

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**RULE PROMULGATION ORDER 17-06**

(Amending and Adding Super. Ct. Dom. Vio. R. 1-15)

**WHEREAS**, pursuant to D.C. Code § 11-946, the Board of Judges of the Superior Court approved the amendments and additions to Rules Governing Proceedings in the Domestic Violence Unit 1-15; and

**WHEREAS**, these rules do not modify the Federal Rules of Civil or Criminal Procedure; it is

**ORDERED**, that Rules Governing Proceedings in the Domestic Violence Unit 1-15 are hereby amended and enacted as set forth below; and it is further

**ORDERED**, that the above enumerated amendments and additions shall take effect January 22, 2018, and shall govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

**Rule 1. Scope; and Purpose; Title; Applicability of Civil Rules; Other Proceedings Assigned to the Domestic Violence Unit**

~~(a) SCOPE. These rules govern the procedure in all civil protection order proceedings regarding intrafamily offenses, as defined in filed under D.C. Code §§ 16-1001 to -1006 (2012 Repl. & 2017 Supp.) et seq., and criminal, domestic relations and paternity and support proceedings assigned to the Domestic Violence Unit (hereinafter, "the Unit").~~

~~(b) PURPOSE. The purpose of these rules is to provide for the should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every such civil protection order 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.~~

~~(c) TITLE. These rules may be known and cited as the Rules Governing Proceedings in the Domestic Violence Unit and may be cited as "Super. Ct. Dom. Vio. R. \_\_\_\_." GR-DV.~~

~~(d) APPLICABILITY OF CIVIL RULES. Except when inconsistent with these rules or with the expeditious nature of civil protection order proceedings, the following Superior Court Rules of Civil Procedure are deemed applicable to civil protection order proceedings: 6, 9, 9-I, 11 (except that a party does not have to provide the party's address, phone number, or e-mail address if doing so poses safety concerns), 43, 43-I, 44, 44-I, 44.1, 46, 59, 61, 63, 63-I, 77(c)(1), 79, 79-I, 80, 82, 86, 101, 102, 103, 104, 201, and 203.~~

~~(e) OTHER PROCEEDINGS ASSIGNED TO THE DOMESTIC VIOLENCE UNIT.~~

~~Criminal proceedings assigned to the Domestic Violence Unit are governed by the Superior Court Rules of Criminal Procedure. Except when inconsistent with these rules or federal law, Domestic relations proceedings assigned to the Domestic Violence Unit are governed by the Superior Court General Rules of the Family Division and the Rules Governing Domestic Relations Rules Proceedings 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 TO 2017 AMENDMENTS**

This rule has been amended consistent with the stylistic changes to the civil rules. The provision regarding clerk's office hours has been replaced by a reference to Civil Rule 77(c)(1). Also, the provision regarding the effect of institution of a criminal charge was deleted as unnecessary because this is addressed in D.C. Code § 16-1002 (2012 Repl.).

## 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 an Action; Amending or Supplementing Petition; Related Cases**

(a) ~~Petition~~**COMMENCEMENT OF ACTION.** A person may commence a civil protection order proceeding by ~~F~~ filing a petition pursuant to in accordance with D.C. Code § 16-1003 (2012 Repl.)~~(a) shall commence an intrafamily proceeding.~~

~~(1) Content of Petition.~~ The petition ~~shall~~**must** be signed under oath ~~and must state:-~~ and shall recite

~~(A) the facts and circumstances upon which the petitioner(s) believe(s) that the respondent has committed or threatened to commit one or more intrafamily criminal offense(s) are threatened or have been committed against the petitioner(s);~~

~~(B) the jurisdictional basis for the requested order; and. 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.~~

~~(C) if a temporary protection order is requested, the factual basis for the temporary protection order.~~

~~(2) Notice of Hearing and Order to Appear.~~

~~(A) Issuance.~~ At the time the petition is filed, the clerk must issue a notice of hearing and order to appear.

~~(B) Content.~~ The notice of hearing and order to appear must:

~~(i) name the court and the parties;~~

~~(ii) be directed to the respondent;~~

~~(iii) state the date and time that the respondent must appear for the trial;~~

~~(iv) notify the respondent that failure to appear may result in the issuance of a default civil protection order against the respondent and a warrant for the respondent's arrest;~~

~~(v) be signed by the clerk; and~~

~~(vi) bear the court's seal.~~

(b) ~~Amendment or supplementation~~**AMENDING OR SUPPLEMENTING PETITION.**

The petition may be amended or supplemented at any time prior to the conclusion of the ~~hearing trial~~ on the merits. ~~Such~~**An** amendments or supplementations ~~shall~~**must** be under oath.

~~(1) Amended or Supplemental Petition in Writing.~~ ~~W~~**An** ~~ritten~~ amended or supplemental petition ~~filed prior to the day of trial must be in writing and s~~**shall**~~must~~ be served ~~pursuant to under Domestic Violence Unit Rule 53, provided that such service shall be accomplished prior to the date set for hearing the petition.~~

~~(2) Oral Motion to Amend or Supplement.~~ On the day of trial, a petitioner may make an oral motion to amend or supplement a petition. ~~An O~~**Oral** ~~oral motions~~ to amend or supplement the petition made ~~during on the day of the hearing trial shall~~**must** be granted in the absence of a showing of prejudice to the respondent. When prejudice is shown, the ~~C~~**C**ourt may grant the motion but allow ~~the~~ respondent ~~a continuance pursuant to Domestic Violence Unit Rule 4 in order to allow additional~~ time to prepare a defense.

(c) ~~Consolidation with other matters~~**RELATED CASES.** In any criminal, family, or intrafamily case filed in the Domestic Violence Unit

(1) *In General.* On the filing of a petition for civil protection order, the Clerk will must identify the following related cases on the docket unless the related case is sealed or confidential:

(A) any criminal case involving either party; and  
(B) any other civil, family, probate, or intrafamily civil protection order 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.

(2) *Consolidation.*

(A) *Related Family Court Case.* On request of a party or on its own initiative, 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 the court shall may be consolidated and heard in the Domestic Violence Unit a civil protection order case with a related case pending in the Family Court. The judges assigned to the cases or the presiding judges of the Domestic Violence Unit and the Family Court must confer and decide whether the cases should be consolidated and, if consolidated, to whom the cases will be assigned. When deciding whether to consolidate, the judges must consider:

- (i) each judge's familiarity with the parties;
- (ii) the effect on each judge's calendar; and
- (iii) the need to resolve expeditiously the civil protection order case.

