protection order shall be filed before the expiration date of the civil protection order. If the hearing on the motion to extend or modify cannot be held prior to the expiration date of the civil protection order, the order shall remain in effect until the Court rules on the motion.

(e) Motion for contempt for violation of protection order. When a motion for contempt is filed alleging violation of a civil protection order or temporary protection order, the Clerk shall issue a notice of hearing and an order directing appearance. The motion shall be in writing and shall be signed under oath. The motion and notice of hearing and order directing appearance shall be served personally, in accordance with Domestic Violence Unit Rule 3(b).

**Rule 7A. Temporary Protection Orders**

(a) Hearing. Upon filing a petition for a civil protection order, a petitioner may, by oral or written motion, request a temporary protection order. The Clerk shall schedule a hearing on the motion for the same day.

(b) Scope of temporary protection order. If the Court determines from testimony or from the petition that the respondent immediately endangers the safety or welfare of a family member, a temporary protection order may be issued ex parte. A temporary protection order shall, by its terms, be of no longer than fourteen (14) days duration from the date it is issued. The temporary protection order may include any of the remedies authorized with the issuance of a civil protection order. The temporary protection order shall be served on the respondent, pursuant to Domestic Violence Unit Rule 3.

(c) Scheduling of hearing on petition for civil protection order. In cases when a temporary protection order is issued, the hearing on the petition for civil protection order shall be scheduled for a date on or before the expiration of the temporary protection order.

(d) No service upon respondent required. A motion for a temporary protection order need not be served upon the respondent if it appears from the petition for a civil protection order that the safety or welfare of a family member is immediately endangered.

(e) Reissuance. The Court may reissue a temporary protection order for a period no longer than fourteen-days (14) duration from the date it is reissued.

## **Rule 8. General Provisions Regarding Discovery**

(a) Discovery methods for civil protection order proceedings. For good cause shown and with due regard for the summary nature of the proceedings, the Court may authorize a party to proceed with discovery from the other party by requests for written interrogatories or production of documents. Prior to any such authorization, a party shall submit to the Court each proposed interrogatory or request for production in writing. Upon leave of the Court, a party may obtain discovery from a non-party pursuant to Superior Court Rules of Civil Procedure. Requests for publicly available Metropolitan Police Department reports may be made directly to the Department. The frequency and use of these methods is limited pursuant to subsections (1), (2), and (3) herein. Every application for discovery shall state whether there is a criminal proceeding pending involving the facts alleged in the petition.

(1) Scope of discovery in civil protection order proceedings. Unless otherwise directed by the Court, the scope of discovery is limited to matters directly relating to the incident or incidents of abuse alleged in the petition or answer, to medical treatment obtained as a result of those incidents, and to any prayers for relief.

(2) Sequence and timing of discovery. Discovery may be initiated in any sequence, provided that any discovery methods used shall be initiated within five (5) calendar days of service of the petition on the respondent in civil protection order proceedings. Time for discovery shall not be enlarged if it would delay the scheduled hearing on the petition, provided that the respondent has been served with the petition at least seven (7) days prior to the hearing.

(3) Protective order. No methods of discovery shall be used or enforced which would require direct contact between the parties if either party objects. Upon motion by a party or witness, the Court may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (a) that discovery be denied; (b) that discovery be granted only on specified terms and conditions; (c) that certain matters not be inquired into or that the scope of discovery be limited to certain matters.

(4) Responses to discovery. Responses to requests for discovery shall be served on the other party and filed with the Clerk's Office not later than the close of business on the second day prior to the hearing.

(5) Alternative discovery methods. Requests for discovery by methods pursuant to section (a) above, other than written interrogatories or requests for production of documents, shall be made by written motion with notice that any opposition shall be filed in writing no later than five (5) days after service of the motion. The motion may be decided without a hearing.

(6) Alternative means for service of discovery requests. When a respondent is ordered not to have contact, direct or indirect, with a petitioner or witness, requests for service of discovery demands or subpoenas shall be made to the Court for service by the Metropolitan Police Department or by such manner as the Court may direct.

(b) Discovery methods for criminal contempt proceeding arising out of violation of a temporary protection order or civil protection order. All discovery requests made in privately prosecuted criminal contempt actions shall be presented to the Court for approval. In publicly prosecuted criminal contempt actions, counsel are expected to engage in prompt informal discovery as set forth below:

(1) Statements of accused. Upon the timely request of an accused, the prosecutor shall disclose to the accused and make available for inspection, copying or photographing any relevant written or recorded statements made by the accused, that portion of any written recording containing the substance of any relevant oral statement made by the accused, within the custody or control of the prosecutor, and the substance of any other relevant oral statement made by the accused if the prosecutor intends to use the statement at trial.

