SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 18-02

(Amending Super. Ct. Dom. Rel. R. 1-406 and Adding Super. Ct. P&S R. 1-6)

WHEREAS, pursuant to D.C. Code § 11-946, the Board of Judges of the Superior Court approved amendments to Rules Governing Domestic Relations Proceedings 1-406 and the addition of Rules Governing Parentage and Support Proceedings 1-6; and

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

ORDERED, that Rules Governing Domestic Relations Proceedings 1-406 and Rules Governing Parentage and Support Proceedings 1-6 are hereby amended and enacted as set forth below; and it is further

ORDERED, that the above enumerated amendments and additions shall take effect November 26, 2018, and shall govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

SUPERIOR COURT RULES GOVERNING
DOMESTIC RELATIONS PROCEEDINGS

TITLE I. SCOPE OF RULES; ~~– ONE~~ FORM OF ACTION~~.~~

Rule 1. Title, ~~and s~~Scope, and Purpose ~~of rules.~~

(a) TITLE~~itle~~. ~~--~~ These ~~R~~rules may be known and cited as the Rules Governing Domestic Relations Proceedings of the Superior Court of the District of Columbia, ~~and may be cited~~ as the Rules Governing Domestic Relations Proceedings, or as ~~SCR-Dom. Rel~~"Super. Ct. Dom. Rel. R.___."

(b) SCOPE~~cope of Domestic Relations Rules~~. ~~--~~ These ~~R~~rules govern the procedure in all actions and proceedings in the Domestic Relations Branch of ~~suits of a civil nature in~~ the Family ~~Division~~Court of the Superior Court of the District of Columbia, ~~within D.C. Code § 11-1101(1)-(8), (10) and (11), whether cognizable as cases at law or in equity~~ including:

__(1) ~~A~~actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony~~, pendente lite and permanent,~~ and for support and custody of minor children;

__(2) ~~A~~applications for revocation of divorce from bed and board;

__(3) ~~A~~actions to enforce support of any person as required by law, including proceedings to register an order from another jurisdiction for enforcement or modification under D.C. Code §§ 46-356.01 to -.16 (2018 Supp.);

__(4) ~~A~~actions involving ~~seeking~~ custody of minor children, including proceedings to register an order from another jurisdiction under D.C. Code § 16-4603.05 (2012 Repl.), petitions for appointment of standby guardian under D.C. Code §§ 16-4801 to -4810 (2012 Repl.), writs of habeas corpus under D.C. Code § 16-1908 (2018 Supp.), and incidental proceedings for support of the minor children;

__(5) ~~A~~actions to declare marriages void;

__(6) ~~A~~actions to declare marriages valid;

__(7) ~~A~~actions for annulments of marriage;

__(8) ~~D~~determinations and adjudications of property rights, both real and personal, in any action referred to in this rule;

__(9) ~~P~~proceedings for interstate or reciprocal support under D.C. Code §§ 46-351.01 to -359.03 (2018 Supp.)~~30-301 through 30-324~~;

__(10) ~~P~~proceedings to determine pa~~rentage~~~~ternity of any child born out of wedlock~~.

(c) PURPOSE. These rules ~~shall~~ should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

(~~c~~d) APPLICABILITY OF CIVIL RULES~~Applicability of Civil Rules~~. When a civil claim is raised with a domestic relations action~~, either~~ in a complaint, ~~or~~ counterclaim, or motion, the Superior Court Rules of Civil Procedure ~~shall~~ apply to ~~such~~that claim. At any time during the pendency of the domestic relations case, ~~T~~the judge or magistrate judge ~~judicial officer~~ who is assigned to the domestic relations action may~~, as a discretionary matter,~~ bifurcate the civil claim for trial purposes or may certify the civil claim to the Civil Division for adjudication under existing ~~C~~civil ~~R~~rules ~~at any time during the pendency of the domestic relations case~~. The judge or magistrate judge ~~judicial officer~~ may also refer

the civil claim for any type of alternative dispute resolution~~,~~ ~~irrespective~~regardless of the litigation status of the domestic relations case.