(B) *Other Related Cases.* However, a judge in the Cases from any other division may be consolidated with a civil protection order case and assigned to a judge in the Domestic Violence Unit, but a civil protection order case may not be assigned to a judge outside of the Family Court. 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.

(C) *Fees.* If cases are consolidated, the court may not charge a fee for filings made in the civil protection order case.

## COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. Section (c) was also amended to clarify when and how related cases could be consolidated. As required by D.C. Code §§ 11-1101 and -1104 (2012 Repl.), civil protection order cases must remain in the Domestic Violence Unit or Family Court.

## 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 36. ~~Form of Pleadings~~ Allowed; Form of Pleadings, Motions, and Other Documents**

(a) ~~Pleadings~~PLEADINGS. There shall be a petition and an answer. No other pleading shall be allowed unless authorized by the Court. Only these pleadings are allowed:

- (1) a petition;
- (2) an answer to a petition; and
- (3) an amended or supplemental of either.

(b) ~~Caption; names of parties~~CAPTION; NAME OF PARTIES.

(1) In General. Every pleading and motion ~~shall~~must contain~~have~~ a caption ~~setting forth with the court's name of the court, the parties' names, the case number, and the title of the action, the names of the parties, the file number and the type of pleading or motion.~~ Except as provided in Rule 3(b)(2) and (3), the caption of the petition must include the parties' names and full residence addresses, if known.

(2) Substituted Address. The petitioner is not required to state his or her residence address if the petitioner substitutes the name and residence or other address of his or her attorney or a third person willing to accept service copies for the petitioner. The petitioner must indicate on the petition that a substituted address has been used.

(3) Confidential Address. If no substituted address is available, a petitioner may file a confidential address under seal on a form maintained by the clerk. When filing a confidential address form, the petitioner must authorize the clerk to accept service of all documents filed in the case. The clerk must immediately send all documents, by first-class mail, to the petitioner's confidential address.

(c) ~~Stationary and locational information~~STATIONERY. 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. A party may type or handwrite a pleading or motion, but the pleading or motion must be legible to the clerk. 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~~NONCONFORMANCE WITH ABOVE. A pleading or other ~~paper~~document ~~that does not meet~~not conforming to the requirements of this rule ~~shall~~will not be accepted for filing.

**COMMENT TO 2017 AMENDMENTS**

Formerly Rule 6, this rule has been renumbered as Rule 3. The rule has been amended consistent with the stylistic changes to the civil rules. Also, the provision permitting a petitioner to file an address under seal was updated to include a process for serving the petitioner. Subsection (b)(3) requires a petitioner who files an address under seal to authorize the clerk to accept service.

#### **Rule 4. ContinuancePrivacy Protection for Filings Made with the Court**

~~(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.~~

#### **(a) REDACTED FILINGS.**

(1) Required Redactions. Unless the court orders otherwise, a party or nonparty must redact, in an electronic or paper filing with the court, an individual's social-security number and taxpayer-identification number and a financial-account number, except that a party or nonparty making the filing may include the following:

(A) the acronym "SS#" where the individual's social-security number would have been included;

(B) the acronym "TID#" where the individual's taxpayer-identification number would have been included; and

(C) the last four digits of the financial-account number.

(2) Permitted Redactions. Unless the court orders otherwise, a party or non-party, in an electronic or paper filing with the court, may use a minor's initials in place of the minor's name.

(b) FILINGS MADE UNDER SEAL. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(c) PROTECTIVE ORDERS. For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(d) MOTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL. A person who makes a redacted filing and wishes to file an additional unredacted copy must file a motion to file an unredacted copy under seal. If granted, the court must retain the unredacted copy as part of the record.

(e) WAIVER OF PROTECTION OF IDENTIFIERS. A person waives the protection of Rule 4(a) as to the person's own information by filing it without redaction and not under seal. If a person includes his or her own information by mistake, the court may permit the person to withdraw the filing and replace it with a redacted version.

(f) RESPONSIBILITY TO REDACT. The responsibility for redacting these personal identifiers rests solely with the person making the filing.

#### **COMMENT TO 2017 AMENDMENTS**

The privacy protections for filings were previously addressed by Civil Rule 5(f), which was made applicable to civil protection order proceedings by former Rule 1. New

Rule 4 is modeled after the civil rule, but it has been modified to reflect the unique nature of civil protection order proceedings, where minors' names and dates of birth are often necessary to provide the respondent with notice of the allegations or requested relief.

Requests for continuance are now addressed in Rule 7.



### **Rule 53. ~~Serv~~ngce of Process a Petition or Other Filing**

~~(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.

~~(ab) Service of process~~SERVING A PETITION.

(1) In General. A petition for civil protection order must be served with a copy of the notice of hearing and order to appear and any temporary protection order issued by the court. The petitioner is responsible for arranging service on the respondent.

(2) By Whom. Any person who is at least 18 years of age and not a party or witness may serve the petition, notice of hearing and order to appear, and any temporary protection order issued by the court. The petitioner may request that the clerk provide the documents to a law enforcement officer for service.

~~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.

(32) Manner of sService. 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 a

(A) In General. An individual—, other than an infant minor or an incompetent person—may be served by:

(i) personally delivering to the individual a copy of the petition, personally to the individual, or to the individual's dwelling house or usual place of abodenotice of hearing and order to appear, and any temporary protection order issued by the court; or —

(ii) Delivery of a copy within the context of this rule means handing it to the individual, or leaving it a copy of each at the individual's dwelling house or usual place of abode with a personsomeone of suitable age and discretion who then residesing therein.

(B) Serving a Minor. A minor must be served by following District of Columbia law (D.C. Code § 13-332 (2012 Repl.)) or the state law for serving like process on such a respondent in an action brought in the courts of general jurisdiction of the state where service is made. A minor respondent's custodial parent, guardian, or custodian must also be served with a copy of the petition, notice of hearing and order to appear, and any temporary protection order issued by the court.

