

### **Rule 8. Evidentiary Hearing**

(a) Determination by court. If the motion has not been dismissed at a previous stage in the proceeding, the judge, after the answer is filed and any transcripts or records of prior court actions in the matter are in his or her possession, shall, upon a review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the motion as justice dictates.

(b) Appointment of counsel; time for hearing. If an evidentiary hearing is required, the judge shall appoint counsel for a movant who qualifies for the appointment of counsel under D.C. Code §11-2601 and the hearing shall be conducted as promptly as practicable, having regard for the need of counsel for both parties for adequate time for investigation and preparation. These rules do not limit the appointment of counsel at any stage of the proceeding if the interest of justice so requires.

(c) Production of statement at evidentiary hearing.

(1) In General. Rule of Criminal Procedure 26.2 applies at an evidentiary hearing under these rules.

(2) Sanctions for Failure to Produce Statement. If a party elects not to comply with an order under Rule of Criminal Procedure 26.2(a) to deliver a statement to the moving party at the evidentiary hearing, the Court may not consider the testimony of the witness whose statement is withheld.

### **COMMENT**

D.C. Code § 11-1732 does not confer authority on hearing commissioners to conduct proceedings on motions under § 23-110. Consequently, the portion of the equivalent federal rule dealing with review of magistrate judges' decisions has been deleted.