~~(d) Procedure not otherwise specified. -- If no procedure is specifically prescribed by these Domestic Relations Rules, the Superior Court Rules of Civil Procedure shall apply to the extent and in the manner permitted by the judicial officer assigned to the case.~~

COMMENT TO 2018 AMENDMENTS

Section (b) was amended to clarify that the Rules Governing Domestic Relations Proceedings apply to proceedings in the Domestic Relations Branch of the Family Court. Proceedings in the Parentage and Support Branch are governed by the Superior Court Rules Governing Parentage and Support Proceedings and any domestic relations rules that are made applicable by Parentage and Support Rule 1.

Former section (d) was deleted. Section (d) provided that if the domestic relations rules did not specifically prescribe a procedure, the Superior Court Rules of Civil Procedure applied to the extent and in the manner permitted by the judicial officer assigned to the case. This section was deleted because the domestic relations rules include any procedure contained in the civil rules that is generally appropriate for domestic relations cases. The deletion of this section does not affect the authority of a judge or magistrate judge to adopt procedures that are consistent with the domestic relations rules.

COMMENT

The Domestic Relations Rules are often similar to the corresponding civil rules. Where the nature of domestic relations practice calls for a different procedure, the rule's variance is noted in the comment.

Any civil claim that is raised in a domestic relations action that is assigned to a hearing commissioner must be adjudicated according to the Rules of the Superior Court and administrative orders of the Chief Judge that govern the powers of hearing commissioners and their authority to certify matters elsewhere in the court system.

Where alternative dispute resolution is concerned, the judicial officer may determine that such resources would speed the resolution of the civil claim even while discovery is ongoing with respect to the specific domestic relations allegations or claims. Paragraph (c) is designed to encourage timely resolution of all claims that may arise within a single action.

Pursuant to paragraph (d), where no procedure is specifically prescribed by the domestic relations rules, current Superior Court civil rules may be applied.

Rule 2. Form of ~~a~~Action; ~~and d~~Definitions; Unsworn Declarations~~.~~

(a) FORM OF ACTION. There ~~shall be~~is ~~1~~one form of action ~~to be known as "~~ the domestic relations action~~"~~.

(b) DEFINITIONS. ~~As used in~~The following definitions apply to these rules~~, the terms listed below are defined as follows~~:

(1) Affidavit. A written declaration or statement of facts confirmed by the oath of the party making it.

(2) Clerk. Clerk of the Domestic Relations Branch of the Family ~~Superior~~ Court.

~~(3) Legal holiday. -- The term legal holiday includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the District of Columbia.~~

(3~~4~~) Minor. Any person under the age of 18~~,~~ except~~and~~,:

(A) in cases involving the right to child support, any person under the age of 21;~~,~~ or

(B) in cases where a child support order has been issued in another jurisdiction, any person designated as a minor under the laws of that jurisdiction.

~~(5) Oath. -- Unless otherwise provided by statute or rule, whenever a document is required to be signed under oath, the affiant may either:~~

~~(A) sign the following statement: "I solemnly swear or affirm under criminal penalties for the making of a false statement that I have read the foregoing paper and that the factual statements made in it are true to the best of my personal knowledge, information and belief" or~~

~~(B) make the foregoing statement before an officer authorized to administer an oath or affirmation, including a notary public, who shall certify in writing to having administered the oath or taken the affirmation.~~

~~Whenever these Rules require that a person take an oath, an affirmation may be accepted instead.~~

(c) UNSWORN DECLARATIONS.

(1) *When Allowed*. Unless otherwise provided by law, whenever any matter is required or permitted by these rules to be supported by the sworn written declaration, verification, certificate, statement, oath, or affidavit of a person, the matter may, with the same force and effect, be supported by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed as true under penalty of perjury, and dated, in substantially the following form, which must appear directly above the person's signature:

(A) If executed inside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States:

I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(B) If executed outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States:

I declare under penalty of perjury under the law of the District of Columbia that the foregoing is true and correct, and that I am physically located outside the

geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. Executed on _____ (date) day of _____ (month), _____ (year), at _____ (city or other locations, and state), _____ (country).

(2) *Exclusions*. Rule 2(c)(1) does not apply to:

(A) a deposition;

(B) an oath of office; or

(C) an oath required to be given before a specified official other than a notary public.