(C) Serving an Incompetent Person. ~~Service upon an infant or~~ An incompetent person shall be made by must be served ~~ing the petition and notice of hearing and order directing appearance in the manner prescribed by the law of the~~ following District of Columbia law (D.C. Code § 13-333 (2012 Repl.)) or the state law of the state in which service is made ~~for serving like process on such a respondent in an action brought in the courts of general jurisdiction of the state where service is made.~~

(D3) Alternative sService. If at the time of the hearing, ~~on the petition~~ the Ccourt determines that, after diligent effort, a petitioner has been unable to accomplish service in the manner prescribed in paragraph (2) above by a method listed in Rule 5(a)(3)(A), the Ccourt may permit an alternative method of service ~~designed~~ reasonably calculated to give ~~reasonable~~ actual notice of the action to the respondent. Alternative methods of service include, but are not limited to ~~may be accomplished by~~:

    (iA) 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;

    (iiB) mailing a copy ~~of the petition and notice of hearing and order directing appearance to respondent~~ the individual by registered or certified mail, return receipt requested; ~~or~~

    (iiiC) ~~transmitting a copy to the individual by electronic means; or~~

    (iv) ~~such any other manner as that~~ the Ccourt, in its discretion, may deem ~~s~~ just and reasonable. ~~Service by mail shall be deemed made as of the date the return receipt is signed.~~

(4) Sending Notice When Petitioner Is a Minor.

(A) In General. Unless the court determines that sending notice would be contrary to the best interests of the minor, the court must send a copy of any temporary protection order issued, along with the notice of the hearing and order to appear, to the parent, guardian, or custodian with whom the minor resides if the minor:

    (i) files a petition for civil protection without a parent, guardian, or custodian; and

    (ii) is residing with a parent, guardian, or custodian.

(B) Notice to Other Person. If the court does not send notice to the parent, guardian, or custodian with whom the minor resides, the court may send notice to any other parent, guardian, custodian, or other appropriate adult.

(b) SERVING OTHER FILINGS.

(1) In General. Any motion or other document filed after the original petition must be served, on the other party, along with any notice of hearing and order to appear issued by the clerk at the time of filing. Except as provided in Rule 5(b)(4), the motion or other document and any notice of hearing and order to appear may be served:

    (A) by first class mail;

    (B) in the manner provided in Rule 5(a)(3) for service of a petition; or

    (C) by e-mail in accordance with Rule 5(b)(3).

(2) Serving an Attorney. If a party is represented by an attorney, service under Rule 5(b) must be made on the attorney unless the court orders service on the party.

(3) E-mail Service.

(A) Attorney. An attorney may consent to accepting service by e-mail by sending an e-mail indicating consent to the other party or the other party's attorney from the e-mail address to be used for service. An attorney may revoke consent through written or e-mail notice to the other party or the other party's attorney.

(B) Self-Represented Party. If a self-represented party consents to receive service by e-mail, the party must file a notice with the clerk's office stating the e-mail address to be used for service. The consent is effective only for the case in which the notice of consent is filed. A self-represented party may revoke consent to e-mail service by filing a notice with the clerk's office and sending notice to the other party.

(4) *Personal Service Required.* The following motions and other documents filed after the original petition must be served in the manner provided in Rule 5(a)(3) for service of a petition:

- (A) a written amended or supplemental petition;
- (B) a reinstated petition;
- (C) a motion to set aside default order; and
- (D) a motion for contempt.

(c) ~~Return of service~~PROVING SERVICE.

(1) *Personal 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:–

(A) *In General.* Except as provided in Rule 5(c)(1)(C), proof of service for documents served in accordance with Rule 5(a)(3) must be by the server's affidavit.

(B) *Form and Content.* Proof of service may be provided on a return of service form maintained by the clerk. The return of service must be made under oath and must include:

- (i) the court;
- (ii) the caption and number of the case;
- (iii) the server's name, residential or business address, and the fact that he or she is 18 years of age or older;
- (iv) the documents served;
- (v) the date, time, and place of service; and 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
- (vi) if service was made by delivery to a person other than the party, then specific facts from which the Court can determine that the person to whom the documents were delivered meets the appropriate qualifications for receipt of process set out in sections (b)(2) or (b)(3) of this rule; service under Rule 5(a)(3)(A)(ii) or (a)(3)(D)(i). 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.–

(C) *Law Enforcement Officer.* If the person making service is a law enforcement officer, said declarationthe return of service need not be under oath and may be transmitted by facsimile copy, from a court of competent jurisdiction to the Clerk of this Court.

(2) *Other Methods of Service.* Proof of service for motions and other documents served in accordance with Rule 5(b) must be by:

- (A) written acknowledgment;
- (B) the server's affidavit;
- (C) certificate of a member of the District of Columbia Bar; or
- (D) other proof satisfactory to the court.

(d) ~~Amendment of return of service~~FAILURE TO MAKE PROOF; AMENDING PROOF.  
Failure to make proof will not affect the validity of service. At any time in its discretion  
and upon such terms as it deems just, t~~The C~~court may at any time allow any~~the~~ proof of  
service of process to be amended or supplied, unless it clearly appears that would result in  
material prejudice would result to the substantial rights of the to a party ~~against whom the~~  
~~process issued.~~

#### COMMENT TO 2017 AMENDMENTS

Formerly Rule 3, this rule has been renumbered as Rule 5. The rule, which has  
been amended consistent with the stylistic changes to the civil rules, now includes  
procedures for service of filings after the original petition.

## **Rule 67A. Temporary Protection Orders**

(a) ~~Hearing~~REQUESTING AND SCHEDULING HEARING. ~~Upon~~At the time of filing a petition for a civil protection order, or any time after, at the petitioner may, ~~by oral or written motion,~~ request a temporary protection order. The ~~C~~clerk ~~shall~~must schedule a hearing on the ~~motion request~~ for the same day or the next business day.

(b) ~~Scope of temporary protection order~~ISSUANCE.

(1) In General. If, after a hearing, the ~~C~~court determines ~~from testimony or from the petition~~ that the respondent immediately endangers the safety or welfare of ~~a family~~the petitioner or a household member, the court may issue a temporary protection order ~~may be issued ex parte without the respondent present.~~ 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.

(2) Issuing Without Notice or Service. The court may issue a temporary protection order without notice to the respondent and prior to service of the petition on the respondent.

