

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Notice of Proposed Amendments to Superior Court Rules of Civil Procedure

The District of Columbia Superior Court Rules Committee recently completed review of proposed amendments to Superior Court Rule of Civil Procedure 12-I and conforming amendments to Superior Court Rules of Civil Procedure 5, 56, 64-I, and 64-II. The Rules Committee will recommend to the Superior Court Board of Judges that the amendments be approved unless, after consideration of comments from the Bar and the public, the proposed amendments are withdrawn or modified.

Written comments must be submitted by December 1, 2021. Comments may be emailed to Laura.Wait@dccsystem.gov or may be mailed to:

Laura M.L. Wait
Associate General Counsel
District of Columbia Courts
500 Indiana Avenue, N.W., Room 6715
Washington, D.C. 20001

All comments submitted in response to this notice will be available to the public. New language is underlined, and deleted language is stricken through.

Rule 12-I. Motions Practice

(a) EFFORTS TO OBTAIN CONSENT; CONSENT MOTIONS.

(1) *In General.* Before filing any nondispositive motion, except motions filed pursuant to Rule 11, the moving party must discuss the anticipated motion with other parties in a good-faith effort to determine whether there is any opposition to the relief sought and, if there is, to narrow the areas of disagreement~~first ascertain whether other affected parties will consent to the relief sought.~~

(2) *Rule 11 Motions.* For motions filed pursuant to Rule 11, the moving party must make good faith efforts to resolve or dispose of the issues in dispute before the motion is served pursuant to Rule 11(c)(2).

(3) *No Resolution or Consent.* The court must consider the motion as a contested matter if the movant certifies in writing that:

(A) in the case of a Rule 11 motion, resolution of the disputed issues is not possible; or

(B) for a motion other than a Rule 11 motion, that despite diligent efforts the movant consented to the motion as required by Rule 12-I(a)(1) and could not be obtained consent.

(4) *Consent Obtained.* 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 the parties (which should 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 must 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.

(d) ~~FORM OF MOTIONS.~~

~~(1) *In General.* 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 must be made in writing and filed with the clerk. Every motion must 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 must be indicated in the title of the motion, e.g., "Consent Motion to Extend Time for Filing Plaintiff's Witness List." The caption must contain the parties' next court date (e.g. case mediation, pretrial conference, or trial) if one has been set.

~~(2) *Points and Authorities.* Each motion must include or be accompanied by a statement of the specific points and authorities that support the motion, including, where appropriate, a concise statement of material facts. The statement of points and authorities must be a part of the record. The points and authorities must be labeled as such and placed either on a separate paper or below all other material, including signatures, on the last page of the motion.~~

(e) ~~OPPOSITIONS~~OPPOSING POINTS AND AUTHORITIES. Within 14 days after service of the motion or at such other time as the court may direct, an opposing party must file and serve an opposition ~~statement of opposing points and authorities in~~

~~opposition to the motion~~. If ~~an opposition statement of opposing points and authorities~~ is not filed within the prescribed time, the court may treat the motion as conceded.

(g) REPLY. Within 7 calendar days after service of ~~an~~ ~~the~~ ~~opposition~~ ~~ng~~ ~~statement~~, the moving party may file and serve a ~~statement of points and authorities in reply to the following types of motions only~~:

- ~~— (1) motions for summary judgment;~~
- ~~— (2) motions to dismiss for failure to state a claim;~~
- ~~— (3) motions to strike expert testimony; and~~
- ~~— (4) motions for judgment on the pleadings.~~

COMMENT TO 2021 AMENDMENTS

The requirement in section (a) to seek consent to the relief sought in a motion was limited to nondispositive motions, and parties must attempt to narrow any area of disagreement. This requirement does not apply to a motion to dismiss, a motion for summary judgment, a motion for judgment on the pleadings, or any other motion seeking to dispose of a claim or defense.

The option in section (d) to file separate points and authorities was eliminated, and consistent with Rule 7(b)(1)(B), the motion itself must state with particularity the grounds for seeking the order. Motions practice under the amended rule includes motions, oppositions, and replies.

Section (g) was amended to permit replies in support of any motion, not only the four types of motions previously specified in section (g).

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule, and the rule was reorganized so related materials now appear in the same section or subsection. The deadlines were also amended to conform with the time-calculation changes made to Rule 6 as part of the 2009 amendments to the Federal Rules of Civil Procedure and to allow adequate time to resolve motions where the time for filing a response has been extended. The following provisions in section (a) were deleted as unnecessary: 1) the provision suggesting how the court would rule on a consent motion and 2) the provision stating how the court would serve an order for a consent motion. Language in subsection (d)(2) was modified to clarify that the statement of points and authorities may be included as part of the motion; there is no requirement that it be a separate document.

New section (g) permits the filing of a reply as a matter of right on all of the motions listed. However, no further filings are permitted without leave of court. Section (k) now directs parties to Rule 56 for provisions regarding summary judgment motions

Rule 5. Serving and Filing Pleadings and Other Papers

(d) FILING.

(1) *Required Filings.* Any paper after the complaint that is required to be served, other than those referred to in Rule 12-I(d)~~(2)~~ and (e), must be filed no later than 7 days after service. The following discovery requests and responses must not be filed except as provided in Rule 5(d)(2) or until they are used in the proceeding: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(4) *Chambers Copy Required for Non-Electronic Filing.* When a party files, by non-electronic means, a motion, papers related to the motion (e.g., an opposition, ~~a memorandum of points and authorities~~, exhibits, or a proposed order), pretrial statements, or other papers described in Rule 16(d) and (e), the party must deliver a chambers copy to a depository designated by the clerk's office for receipt of such papers by the assigned judge.

COMMENT TO 2021 AMENDMENTS

Consistent with the 2021 amendment to Rule 12-I, the reference to a memorandum of points and authorities was deleted from Rule 5(d)(4).

Rule 56. Summary Judgment

(b) TIME TO FILE A MOTION; FORMAT.

(1) *Time to File.* Unless the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(2) *Format: Parties' Statements of Fact.*

(A) *Movant's Statement.* ~~In addition to the points and authorities required by Rule 12-I(d)(2),~~ ~~†~~The movant must file a statement of the material facts that the movant contends are not genuinely disputed. Each material fact must be stated in a separate numbered paragraph.

COMMENT TO 2021 AMENDMENTS

Consistent with the 2021 amendment to Rule 12-I, the reference to a memorandum of points and authorities was deleted from Rule 56(b)(2)(A).

Rule 64-I. Attachment Before Judgment

(b) ISSUANCE. An application for a writ of attachment before judgment must be submitted ~~as provided in Rule 12-I(b)~~ to the judgecourt—~~whiche~~ may approve or deny issuance or direct further hearings before issuance as deemed appropriate.

COMMENT TO 2021 AMENDMENTS

Consistent with the April 2021 amendment to Rule 12-I, the reference to Rule 12-I(b) has been eliminated.

Rule 64-II. Replevin Actions

(a) NOTIFYING THE JUDGE. On filing any action in replevin and before process is placed in the hands of the United States marshal or deputy marshal or other process server, the plaintiff, personally or by his attorney, will bring the action to the attention of the assigned judge ~~to whom the case is assigned under Rule 12-I(b)~~.

COMMENT TO 2021 AMENDMENTS

Consistent with the April 2021 amendment to Rule 12-I, the reference to Rule 12-I(b) has been eliminated.