COMMENT TO 2018 AMENDMENTS

Section (c) is based on Civil Rule 9-I(e) and replaces the definition in former section (b) concerning oaths.

COMMENT

Subparagraph (b)(5)(A) of this rule permits the use of an unsworn statement where an oath or affidavit is required by the Domestic Relations rules, unless otherwise provided. In accordance with D.C. Code § 22-2405 (False Statements), the statement contains a warning clause which indicates that making a false statement will subject the person to criminal liability.

TITLE II. COMMENCINGEMENT OFAN ACTION;: SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS.

Rule 3. Commencingement ofan aAction.

(a) IN GENERAL. The following Ddomestic Rrelations actions under D.C. Code § 11-1101 are commenced by filing a complaint or counterclaim with the Ccourt:

(1) Aactions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente litetemporary and permanent, and for support and custody of minor children;

(2) actionsApplications for revocation of divorce from bed and board;

(3) Aactions seeking custody of minor children, including petitions for writs of habeas corpusincidental proceedings for support of the minor children;

(4) Aactions to declare marriages void;

(5) Aactions to declare marriages valid;

(6) Aactions for annulments of marriage; and

(7) Ddeterminations and adjudications of property rights, both real and personal, in any action referred to in this Rrule.;

(8) Proceedings for reciprocal support under D.C. Code §§ 30-301 through 30-324.

(b) PETITIONS. Proceedings to determine parentage, to appoint a standby guardian, or for a writ of habeas corpus paternity of any child born out of wedlock are commenced by filing a petition with the Ccourt.

(c) OTHER PROCEEDINGS.

(1) Except as provided by Rule 3(c)(3), Aa Ddomestic Rrelations action pursuant to D.C. Code § 11-1101(3) to enforce support of any person may be initiated by either complaint or petition.

(2) Proceedings to modify support or custody pursuant tounder D.C. Code §§ 16-831.11, 16-9114, or -916.01 (2012 Repl.) may be brought by motion in the underlying case, if any, or by complaint.

(3) Proceedings for interstate or reciprocal support or to register an order from another jurisdiction under D.C. Code §§ 46-351.01 to -359.03 and 16-4603.05 (2012 Repl. & 2018 Supp.) are commenced by filing the documentation required by statute.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the general restyling of the civil rules. Additionally, new subsection (c)(3) clarifies that proceedings for interstate or reciprocal support or to register a foreign order are commenced in the manner required by statute.

COMMENT

This Rule provides for 3 divisions of actions within D.C. Code § 11-1101 and specifies the method or methods by which an action is commenced in each area. Those actions traditionally in the Domestic Relations Branch continue to be initiated by filing a complaint. All actions to obtain or modify custody of a child, other than those made for custody pendente lite, or in conjunction with a neglect or intrafamily case, must be initiated by complaint in the Domestic Relations Branch; custody cannot be determined

pursuant to motion in a paternity and support action. A petition will be used for actions in which a greater speed of determination is desirable. In local support cases there is an option to proceed either by complaint or by petition. In these local support cases Corporation Counsel will represent most of the persons seeking support pursuant to D.C. Code § 16-2341 and will use the petition form of commencement to handle the high volume of cases. However, the classic complaint is also available should private counsel (representing complainant where a public support burden is not incurred or threatened) prefer that form of commencement.

Rule 4. Process.

(a) CONTENTS; AMENDMENTS.

(1) *Summons*. A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff;

(D) state the time within which the defendant must file a response to the complaint and appear in court;

(E) notify the defendant that a failure to file a response to the complaint and to appear at any scheduled hearing will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) *Notice of Hearing and Order Directing Appearance*. A Notice of Hearing and Order Directing Appearance must:

(A) name the court and the parties;

(B) specify the date and time of the hearing;

(C) be directed to the defendant or individual whose attendance is required;

(D) state the name and address of the filer's attorney or, if unrepresented, of the filer;

(E) state the time period within which any response is required;

(F) notify the defendant or individual that failure to appear may result in issuance of a bench warrant and a default judgment or order;

(G) be signed by the clerk; and

(H) bear the court's seal.