(2) Prior record. Upon the timely request of an accused, the prosecutor shall furnish to the accused such copy of the accused's criminal record which the prosecutor intends to use for any purpose in the criminal contempt proceedings.

(3) Documents and tangible objects. Upon the timely request of the accused, the prosecutor shall permit the accused to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecutor, and which are material to the preparation of the defense, or are intended for use by the prosecutor as evidence in chief at the contempt proceeding, or which were obtained from or belong to the accused.

(4) Reports of examinations and tests. Upon the request of the accused, the prosecutor shall permit the accused to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the prosecutor, and which are material to the preparation of the defense or are intended for use by the prosecutor as evidence in chief at the contempt proceeding.

(5) Expert witnesses. Upon the request of the accused, the prosecutor shall disclose to the accused a written summary of expert testimony the prosecutor intends to use during its case in chief at the contempt proceedings. This summary shall describe the opinions of the witnesses, the bases and the reasons therefor, and the witnesses' qualifications.

(6) Defense disclosure of evidence. If the accused requests disclosure under subsections (b)(2), (3), or (4) of this rule, upon compliance with such requests, upon request by the prosecutor, the accused shall permit the prosecutor to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are in the possession, custody or control of the accused and which the accused intends to introduce as evidence in chief at the contempt proceedings; and to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, made in connection with the particular case and within the possession, custody or control of the accused, which the accused intends to introduce as evidence in chief at the contempt proceeding or which were prepared by a witness whom the accused intends to call at the proceeding when the results or reports relate to the witness's testimony.

(7) Defense disclosure of expert witnesses. If the accused requests disclosure under subsection (b)(5) of this rule and the prosecutor complies, the accused, at the request of the prosecutor, shall disclose to the prosecutor a written summary of expert testimony the accused intends to use at trial. This summary shall describe the opinions of the witnesses, the bases and reasons therefor, and the witnesses' qualifications.

(8) Information not subject to disclosure. Except as provided in subsections (b)(1), (2), (3), (4), (5), (6) and (7), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal prosecution or defense documents made in connection with the investigation, prosecution or defense of the case. Except as to scientific or medical reports, section (b) of this Rule does not authorize discovery of statements producible under *18 U.S.C. § 3500* or SCR-Criminal 26.2, which authorities may be relied upon in the discretion of the judicial officer.

(9) Continuing duty to disclose. If, prior to or during the contempt proceeding, a party discovers additional evidence or material which was previously requested by the other party or ordered to be disclosed, and which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or that other party's attorney or the Court of the existence of the additional evidence or material.

(10) Protective orders. Upon a sufficient showing the Court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such protective or modifying order as is appropriate.

(11) Discovery sanctions. If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with this rule, the Court may order such party to permit the discovery or inspection, grant a continuance, prohibit the party from introducing evidence not disclosed, or may enter such other orders as it deems just under the circumstances.

## COMMENT

This rule provides respondents charged with criminal contempt in the Unit the same access to discovery as is guaranteed criminal defendants under the Superior Court Rules of Criminal Procedure. There is a preference for publicly prosecuted criminal contempt charges. In such prosecutions the respondent is entitled to the discovery set forth in this rule upon request of the prosecutor as in any other criminal case. In situations when a public prosecutor is not available and the Court appoints a private prosecutor, the Court shall approve discovery requests. This procedure is only meant to guard against a respondent's discovery requests overburdening a private prosecutor. This concern is greater when the petitioner is pro se and is prosecuting the contempt charge.

## **Rule 9. Conduct of Hearings**

### **(a) Representation by counsel.**

(1) By private counsel. Whenever a petition for a civil protection order or a motion pursuant to these rules is filed by a petitioner, at his or her initiative, the petitioner and the respondent may be represented by private counsel.

(2) Representation by the Corporation Counsel. Whenever a petition for a civil protection order or a motion pursuant to these rules is filed by the Corporation Counsel, the Corporation Counsel shall represent the petitioner unless private counsel enters an appearance in the case or the Court permits the Corporation Counsel to withdraw.

### **(b) Evidence.**

(1) Under oath. In all fact-finding hearings the testimony of witnesses shall be taken under oath or affirmation.

