

Rule 5. Transfer of Committed Resident

(a) Filing of recommendation for transfer. When a recommendation for transfer of a committed resident from one facility to another facility is made pursuant to D.C. Code § 7-1303.09(a) (2003 Supp.), four copies of the recommendation shall be filed with the Court. The Court shall send a copy of the recommendation to the resident, the resident's attorney, advocate, and parent or guardian, and this copy shall constitute the required notice.

(b) Contents of recommendation. The recommendation shall state the reasons why the transfer would be beneficial and consistent with the habilitation needs of the resident and shall provide a basis for the Court to determine whether the transfer is to a more, equally or less restrictive facility. The recommendation shall also provide information sufficient to permit the Court to compare the facility in which the resident is residing with the facility to which transfer is sought; and shall include but not be limited to, descriptions of the location and size of the facilities, the particular habilitation services available to the resident in both facilities, their populations, and such other information particularly applicable to the resident which demonstrates that the facility to which transfer is sought is more or less or equally restrictive in relation to the resident's specific needs. The information shall also include the date of the proposed transfer. The recommendation shall be accompanied by copies of the resident's current comprehensive evaluation report and individual habilitation plan, if they have not already been provided to the parties.

(c) Transfer to more restrictive facility. If the Court determines, upon consideration of the recommendation, that the transfer would be to a more restrictive facility, the Court shall promptly schedule a hearing on five days' written notice, or as otherwise directed by the Court. In all cases this hearing shall take place prior to the date of the proposed movement of the committed person. Notice of the date of the hearing shall be sent by the Court to the resident, the Department of Human Services Mental Retardation and Developmental Disabilities Administration, the directors of both facilities, the parent or guardian who initially petitioned for commitment, the resident's attorney and advocate, and the Office of the Attorney General.

(d) Transfer to an equally or less restrictive facility. If the Court determines that the transfer would be to an equally or less restrictive facility, the Court shall send notice of that determination to the directors of both facilities, the Department of Human Services Mental Retardation and Developmental Disabilities Administration, the resident, the resident's parent or guardian, attorney, and advocate, and the Office of the Attorney General. The notice shall also provide instructions concerning the method for applying for a hearing to oppose the proposed transfer. A Court hearing shall be held only upon the written request of the resident, or his or her attorney, or his or her parent or guardian, which must be filed with the Court within 10 days of being notified of the Court's determination. In cases involving residents committed pursuant to D.C. Code § 7-1304.06a (2003 Supp.), the District may petition the court in writing for a hearing within 10 days of being notified of the proposed transfer. If a request for a hearing has been made within this time, the Court shall promptly schedule a hearing on five days' written notice, or as otherwise directed by the Court. In all cases this hearing shall take place prior to the date of the proposed transfer of the committed person. If a request for a hearing has not been made within this time the Court shall promptly send notice to the

directors of both facilities and all parties that no objection to the transfer has been filed. (e) Hearing. If a hearing is required pursuant to paragraphs (c) or (d) of this Rule, the transfer may not occur unless by order of the Court. At the hearing, the Court shall consider the following factors:

- (1) Whether the proposed facility can provide the necessary habilitation;
- (2) Whether the proposed facility is the least restrictive means of providing the necessary habilitation;
- (3) Whether the relationship of the resident to the resident's family, guardian, or friends can be maintained by transfer to the proposed facility and whether visits beneficial to these relationships would be encouraged by the proposed transfer; and
- (4) With respect to a resident committed pursuant to D.C. Code § 7-1304.06a (2001), whether the proposed placement can provide sufficient supervision or security to prevent the resident from causing injury to others as the result of his or her mental retardation.

After consideration of these factors, the Court shall issue an order approving or denying the recommendation for transfer and shall send notice of its decision to the resident, the resident's parent or guardian, attorney, and advocate, the directors of both facilities, the Department of Human Services Mental Retardation and Developmental Disabilities Administration, and the Office of the Attorney General.

(f) Emergency transfer. In an emergency situation, when the life of a resident is in danger, transfer of the resident to a health care facility may be accomplished without prior Court approval, in accordance with D.C. Code § 7-1303.09(c) (2003 Supp.).

COMMENT

Rule 5 was amended to ensure that no transfer of a resident from his or her facility is effectuated without the knowledge and input of all relevant parties including the resident, the resident's attorney, parents or guardian and advocate. See *In re Cook*, 118 Daily Wash. L. Rept. 1057 (D.C. Super. Ct. May 15, 1990). "Transfer" does not include a respite care placement or a brief stay in another facility for appropriate medical, recreational, or social purposes.