(3) *Amendments*. The court may permit a summons or notice to be amended.

(4) *Service Outside the District of Columbia*. A summons, notice, or order in lieu of summons should correspond as nearly as possible to the requirements of a statute or rule whenever service is made pursuant to a statute or rule that provides for service of a summons, notice, or order in lieu of summons on a party not an inhabitant of or found within the District of Columbia.

(b) ~~Issuance~~ISSUANCE.

(1) *Summons*. ~~-- In cases in which a Domestic Relations action is initiated by complaint, a completed~~At the time the complaint is filed, the clerk must issue a summons ~~with copies~~ for each defendant named in the complaint ~~shall be delivered to the Clerk at the time the complaint is filed, except actions for reciprocal support under D.C. Code § 11-1101(10). If reissued, separate, or additional process is required, a completed summons for such process shall also be delivered to the Clerk. The Clerk shall record the date of filing and return all summonses~~and must provide to the plaintiff or the plaintiff's agent a copy of each summons for service of process ~~by special process server, mail, by the Marshal or in any manner set forth in paragraph~~in accordance with Rule 4(c) ~~of this Rule~~. ~~In cases where a post-judgment motion is filed (1) after the appearance of counsel of the party to be served has been terminated pursuant to SCR-Dom. Rel. 101(e)(4), or (2) 60 or more days after judgment and the party to be served was not represented by counsel at the time of the entry of judgment,~~

the motion shall be accompanied by a summons and served pursuant to paragraph (c) of this Rule.

(2) *Notice of hHearing and oOrder dDirecting aAppearance*. --

(A) *Support or Parentage Case*. In a cases in which a Domestic Relations action is initiated by petitionparty seeks permanent or temporary support of a child, to modify a child support order, or to establish parentage, the clerk must issue a Notice of Hearing and Order Directing Appearance, with copies forto each named defendant or individual whose attendance is otherwise required and must provide to the plaintiff, petitioner, or movant, a copy of the notice for service of process in accordance with Rule 4(d)., shall be filed with the Clerk. A Notice of Hearing and Order Directing Appearance shall bear the name and seal of the Court and the title of the action. It shall command the person to whom it is directed to appear on a date and at a time specified therein. The Clerk shall set the matter for hearing and deliver all such notices for service to the petitioner or the petitioner's agent. Service shall be made by special process server as provided for in subparagraph (c)(1) of this Rule, by the Marshal, or in any other manner authorized by an applicable statute, rule or order of the Court.

(B) *Motion for Contempt or Post-Judgment Motion*. When a judge or magistrate judge orders a hearing on a motion for contempt or a post-judgment motion, the clerk must issue and mail a Notice of Hearing and Order Directing Appearance to each named defendant or individual whose attendance is required.

(3) Orders to show cause. -- In proceedings in which an order to show cause is required or allowed by the Court or by statute, a completed order, with sufficient copies for each defendant or other individual to be served, shall be filed with the Clerk and delivered for service by the moving party or the moving party's agent. Service shall be made by special process server as provided for in subparagraph (c)(1) of this Rule, by the Marshal, or in any other manner authorized by applicable statute, rule or order of the Court.

(b) Summons: Form. -- The summons shall be signed by the Clerk, be under the seal of the Court, contain the name of the Court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any (otherwise the plaintiff's address), and the time within which these Rules require the defendant to respond, and shall notify the defendant that in case of the defendant's failure to do so action can be taken against the defendant for the relief demanded in the complaint. When, under SCR-Dom. Rel. 4(e), service is made pursuant to a statute or Rule of Court of the District of Columbia, the summons or notice, or order in lieu of summons shall correspond to the requirements of the statute or Rule.

(c) SERVING A SUMMONS AND COMPLAINTSummons: How served. --

(1) *In General*. A summons must be served with a copy of the complaint and any scheduling or other order directed to the parties at the time of filing. The plaintiff is responsible for having the summons, complaint, and any order directed to the parties at the time of filing served within the time allowed by Rule 4(i) and for furnishing the necessary copies to the person who makes service.