(c) SERVICE. In accordance with Rule 5(a)(1), a temporary protection order issued on the day that the petition was filed must be served with the petition and the notice of hearing and order to appear. If a temporary protection order is issued on a later day, it may be served separately, but it must be served in the manner provided in Rule 5(a)(3) for service of a petition.

~~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.~~

## COMMENT TO 2017 AMENDMENTS

Formerly Rule 7A, this rule has been renumbered as Rule 6. The rule has been amended consistent with the stylistic changes to the civil rules.

## Rule 7. Motions

(a) ~~Filing and service~~FILING. All written motions ~~(including but not limited to those to adjudicate contempt, to modify, extend and/or dismiss civil protection orders)~~ shall must be filed with the ~~C~~ourt. ~~Motions shall be in writing, but need not~~Motions may be written on ~~court~~ forms maintained by the clerk.

### (b) NOTICE OF HEARING AND ORDER TO APPEAR.

(1) Issuance. ~~Upon~~On the filing of a motion that requires a hearing, the ~~C~~lerk ~~will~~must issue a notice of hearing and order to appear. ~~directing appearance that shall be served along with that motion.~~

(2) Content. The notice of hearing and order to appear must:

- (i) name the court and the parties;
- (ii) be directed to the nonmovant;
- (iii) state the date and time that the nonmovant must appear for the hearing;
- (iv) notify the nonmovant that failure to appear may result in the issuance of a default order and a warrant for the nonmovant's arrest;
- (v) be signed by the clerk; and
- (vi) bear the court's seal.

### (c) MOTION TO CONTINUE.

(1) In General. Any party seeking a continuance must file a motion to continue 48 hours before the hearing. Under justifiable circumstances, the court may waive the 48-hour requirement or permit an oral motion.

(2) Consent. An attorney, who is filing a motion to continue and knows before filing that the other party is represented, must include in the motion that:

- (A) the adverse party consents to the continuance; or
- (B) despite diligent efforts, consent could not be obtained.

(3) Extension of Temporary Protection Order. If the court grants a continuance, the court may grant or extend a temporary protection order as allowed by law. The court may condition a continuance on the extension of a protection order as is justified under the circumstances to cover the continuance period. A respondent's motion for continuance must state whether the respondent consents to the extension of an existing protection order.

### (d) MOTION TO DISMISS.

(1) By Written Motion. A respondent may file a written motion to dismiss a petition at any time prior to entry of a civil protection order. If made in writing prior to the entry of a civil protection order, the clerk must schedule the motion for a hearing on the date already set for the trial on the petition. At the request of the petitioner, the court may continue the hearing to allow the petitioner additional time to respond.

(2) By Oral Motion. A respondent may make an oral motion to dismiss a petition in open court at any hearing or trial prior to entry of a civil protection order. If the basis for the motion is anything other than petitioner's failure to proceed with the case, the court may direct the respondent to submit the motion in writing. At the request of the petitioner, the court may continue the hearing or trial to allow the petitioner additional time to respond.

### (e) MOTION TO REINSTATE.

(1) By Written Motion. A petitioner may file a written motion asking the court to reinstate a petition that was dismissed without prejudice. A written motion must be

signed under oath and must show good cause to reinstate. On filing of a motion to reinstate, the clerk must schedule a hearing on the motion.

(2) By Oral Motion. A petitioner who is not present when the court dismisses his or her petition without prejudice may orally request reinstatement of a petition in open court the same day that the petition is dismissed.

(f) MOTION TO SET ASIDE A DEFAULT ORDER.

(1) In General. A motion to set aside a default order must be signed under oath and must show:

(A) good cause for the failure to appear; and

(B) grounds which, if proved, would be sufficient to prevent the issuance of the civil protection order in whole or in part.

(2) Timing. A motion to set aside a default order must be filed no later than 14 days after the respondent is personally served with the civil protection order.

(3) Hearing. On filing of a motion to set aside a default order, the clerk must schedule a hearing on the 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.~~

~~(dg) Motion for modification and/or extension~~ MOTION TO MODIFY.

(1) In General. ~~Upon~~ On motion of ~~any~~ either party ~~or on its own initiative, after a hearing, the Court may extend or modify a civil protection order at any time. A M~~ otions to extend or modify may be written or oral. A motion to modify the civil protection order shall be filed must be made before the protection order expires ~~ation 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.~~

(2) Hearing. On filing of a written motion to modify, the clerk must schedule a hearing on the motion. The court may decide the motion without holding the hearing if the relief is favorable to the nonmovant.

(3) Effect of Motion. Filing a motion to modify does not change the protection order. Only the court can modify a protection order.

(h) MOTION TO EXTEND.



(1) *In General.* On motion of either party, the court may extend a civil protection order. A motion to extend may be written or oral. A motion to extend must be made before the civil protection order expires.

(2) *Hearing.* On filing of a written motion to extend, the clerk must schedule a hearing on the motion. If the hearing on the motion to extend is not held prior to the expiration of the civil protection order, the order will remain in effect until the court decides the motion.

(i) MOTION TO VACATE.

(1) *In General.* On motion of either party, the court may vacate a protection order. A motion to vacate may be written or oral.

(2) *Hearing.* On filing of a written motion to vacate, the clerk must schedule a hearing on the motion.

(3) *Effect of Motion.* Filing a motion to vacate does not vacate the protection order. Only the court can vacate a protection order.

(j) MOTION TO RECONSIDER.

(1) *Grounds.* On motion of either party, the court may reconsider its ruling, order, or judgment on the following grounds:

(A) the court's failure to consider a material fact or applicable law;

(B) newly discovered evidence that, with reasonable diligence, could not have been discovered prior to the court's ruling, order, or judgment;

(C) a change of law not previously brought to the court's attention;

(D) the absence of a stated reason for the court's order;

(E) fraud, misrepresentation, or other misconduct by the opposing party;

(F) mistake, inadvertence, surprise, or excusable neglect; or

(G) any other reason that justifies relief.

(2) *Timing.* A motion to reconsider must be filed no later than 28 days after entry of the ruling, order, or judgment.

(3) *Supporting Documentation.* A movant may submit documentation supporting the motion to reconsider.

(4) *Hearing.* The court may rule on a motion for reconsideration with or without a hearing.