(2) Non-jury hearing. The Court shall, without a jury, hear and adjudicate petitions for civil protection orders and all motions made pursuant to these rules.

(3) Who may present evidence. Whenever a petition for a civil protection order or a motion pursuant to these rules is filed, both the petitioner and the respondent may present evidence, including their own testimony and testimony of other witnesses, and physical evidence.

#### **(4) Admissible evidence.**

(A) Evidence that is competent, material and relevant shall be admissible at fact-finding hearings.

(B) Pursuant to *D.C. Code § 16-1005(b)*, notwithstanding *D.C. Code § 14-306*, one spouse shall be a competent and compellable witness against the other and may testify as to confidential communications, but such testimony be inadmissible as evidence in a criminal trial, over the objection of a spouse entitled to claim that privilege.

(5) Prohibition against use of testimony against respondent in a criminal action. Pursuant to *D.C. Code § 16-1002(c)*, testimony of the respondent in a proceeding for a civil protection order or temporary protection order shall be inadmissible as evidence in a criminal trial except in a prosecution for perjury or false statement.

(6) Level of proof required for civil protection order. If the Court finds in a fact-finding hearing that there is good cause to believe the allegations in the petition, the Court may issue the civil protection order.

(c) Findings. At the conclusion of a contested hearing, the Court shall make those findings of fact essential to the ultimate conclusion of law.

**Rule 10. Dismissal of Action**

(a) Voluntary dismissal. The petitioner, without court order, may dismiss an action at any time before filing of an answer by the respondent or before entry of a civil protection order by filing a notice of dismissal. Unless otherwise stated, the dismissal is without prejudice. If a civil protection order has been entered the action shall not be dismissed over the respondent's objection if the dismissal would seriously prejudice substantial rights of the respondent granted by the order.

(b) Motion to reinstate. Any request to reinstate a case dismissed without prejudice shall be filed in a written motion signed under oath setting forth good cause to reinstate.

**COMMENT**

Paragraph (a) of this rule permits the petitioner to dismiss the action at any time so long as there is no prejudice to the other party. In allowing dismissal, the Court may wish to inquire carefully about the voluntariness of the petitioner's actions and advise the petitioner of the right to refile the petition if all other statutory requirements are met. In appropriate circumstances, when the petition has been dismissed more than once, the Court may consider and decide whether the petition should be dismissed with prejudice.

### **Rule 11. Issuance of Orders**

(a) Order issued when both parties are present. All protection orders entered by the Court shall be in writing, and a copy shall be hand delivered to each party to the proceedings. The Court shall explain the meaning of the order to the parties and shall advise the parties that violation of the order may result in:

(1) a criminal contempt prosecution involving a fine or penalty of not more than \$ 1,000, imprisonment for not more than six (6) months, or both; and/or

(2) a misdemeanor prosecution involving a fine or penalty of not more than \$ 1,000, imprisonment for not more than 180 days, or both.

(b) Consent order. When the respondent has consented to having a civil protection order issued, the Court shall make sufficient inquiry to be assured that:

(1) the respondent voluntarily consented to the issuance of the civil protection order issued; and

(2) the parties understand the contents of the order.

(c) Order issued in the absence of respondent. When a civil protection order or temporary protection order is issued without the respondent's presence, the Court may deliver an additional copy of the order to the petitioner for service upon the respondent.

The Court shall inform the petitioner that the order is valid and effective, but that the respondent cannot be held in contempt of Court for violation of the order unless the violation is committed after the respondent is legally served with a copy of it pursuant to Domestic Violence Unit Rule 3. For good cause shown, the Court may order that a member of the Metropolitan Police Department serve the order upon the respondent or take other steps necessary to effectuate the Court's order.

(d) Issuance of order against both parties. The Court may not issue a civil protection order unless a petition signed under oath has been filed and served upon the individual who is the subject of the order pursuant to Domestic Violence Unit Rules 2 and 3 and the Court, after a hearing, has made specific findings that there is good cause to believe that the individual has committed or is threatening to commit an intrafamily offense. However, the Court may, as a condition of the issuance of a civil protection order in favor of any party, require that party to abide by such fair and reasonable conditions as are consistent with the requirements of *D.C. Code § 16-1005(c)* and are necessary and appropriate to ensure fairness and facilitate compliance with the civil protection order.