(2) *Methods of Service*. Service of the summons, complaint, and any order process shallmust be made in one of the following ways which may, at the plaintiff's election, be attempted either concurrently or successively:

(A1) Bby any competent person who is at least 18 years of age or older who is and not a party to the suit.:

(i) delivering a copy of each to an individual personally; or

(ii) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there;Proof of service shall be made under oath and specifically state each of the following: The caption and number of the case; the special process server's name, residential and business addresses, and the fact that the process server is at least 18 years of age; the date, time and place at which service was effected and on whom it was effected; and if service was effected by delivery to a person other than the party named in the summons, then specific facts from which the Court can determine that the person to whom process was delivered meets the appropriate qualifications for receipt of process set out in paragraph (d) of this Rule.

(B2) Bby mailing a copy of the summons and complaineach to the defendantperson to be served by registered or certified mail, and filing with the Clerk the signed return receipt requested;attached to an affidavit which shall specifically state each of the following: The caption and number of the case; the date when the summons and complaint were mailed and by whom; and, if the return receipt does not purport to be signed by the party named in the summons, then specific facts from which the Court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in paragraph (d) of this Rule. Service shall be deemed made as of the date the return receipt was signed, or if that date is not indicated, the date stamped by the U.S. Postal Service upon delivery.

(C) by mailing a copy of each by first-class mail, postage prepaid, to the person to be served, together with two copies of a Notice and Acknowledgment conforming substantially to the form maintained by the clerk's office and a return envelope, postage prepaid, addressed to the sender, and unless good cause is shown for not doing so, the court must order the party served to pay the costs incurred in securing an alternative method of service authorized by this rule if the person served does not complete and return, within 21 days after mailing, the Notice and Acknowledgment of receipt of the summons;

(D3) Bby the Metropolitan Police Department pursuant toas authorized by D.C. Code § 13-302.01 (b) (2012 Repl.);.

(E4) Bby thea United States Mmarshal or deputy marshal as authorized by D.C. Code § 13-302 (2012 Repl.);.

(5) By publication pursuant to D.C. Code § 13-336 or by posting pursuant to D.C. Code § 13-340(a).

(F6) Iin any manner authorized by paragraph (e) of this Rule 4(f);.

(7) By written acknowledgment or waiver of service signed by the person to be served, under oath before a notary.

(G8) Iin any other manner authorized by applicable statute;. or

(H) by any other method to which the person to be served consents in writing, with an acknowledgement that the person:

(i) received the summons, complaint, and any order;

(ii) understands that the person must answer the complaint within 21 days after signing the consent; and

(iii) understands that judgment by default may be entered against the person if the person fails to answer the complaint within that time.

(3) *Alternative Methods of Service*. If the court determines that, after diligent effort, a plaintiff or petitioner has been unable to accomplish service by a method prescribed in Rule 4(c)(2), the court may permit an alternative method of service reasonably calculated to give actual notice of the action to the defendant or respondent. The court may specify how the plaintiff or petitioner must prove that service was accomplished by the alternative method. Alternative methods of service include, but are not limited to:

(A) delivering a copy to the individual's employer by leaving it at the individual's place of employment with a clerk or person in charge;

(B) transmitting a copy to the individual by electronic means;

(C) posting on the court's website; or

(D) any other manner that the court deems just and reasonable.

(4) *Service by Publication*.

(A) *When Allowed*. The court may permit service by publication, instead of service under Rule 4(c)(2) or (3), if:

(i) a summons for the defendant has been issued and returned "not to be found," and an affidavit establishes that the defendant is a nonresident or has been absent from the District of Columbia for at least 6 months;

(ii) the defendant cannot be found after diligent efforts; or

(iii) the defendant, by concealment, seeks to avoid service of process.

(B) *Manner of Publication*. An order of publication must be published in at least one legal newspaper or periodical of daily circulation and any other newspaper or periodical specifically designated by the court, at least once a week for 3 successive weeks or as otherwise ordered by the court.

(C) *Definition of Legal Newspaper or Periodical*. A legal newspaper or periodical means a publication designated by the court that is:

(i) devoted primarily to publication of opinions, notices, and other information from the District of Columbia courts;

(ii) circulated generally to the legal community; and

(iii) published at least on each weekday that the court is in session.