(5) *Effect of Motion.* Filing a motion to reconsider does not change or suspend the ruling, order, or judgment.

(k) MOTION TO CORRECT. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a ruling, order, judgment or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(l) RESPONSES. Any response to a motion must be filed within 14 days after service of the motion or prior to the hearing on the motion, whichever is earlier.

~~(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).~~



## COMMENT TO 2017 AMENDMENTS

This rule was rewritten and expanded to provide more detailed procedures to self-represented parties. Also, in order to be more easily understood by self-represented parties, section (i) uses the term “vacate” in place of the term “rescind,” which is used in D.C. Code § 16-1005 (d) (2017 Supp.). When the court is considering a motion to vacate in the absence of either party, the court should consider, among other things, the circumstances surrounding the case, the demeanor of the party, and safety factors in the particular case.

Sections (g) and (h), addressing motions to modify and to extend, now reflect the determination in *Adams v. Ferreira*, 741 A.2d 1046 (D.C. 1999) (explaining that, under D.C. Code § 16-1005, a civil protection order could only be extended, rescinded, or modified by motion of a party to the original proceeding, not on the court’s own initiative).

Sections (j) and (k) are modeled after Civil Rule 60, but have been modified to reflect practice in the Domestic Violence Unit. Where these sections are substantially similar to the civil rule, case law interpreting the civil rule is expected to apply. Under District of Columbia Court of Appeals Rule 4, the timely filing of a motion to reconsider may impact the time for filing a notice of appeal.

Motions for contempt are addressed in Rule 14.

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

(a) ~~Discovery methods for civil protection order proceedings~~IN GENERAL. On motion of a party, the court, F~~or good cause shown,~~ and with due regard for the summary nature of the proceedings, ~~the Court~~ may authorize a party to proceed with the discovery ~~permitted by this rule~~from the other party by requests for written interrogatories or production of documents. A motion for discovery must:

(1) state whether there is a pending criminal case involving the same facts alleged in the civil protection order case; and

(2) be accompanied by the proposed interrogatories, requests for production, or requests for admission.

(b) TIMING.

(1) Motion. A motion for discovery must be filed no later than 7 days after the respondent was served with the petition or at such other time as the court may direct.

(2) Opposition. An opposition to the motion must be filed no later than 7 days after service of the motion or at such other time as the court may direct.

(c) LIMITATIONS AND SCOPE.

(1) Written Interrogatories, Requests for Production, and Requests for Admission. Discovery in civil protection order proceedings is limited to written interrogatories, requests for production, and requests for admission.

(2) Discovery from Nonparty. A motion for discovery may seek discovery from a nonparty. ~~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.~~

(3) Scope of discovery in civil protection order proceedings. Unless otherwise ~~directed~~authorized by the ~~C~~ourt, ~~the scope of discovery is limited to matters directly relating to the incident or any incidents of abuse alleged in the petition, defenses to those allegations, or answer, to medical treatment obtained as a result of the~~ these incidents, and ~~to any prayers~~requests 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.~~

(d3) Protective orderPROTECTIVE ORDER. ~~No methods of discovery shall be used or enforced which would require direct contact between the parties if either party objects. Upo~~On motion by a party or witness, the Court may, for good cause, make issue 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:

(1a) forbidding that the discovery be denied;

(2b) specifying terms, including time and place or the allocation of expenses, for the discovery; that discovery be granted only on specified terms and conditions;

~~\_\_\_(3e) forbidding inquiry into that certain matters, not be inquired into or that limiting the scope of discovery be limited to certain matters.~~

~~—(e4) Responses to discovery~~RESPONSE TO DISCOVERY. Once authorized by the court, a response to a discovery request must be served on the other party within the time frame ordered by the court. ~~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~~Responses to discovery must not be filed.

~~—(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 TO 2017 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. Former section (b), which addressed discovery in criminal contempt proceedings, was eliminated because discovery in criminal cases is governed by the criminal rules.

## 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 914. Subpoenas**

### **(a) ~~Procedures or attorneys.~~ IN GENERAL.**

(1) *Form and Content.* A subpoena must be written on a form maintained by the clerk. The subpoena must:

- (A) state the name of the court;
- (B) state the name of the parties and the case number;
- (C) command the person to whom it is directed to attend and give testimony at the time and place specified on the subpoena or to produce and permit inspection and copying of designated tangible evidence or documents in the possession, custody, or control of that person at a time and place specified in the subpoena; and
- (D) set out the text of Rule 9(d) and (e).

(2) *Issuance by Attorney.* Except as otherwise provided in Rule 9(b), an attorney authorized to practice in the District of Columbia may issue and sign a subpoena.

(3) *Issuance by Clerk or Court.* A self-represented party must submit a completed subpoena to the clerk for signature by the clerk or the court. The presiding judge may establish guidelines for signature by the clerk. If, based on the guidelines or Rule 9(b), the clerk cannot sign the subpoena, the clerk must forward the subpoena to the assigned judge.

(4) *Notice to Opposing Party.* If the subpoena commands the production of tangible evidence or documents before the hearing or trial, a notice and copy of the subpoena must be served on the opposing party in accordance with Rule 5(b) before the subpoena is served on the person to whom it is directed.

~~—(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.~~

### **(b) CONFIDENTIAL COMMUNICATIONS OR INFORMATION; OPPOSING PARTY'S RECORDS.**

(1) *Confidential Communications or Information.* Confidential communications to or confidential information acquired by a physician, a mental health professional as defined in D.C. Code § 7-1201.01 (11) (2012 Repl.), a domestic violence counselor as defined in D.C. Code § 14-310 (a)(2) (2012 Repl.), a human trafficking counselor as defined in D.C. Code § 14-311 (a)(2) (2012 Repl.), or a sexual assault victim advocate as defined in § 14-312 (a)(7) (2017 Supp.) may be obtained only with:

- (A) the consent of the subject of the records or his or her legal representative; or
- (B) a subpoena authorized and signed by a judge in accordance with applicable law.

(2) *Opposing Party's Records.* A subpoena for documents or tangible objects regarding the opposing party's personal or confidential information must be submitted for judicial authorization.

~~— (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.~~

(c) *SERVICE.*

(1) *By Whom and How.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person.