(e) Available remedies. The Court may issue a civil protection order if, after a hearing, the Court finds that there is good cause to believe the respondent has committed or is threatening an intrafamily offense, or a consent order is reached pursuant to section (b) of this Rule. The Court may:

(1) direct the respondent to refrain from the conduct committed or threatened and to keep the peace toward the family member;

(2) require the respondent, alone or in conjunction with any other member of the family before the Court, to participate in psychiatric, medical, or other appropriate testing or treatment or counseling programs;

(3) direct the respondent to avoid the presence of the family member endangered and not to contact that person, directly or indirectly through a third party;

(4) direct the respondent to refrain from entering, or to vacate, the dwelling unit of the petitioner when the dwelling is:



- (A) marital property of the parties, or
  - (B) jointly owned, or
  - (C) owned, leased, or rented by the petitioner individually, or
  - (D) jointly owned, leased, or rented by the petitioner and a person other than the respondent;
- (5) direct the respondent to relinquish the use of certain personal property owned jointly by the parties or owned by the petitioner individually;
  - (6) award temporary custody of a minor child of the parties;
  - (7) determine visitation rights with appropriate restrictions to protect the safety of the petitioner and the minor children;
  - (8) award child support pursuant to the D.C. Child Support Guideline;
  - (9) award monetary relief to the petitioner that is appropriate to the effective resolution of the matter, including but not limited to rent or mortgage payments and reimbursement for damaged property or medical bills;
  - (10) award litigation costs and attorney fees;
  - (11) order the Metropolitan Police Department to take such action as the Court deems necessary to enforce its order; and
  - (12) direct the respondent to perform or refrain from other actions as may be appropriate to the effective resolution of the matter.
- (f) Duration and extension. A civil protection order shall be in effect for one (1) year unless the Court has provided for a lesser period of time. Upon written motion of any party to the original proceeding, the Court may extend, rescind or modify an order for good cause shown.

## COMMENT

The terms of any order against a respondent may require certain conduct and cooperation by the petitioner or members of the petitioner's family. In those situations in which the Court determines that full relief under this rule cannot reasonably be afforded without requiring more substantial conduct, the petitioner may be permitted to consent to issuance of an order against both parties. Section (e) tracks the language of *D.C. Code § 16-1005*.

## **Rule 12. Contempt**

(a) Definition. Criminal contempt is a violation of the law, a public wrong which is punishable by fine or imprisonment or both. Civil contempt is a sanction imposed by the court to enforce compliance with a court order or to compensate a party for losses or damages caused by noncompliance with a court order.

(b) In the presence of judge.

(1) Summary contempt. Criminal contempt may be punished summarily if the judge certifies that he or she saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered on the record.

(2) Failure to appear. Willful failure to appear after proper service or signed notice is punishable as contempt.

(c) Motion for civil contempt. A motion seeking civil contempt alleging one or more violations of a temporary protection order or civil protection order shall be filed and served pursuant to Domestic Violence Unit Rule 3.

(d) Motion to adjudicate criminal contempt. A motion requesting that the court order a person to show cause why she/he should not be held in criminal contempt for violation of a temporary protection order or civil protection order may be filed by an individual, Corporation Counsel or an attorney appointed by the Court for that purpose. The motion may be referred to the United States Attorney for potential prosecution. The Court may order the Metropolitan Police Department to deliver such motion and the order to appear personally, to the individual, or to the individual's dwelling house or usual place of abode, and may issue a judicial summons for the person to appear. In the alternative, the movant may serve the person pursuant to Domestic Violence Unit Rule 3(b).

(e) Contempt hearing procedures.

(1) Upon the filing of a motion pursuant to section (c) of this rule, the Clerk shall schedule a hearing within a reasonable period of time. Upon the filing of a motion pursuant to section (d) of this rule, the Clerk shall schedule a status hearing with fourteen (14) days. If counsel represents the movant the movant does not have to appear at the status hearing.

(2) In criminal contempt proceedings the Court may appoint the movant Corporation Counsel or other attorney to prosecute the contempt charged. The Court shall give oral notice of the contempt charged in open court in the presence of the accused; upon the request of the movant, Corporation Counsel or an attorney appointed by the Court to prosecute the contempt, such notice shall be by an order to show cause. The notice shall state the essential facts constituting the criminal contempt charged. The Court shall appoint counsel for the accused pursuant to the Criminal Justice Act if the accused so qualifies or advise the accused of the right to representation by counsel, and set a date for ascertainment of counsel. The accused shall be released on conditions or detained as provided in *D.C. Code § 23-1321*, et seq., and the Superior Court Rules of Criminal Procedure.