(2) *Service in the District of Columbia.* Subject to Rule 9(d)(3)(A)(ii), a subpoena may be served at any place:

(A) within the District of Columbia;

(B) outside the District of Columbia but within 25 miles of the place specified for the hearing, trial, production, or inspection; or

(C) that the court authorizes on motion and for good cause, if an applicable statute so provides.

(3) *Serving in a Foreign Country.* 28 U.S.C. § 1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country.

(4) *Proof of Service.* Proving service, when necessary, requires filing with the clerk a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(d) *PROTECTING A PERSON SUBJECT TO A SUBPOENA; ENFORCEMENT.*

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce and Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce and permit inspection and copying of designated documents or tangible evidence need not appear in person at the place of production or inspection unless also commanded to appear for hearing or trial.

(B) *Objections.* A person commanded to produce and permit inspection and copying may serve on the party or attorney designated in the subpoena a written objection to inspection or copying of any or all of the designated materials. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.



(ii) These acts may be required only as directed in the order, and the order must protect a person who is not a party from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court must quash or modify a subpoena that:

(i) fails to allow reasonable time to comply;

(ii) requires a person who is not a party to travel more than 25 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 9(d)(3)(B), the person may be commanded to attend a trial by traveling from any such place to the place of trial;

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

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires a person who is not a party to incur substantial expense to travel more than 25 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstance described in Rule 9(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) DUTIES IN RESPONDING TO A SUBPOENA.

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

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation materials must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) CONTEMPT. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 9(d)(3)(A)(ii).



## COMMENT TO 2017 AMENDMENTS

This rule no longer incorporates Civil Rule 45 or Criminal Rule 17 by reference; instead the rule now includes many of the provisions found in Civil Rule 45. However, these provisions have been modified to reflect the unique nature of the civil protection order proceedings, including the need to protect parties from harassment.

## 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.

## **Rule 10. Dismissal of ~~Action~~ Petition**

### **(a) ~~Voluntary dismissal~~ VOLUNTARY DISMISSAL BY THE PETITIONER.**

(1) Without Appearing in Court. The petitioner, ~~without court order,~~ may dismiss an ~~action~~ petition by filing a notice of dismissal ~~at any time before filing of an answer by the respondent or before entry of the court begins taking testimony at a~~ civil protection order trial by filing a notice of dismissal ~~unless the petitioner has previously dismissed or otherwise failed to proceed on the same petition.~~ If the petitioner properly files a notice of dismissal, the clerk may close the case and remove it from the court's calendar.

(2) By the Court. A petition may be dismissed at the petitioner's request only by the court if:

(A) the petitioner has previously dismissed or otherwise failed to proceed on the same petition;

(B) the petitioner's request is made in open court on the day of the civil protection order trial; or

(C) the court has begun taking testimony at the civil protection order trial.

### **(b) INVOLUNTARY DISMISSAL BY THE COURT.**

(1) Failure to Proceed. On motion or on its own initiative, the court may dismiss a petition if the petitioner fails to proceed with the case.

(2) Failure to State a Claim or Lack of Jurisdiction. At any time prior to entry of a civil protection order, the court, on motion or on its own initiative, may dismiss a petition for failure to state a claim or lack of jurisdiction. Before dismissing a petition for failure to state a claim or lack of jurisdiction, the court may give the petitioner an opportunity to amend or supplement the petition in accordance with Rule 2(b).

### **(c) TYPE OF DISMISSAL.**

(1) Without Prejudice. Unless otherwise stated by the court, a dismissal will be without prejudice.

(2) With Prejudice.

(A) Previously Dismissed Petition. After a petition has been dismissed once by the petitioner or for the petitioner's failure to proceed with the case, the court may dismiss the petition with prejudice. When dismissing with prejudice, the court may consider abuse of process or prejudice to the respondent.

(B) After Testimony Begins. After the court begins taking testimony at the civil protection order trial, if a petitioner requests dismissal or fails to proceed, the court may dismiss the petition with prejudice.

(C) Effect on Future Claims. The dismissal of a petition with prejudice bars a petitioner from obtaining a protection order based on the same incident(s).

(d) EFFECT ON TEMPORARY PROTECTION ORDERS. All temporary protection orders in a case become invalid when all petitions filed in the case are dismissed. ~~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 TO 2017 AMENDMENTS

This rule has been expanded to include more detailed procedures for dismissals.  
Rule 7(d) addresses motions to dismiss by respondents.

### 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 115. 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.~~

~~(a) FAILURE OF RESPONDENT TO APPEAR AT TRIAL OR HEARING Failure of respondent to appear at hearing on petition for civil protection order.~~

~~(1) At Civil Protection Order Trial.~~

~~(A) Entry of Respondent's Default. When the respondent fails to appear at a hearing on a petition for a civil protection order trial, after being served pursuant to Domestic Violence Unit in accordance with Rule 53 with the petition and a notice of hearing and order directing appearance, or having signed a notice to return to court, the Court shall may 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.~~

~~(B) Ex Parte Hearing. After a default has been entered in accordance with Rule 10(a)(1)(A), the court may conduct an ex parte evidentiary hearing. If, after the hearing, the court determines that the petitioner is entitled to relief, the court may enter a civil protection order by default.~~

~~(C) Effect of Default Civil Protection Order. A temporary protection order remains in effect until the respondent is personally served with the default civil protection order or until the default order expires, whichever occurs first. Once the respondent is personally served with the default civil protection order, the respondent must comply with it. 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.~~

(2) For Hearing on Petitioner's Motion.

(A) Ex Parte Hearing. When the respondent fails to appear at a hearing on the petitioner's motion, after being served in accordance with Rule 5 with the motion and notice of hearing and order to appear, or having signed a notice to return to court, the court may conduct an ex parte evidentiary hearing. If, after the hearing, the court determines that the petitioner is entitled to relief, the court may grant the motion by default.

(B) Effect of Default Modification or Extension. Until the respondent is personally served with a modified or extended order, the respondent must comply with any active orders with which the respondent has been personally served. Once the respondent is personally served with the modified or extended order, the respondent must comply with it.

(3) For Hearing on Respondent's Motion. When the respondent fails to appear at a hearing on the respondent's own motion, the court may deny the motion for failure to proceed or continue the hearing for a later date.

(be) Procedure upon failure of the petitioner to appear**FAILURE OF PETITIONER TO APPEAR AT TRIAL OR HEARING.**

(1) At Civil Protection Order Trial. When the petitioner fails to appear at ~~the~~ hearing~~civil protection order trial~~, the ~~C~~c~~court~~ may dismiss the petition ~~without prejudice~~in accordance with Rule 10, or may continue the ~~case~~trial ~~for further hearing~~a later date.

(2) For Hearing on Petitioner's Motion. When the petitioner fails to appear at a hearing on the petitioner's own motion, the court may deny the motion for failure to proceed or continue the hearing for a later date.

(3) For Hearing on Respondent's Motion.

(A) Ex Parte Hearing. When the petitioner fails to appear at a hearing on the respondent's motion, after being served in accordance with Rule 5 with the motion and notice of hearing and order to appear, or having signed a notice to return to court, the court may conduct an ex parte evidentiary hearing. If, after the hearing, the court determines that the respondent is entitled to relief, the court may grant the motion by default.

(B) Effect of Default Modification. Until the petitioner is personally served with a modified order, the petitioner must comply with any active orders with which the petitioner has been personally served. Once the petitioner is personally served with the modified order, the petitioner must comply with it.

(c) BENCH WARRANT.

(1) In General. The court may issue a bench warrant without bond if any party fails to appear after:

(A) being personally served with a notice of hearing and order to appear in accordance with Rule 5;

(B) signing a notice to return to court; or

(C) the court sends an order to show cause to the party's last known address.

(2) *Hearing on Bench Warrant.* When a party with an outstanding bench warrant appears before the court, the court must:

(A) quash the bench warrant;

(B) serve the party with any orders previously issued by the court but not served on the party;

(C) if applicable, require the party to sign a notice to return for any subsequent hearing date; and

(D) issue a release order in the civil protection order case.

#### COMMENT TO 2017 AMENDMENTS

Formerly Rule 5, this rule has been renumbered as Rule 11. This rule has also been modified to provide better notice, to the parties, of the consequences for failing to appear.

#### 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 129. Conduct of Trials or Hearings**

(a) BY COURT~~Representation by counsel.~~ The court will, without a jury, hear and adjudicate petitions for civil protection orders and all motions made in accordance with these rules.

~~—(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~~Evidence.~~

(1) Under o~~O~~ath. In all fact-finding~~trials or~~ hearings under these rules, the testimony of witnesses shall~~must~~ 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.~~

~~(23) Who m~~ay ~~p~~Present ~~e~~Evidence. At a trial or hearing held in accordance with these rules~~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.

~~(34) Admissible~~ e~~Evidence.~~ The following rules apply at a trial or hearing:

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

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

~~(45) Prohibition a~~Against u~~Use of Respondent's t~~Testimony against respondent in a criminal action. Pursuant to D.C. Code § 16-1002(e), The respondent's testimony of the respondent in any trial or hearing under these rules is~~proceeding for a civil protection order or temporary protection order shall be~~ inadmissible as evidence in a criminal trial or delinquency proceeding except in a prosecution for perjury or false statement.

~~(56) Level of p~~Proof r~~Required for e~~Civil p~~Protection o~~Order. The court may issue a civil protection order ~~if the C~~ourt finds in a fact-finding hearing that there is good cause to believe the allegations in the petition~~respondent has committed or threatened to commit a criminal offense against the petitioner or against petitioner's animal or an animal in petitioner's household,~~ the Court may issue the civil protection order.

(c) Findings~~FINDINGS.~~ At the conclusion of a trial or~~contested~~ hearing, the C~~c~~ourt shall~~must~~ make those findings of fact essential to the ultimate conclusion of law.

## **COMMENT TO 2017 AMENDMENTS**

Formerly Rule 9, this rule was renumbered as Rule 12. The rule was also amended consistent with the stylistic changes to the civil rules. Additionally, former subsection (a)(1) was eliminated as unnecessary, and former subsection (a)(2) was eliminated as inaccurate.

### **Rule 131. Issuance of Orders**

(a) IN GENERAL. The court may not issue a civil protection order unless:

- (1) the petitioner has filed a petition under oath;
- (2) the respondent has been served in accordance with Rule 5; and
- (3) the respondent consents to entry of the civil protection order or the court determines that the petitioner is entitled to relief.

~~(b) Order issued when both parties are present~~WHEN BOTH PARTIES ARE PRESENT.

All protection orders entered by the Court ~~shall~~must be in writing, and a copy ~~shall~~must be ~~hand-delivered~~provided to each party to the proceedings. The Court ~~shall~~must explain the meaning of the order to the parties and ~~shall~~ advise the parties that of the criminal penalties for violating ~~on 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.~~

~~(c) Consent order~~CONSENT ORDER. When the respondent has consented to having entry of a civil protection order ~~issued~~, the Court ~~shall~~must make sufficient inquiry to be assured that:

- (1) the respondent's consent is ~~voluntarily consented to the issuance of the civil protection order issued;~~ and
- (2) the parties understand the contents of the order.

~~(d) Order issued in the absence of respondent~~WHEN RESPONDENT IS NOT PRESENT. When the court issues a civil protection order or temporary protection order ~~is issued~~ without the respondent's ~~present~~tee, the Court may deliver an additional copy of the order to the petitioner for service ~~upon~~ the respondent. The Court ~~shall~~must inform the petitioner that, while the order is valid and effective, ~~but that~~ the respondent cannot be ~~held found~~ in contempt of Court for violation of the order unless the violation is committed after the respondent is legally personally served with a copy of it ~~pursuant to Domestic Violence Unit Rule 3. For good cause shown~~When possible, 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~~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~~determines that the petitioner is entitled to relief or the parties agree to, or a consent order is reached pursuant to section (b) of this under Rule 12(c). The Court may order any of the remedies available in D.C. Code § 16-1005 (2017 Supp.). The court may, as a condition of the



issuance of a civil protection order in favor of the petitioner, require that the petitioner abide by fair and reasonable conditions that are consistent with the requirements of D.C. Code § 16-1005 (c)(6)-(7) (2017 Supp.):

- ~~— (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 extensionDURATION AND EXTENSION. A civil protection order issued in accordance with D.C. Code § 16-1005 (2017 Supp.) shall be inis effective for the time period specified by the court, which may be up to one (1)-year-unless the Court has provided for a lesser period of time. UpOn written motion of any party to the original proceeding, made in accordance with Rule 7, the Ccourt may extend, ~~rescind or modify~~ an order for good cause ~~shown~~.