(3) If the accused requests a continuance, the judge may grant it based on any one or all of the following conditions:

(A) that any existing temporary protection order or civil protection order be extended or modified;

(B) such other conditions as will ensure the safety of the moving party; and  
(C) that the accused shall receive no further continuances.

(4) Both parties have the right to present sworn testimony of witnesses and other evidence in support of or in opposition to the motion. The accused shall not be compelled to testify or to give evidence in a trial for criminal contempt.

#### COMMENT

Enforcement by contempt is expressly authorized by *D.C. Code § 16-1005(f)*. The party alleged to be in contempt has no right to a jury trial under either the Constitution or the law of the District of Columbia as long as the penalty for such offense is not more than six months. Therefore, contempt proceedings may be heard by a single judge within the Domestic Violence Unit or Family Division, or may be certified to the Criminal Division for proceedings consistent with the above statute and this rule. The penalties prescribed for criminal contempt are set forth in *D.C. Code § 16-705*.

**Rule 13. Appeal**

(a) Appealable order. Any final order issued pursuant to *D.C. Code § 16-1005*, any order granting or denying extension, modification, or rescission of such order, or any adjudication of contempt shall be appealable to the District of Columbia Court of Appeals and shall be governed by the rules of that court.

(1) A notice of appeal shall be filed within thirty (30) days after entry of any final order (e.g., a civil protection order, an order granting or denying modification or rescission, or an adjudication of contempt).

(2) Upon a showing of excusable neglect, the Superior Court may extend the time for filing the notice of appeal by any party for a period not to exceed thirty (30) days from the expiration of the time prescribed in subparagraph (a)(1) of this rule. However, if such a request is made after the initial thirty (30) day period has expired, the request shall be made by motion, with notice to the other parties.

(b) Stay of order appealed from. The Court may stay its order pending appeal upon such terms and conditions as it deems proper only on written motion of the appellant, with notice to the appellee.

## **Rule 14. Subpoenas**

(a) Procedures or attorneys.

(1) Attendance of witnesses. SCR-Civil 45 shall govern issuance of subpoenas for attendance of witness in civil protection order and civil contempt actions except when it is inconsistent with section (b) of this rule. SCR-Criminal 17 shall govern the issuance of subpoenas for attendance of witnesses in criminal contempt actions arising out of an intrafamily case except when it is inconsistent with section (b) of this rule.

(2) Production of tangible evidence and documents and taking depositions. SCR-Civil 45 shall govern the issuance of subpoenas for production of tangible evidence and documents, and taking depositions in civil protection order and civil contempt actions, and SCR-Criminal 17 shall govern the issuance of subpoenas for production of tangible evidence and documents, and taking depositions in criminal contempt actions arising out of intrafamily cases, except when issuance of the subpoena without court authorization would be inconsistent with the discovery requirements of Domestic Violence Unit Rule 8(a) and (b) and section (b) of this rule.

(3) Medical records. Issuance of subpoenas for the medical records of an opposing party must be authorized by the Court as required by *D.C. Code § 14-307*.

(b) Procedure for party not represented by an attorney. Parties who are not represented by an attorney shall follow the same procedures as set forth in subsection (a)(1), (a)(2) and (a)(3), except that prior judicial authorization is required before any subpoena may issue. Except when inconsistent with this rule, the presiding judge of the Unit may designate the Clerk or Deputy Clerk of the Unit, or other court employee in the Clerk's Office to authorize the issuance of subpoenas based on guidelines established by the presiding judge.

### **COMMENT**

SCR-Civil 45 and SCR-Criminal 17 have no restrictions regarding the Clerk distributing subpoenas to parties not represented by an attorney. SCR Dom Rel 45 states that a party not represented by an attorney may obtain from the Clerk and complete a blank subpoena, and submit it to the Clerk to be signed. That rule also provides that the Clerk may sign subpoena if it relates to a case in which action is pending; otherwise the Clerk shall refer the subpoena to a judicial officer for consideration. Section (b) of this rule requires judicial authorization before the Clerk issues a subpoena to a party not represented by an attorney. The purpose of this section is to prevent one party from harassing the other party through the subpoena process given the nature of the intrafamily proceedings before the court. This section is not intended to prevent any party from obtaining subpoenas for witnesses or other documents or records relevant to the proceeding. It is only intended to provide some judicial oversight in the issuance of subpoenas. Section (b) permits the presiding judge of the Unit to designate the Clerk or Deputy Clerk or a court employee in the Clerk's Office to review requests for subpoenas based on guidelines established by the presiding judge of the Unit.