### COMMENT TO 2017 AMENDMENTS

Formerly Rule 11, this rule was renumbered as Rule 13. The rule was amended consistent with the stylistic changes to the civil rules. Also, the remedies listed in section (e) were deleted as unnecessary because they appear in the statute.

## 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 142. Contempt**

### **(a) CIVIL CONTEMPT Definition.**

~~(1) 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 force a party to obey 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.~~

### ~~(2e) Motion for eCivil eContempt.~~

~~— (A) In General. A motion seekingfor civil contempt alleging one or more violations of a temporary protection order or civil protection order shallmust be filed under oathand served pursuant to Domestic Violence Unit Rule 3.~~

~~— (B) Hearing. On filing of a motion for civil contempt, the clerk must schedule a hearing on the motion and issue a notice of hearing and order to appear in accordance with Rule 7.~~

~~— (C) Timing. A motion for civil contempt must be filed prior to the expiration of the protection order or within a reasonable time after it expires.~~

### ~~(bd) Motion to adjudicate criminal contempt~~**CRIMINAL CONTEMPT.**

~~— (1) Definition. Criminal contempt of a temporary protection order or civil protection order is a violation of the law that is punishable by a fine of not more than the amount set forth in D.C. Code § 22-3571.01 (2017 Supp.), imprisonment for not more than 180 days, or both.~~

### ~~— (2) Motion for Criminal Contempt.~~

~~— (A) In General. A motion requesting that the court order a person to show cause why she/he should not be held infor criminal contempt foralleging one or more violations of a temporary protection order or civil protection order maymust be filed by an individual, Corporation Counsel or an attorney appointed by the Court for that purposeunder oath.~~

~~— (B) Hearing. On filing of a motion for criminal contempt, the clerk must schedule a hearing on the motion and issue a notice of hearing and order to appear in accordance with Rule 7.~~

~~— (C) Referral and Review. TheA motion for criminal contempt willmay be referred to the Office of the Attorney General for the District of Columbia and the United States Attorney's Office for potential prosecutionreview. If both public prosecutors decline to prosecute, the court may appoint a private prosecutor to independently review the motion.~~

~~— (D) Prosecution. If a public or private prosecutor decides to proceed, the prosecutor must file an information or complaint in accordance with Criminal Rule 7. After an information or complaint is filed, all proceedings are governed by the Superior Court Rules of Criminal Procedure.~~

### ~~— (3) Orders to Show Cause.~~

(A) *In General.* On notice that the respondent has allegedly violated a temporary protection order or civil protection order or willfully failed to appear in violation of D.C. Code § 16-1005 (a) (2017 Supp.), the court may order the respondent to appear and show cause why the matter should not be referred to the prosecutor.

(B) *Notice to Respondent.* The order must be sent to the respondent's last known address. If the respondent fails to appear in response to an order to show cause, the court may issue a bench warrant for the respondent's arrest.

(C) *Show Cause Hearing.* At the hearing on the order to show cause, the court may:

(i) discharge the show cause;

(ii) continue the matter; or

(iii) refer the matter to the Office of the Attorney General and the United States Attorney's Office for review.

(D) *Review by Private Prosecutor.* If both public prosecutors decline to prosecute, the court may appoint a private prosecutor to independently review the motion.

(E) *Prosecution.* If a public or private prosecutor decides to proceed, the prosecutor must file an information or complaint in accordance with Criminal Rule 7. After an information or complaint is filed, all proceedings are governed by the Superior Court Rules of Criminal Procedure.

(c) SUMMARY CONTEMPT. Notwithstanding any other provision of these rules, a judge may summarily punish a person who commits criminal contempt in his or her presence if the judge saw or heard the contemptuous conduct and so certifies. The contempt order must recite the facts, be signed by the judge, and be filed with the clerk.

~~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 TO 2017 AMENDMENTS

Formerly Rule 12, this rule has been renumbered as Rule 14. The rule has been reorganized to better distinguish between civil and criminal contempt procedures. The process for criminal contempt proceedings has also been modified consistent with the holdings in *In re Robertson*, 19 A.3d 751 (D.C. 2011) (determining that criminal contempt actions “had to be brought in the name and pursuant to the sovereign power of the United States”) and *In re Jackson*, 51 A.3d 529 (D.C. 2012) (applying *In re Robertson* in context of show cause).

Finally, while subsection (a)(2)(C) now indicates that a motion for civil contempt may be filed within a reasonable time after the order expires, a motion for civil contempt to force a party to obey a protection order must be filed prior to the expiration of the protection order that the party is seeking to enforce. If the order will expire before the motion for civil contempt is resolved and the party wishes to proceed with the motion for civil contempt, the party must also file a motion to extend the protection order.

#### 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 153. Appeal**

~~(a) Appealable order~~IN GENERAL. 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 All appeals are governed by the rules of that courtDistrict of Columbia Court of Appeals Rules.

~~—(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.~~

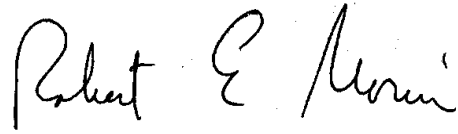
~~(b) Stay of order appealed from~~STAY OF ORDER PENDING APPEAL. On motion of a party and on appropriate terms for the opposing party, the Court may stay its~~the~~ execution or enforcement of an order pending appeal upon such terms and conditions as it deems proper only on written motion of the appellant, with notice to the appellee.

### COMMENT TO 2017 AMENDMENTS

Formerly Rule 13, this rule was renumbered as Rule 15. The substance of former section (a) was deleted to eliminate any existing or potential conflicts with the District of Columbia Court of Appeals Rules. It now directs the parties to the appellate rules.

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By the Court:



Date: November 20, 2017

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Robert E. Morin  
Chief Judge

Copies to:

All Judges  
All Magistrate Judges  
All Senior Judges  
William Agosto, Director, Domestic Violence Unit  
Library  
Daily Washington Law Reporter  
Laura Wait, Assistant General Counsel