(D) *Posting Order of Publication in the Clerk's Office*. In accordance with D.C. Code § 13-340 (2018 Supp.), in a divorce or child custody proceeding, on a finding that the plaintiff is unable to pay the cost of publishing without substantial hardship to the plaintiff or the plaintiff's family, the court may permit publication to be made by posting the order of publication in the clerk's office for 21 days.

~~(d) Personal service: Notice of hearing and order directing appearance, order to show cause and summons. -- In cases within SCR-Dom. Rel. 4(a)(2) and (3) above, involving service of a Notice of Hearing and Order Directing Appearance or an Order to Show Cause, service shall be made upon the defendant, respondent or other named person by delivering to that individual personally a copy of the petition along with the Notice of Hearing and Order Directing Appearance or the Order to Show Cause, unless otherwise ordered by the Court upon a showing of good cause.~~

~~In cases within subparagraph 4(a)(1) of this Rule, the summons and complaint shall be served in one of the following ways:~~

~~(1) Upon an individual other than a minor or an incompetent person, by delivering the~~

~~service copies of the summons and complaint to the individual personally or by leaving them at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then living there or by delivering the service copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.~~

(~~5~~2) *Serving a Minor or Incompetent Person*. ~~Upon a~~A minor or an incompetent person in the United States must be served by following~~, by serving the service copy of the summons and complaint in the manner prescribed by the law of the~~ District of Columbia law (D.C. Code §§ 13-332, -333 (2012 Repl.)) or ~~of~~ the state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state ~~in which the~~where service is made. A minor or an incompetent person who is not within the United States must be served in the manner prescribed by Rule 4(g)(2)(A), (g)(2)(B), or (g)(3).

(6) *Manner of Conducting Service*. Service of process under Rule 4(c)(2)(A)-(H) may, at the plaintiff's or the court's election, be attempted either concurrently or successively.

(d) SERVING A NOTICE OF HEARING AND ORDER DIRECTING APPEARANCE. A Notice of Hearing and Order Directing Appearance must be served on the defendant, respondent, or other named person, along with the complaint, petition, or motion, in one of the following ways:

(1) by any person who is at least 18 years of age and not a party:

(A) delivering a copy of each to that individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) leaving a copy of each at the individual's place of employment with someone of suitable age and discretion;

(2) by mailing a copy of each to the person to be served at the person's dwelling or usual place of abode or at the person's place of employment, by certified mail, return receipt requested, and also by separate first-class mail;

(3) by the Metropolitan Police Department as authorized by D.C. Code § 13-302.01 (2012 Repl.);

(4) by a United States marshal or deputy marshal as authorized by D.C. Code § 13-302 (2012 Repl.); or

(5) in any manner authorized by applicable statute.

~~(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the service copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by and in accordance with law to receive service of process.~~

~~(4) Upon a defendant of any class referred to in subparagraph (d)(1) or (3) of this Rule, by any other means prescribed by the law of the District of Columbia.~~

~~(e) Service outside the District of Columbia. -- Whenever an applicable statute or Rule of Court provides for service of process upon or notice to a party outside of the District of Columbia, service and proof of service may be made under the circumstances and in the manner prescribed in the statute or Rule.~~

~~(f) Service by publication. -- When service by publication is authorized by the Court, publication shall be in at least one legal newspaper or periodical of daily circulation for~~

~~the prescribed time in addition to any other newspaper or periodical specifically designated by the Court. Publication shall be proved by affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the document as published. For purposes of this Rule, a legal newspaper or periodical of daily circulation shall mean a publication designated by the Court that is (1) devoted primarily to publication of opinions, notices and other information from the courts of the District of Columbia, (2) circulated generally to the legal community, and (3) published at least on each weekday that the Superior Court is in session.~~

~~(g) Service by posting. -- Upon a showing that publication pursuant to paragraph (f) would impose a substantial hardship, the Court may order publication by posting or in any other manner prescribed by D.C. Code § 13-340(a).~~

(e~~h~~) ~~Territorial limits of effective service~~TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

~~(1)~~ Serving a summons, complaint, and any order or a Notice of Hearing and Order Directing Appearance establishes personal jurisdiction over a defendant:

(1) who is subject to the jurisdiction of this court; ~~All process may be served anywhere within the territorial limits of the District of Columbia, and, only when authorized by a statute or by these Rules, beyond the territorial limits of the District.~~

(2) ~~Persons who are brought in as~~who is a part~~y~~ies ~~pursuant to~~joined under ~~SCR-Dom. Rel.~~Rule 19 ~~may be served in the manner stated in subparagraphs (d)(1) (3) of this Rule at~~and is served at a~~ll~~ place~~s~~ ~~outside the District that are~~ not more than 100 miles from the ~~Superior Court~~place of the hearing or trial; or ~~and persons required to respond to an order of commitment for civil contempt may be served at the same places.~~

(3) when authorized by a federal or District of Columbia statute.

(f) SERVING AN INDIVIDUAL WITHIN THE UNITED STATES. Unless applicable law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose acknowledgment has been filed—may be served anywhere in the United States by:

(1) following District of Columbia law, or the state law for serving a summons in an action brought in courts of general jurisdiction or, if applicable, in courts with jurisdiction over domestic relations proceedings, in the state where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons, complaint, and any order directed by the court to the parties at the time of filing to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(g~~i~~) ~~Alternative provisions for service in a foreign country~~SERVING AN INDIVIDUAL IN A FOREIGN COUNTRY.~~When the~~ Unless applicable law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose acknowledgment has been filed—may be served at a place not within the United States ~~referred to in paragraph (e) of this Rule authorizes service upon a party in a foreign country, it is also sufficient if service is made~~:

(1) ~~B~~by any ~~applicable,~~ internationally agreed means of service that is reasonably

calculated to give notice, such as those ~~means~~ authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; ~~or~~

(2) ~~I~~if there is no ~~applicable,~~ internationally agreed means~~,~~ ~~of service~~ or if an ~~the applicable~~ international agreement allows but does not specify other means ~~of service~~, by a method that~~provided that service~~ is reasonably calculated to give notice:

(A) ~~in the manner~~as prescribed by the foreign country's law ~~of the foreign country~~ for service in that country in an action in ~~any of~~ its courts of general jurisdiction; ~~or~~

(B) as ~~directed by~~ the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by ~~of the foreign country~~:

(i) ~~upon an individual, by~~ deliver~~ing~~ to the individual personally a copy of the summons, complaint, and any order directed by the court to the parties at the time of filing~~, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent~~; or

(ii) ~~by~~using any form of mail that the clerk addresses and sends to the individual and that requir~~es~~~~ing~~ a signed receipt~~, to be addressed and mailed to the party to be served~~; or

(3~~iii~~) by other means not prohibited by international agreement, as the court~~as directed by~~ order~~s~~ ~~of the Court~~.

~~Service under (C)(i) and (C)(iii) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of this Court or by the foreign court. On request, the Clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make service.~~

(h~~i~~) ~~Proof of service~~PROVING SERVICE. ~~--~~

(1) *In General*. ~~Except where~~Unless service ~~has been~~is waived, proof of service ~~shall~~must be made to the court. ~~in one of the following ways:~~ Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

~~(1) If service is made within the United States, proof shall be made to the Court in accordance with the time limits in paragraph (1) of this Rule.~~

~~(2) If service is made in a foreign country, proof may be made in accordance with the time limits of paragraph (l) of this Rule, or by the law of the foreign country, or by order of the Court. If such service is made by any form of mail requiring a signed receipt, proof of service shall include a receipt signed by the addressee or other evidence of personal delivery to the addressee satisfactory to the Court, and, if the return receipt does not purport to be signed by the party named in the summons or notice, then specific facts from which the Court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in paragraph (d) of this Rule.~~

(A) *Service by Delivery*. If service is made by delivery pursuant to Rule 4(c)(2)(A), (c)(2)(D), (c)(2)(E), (c)(2)(F), (d)(1), (d)(3), or (d)(4), the return of service must be made under oath (unless service was made by the United States marshal or deputy United States marshal) and must specifically state:

(i) the caption and number of the case;

(ii) the process server's name, residential or business address, and the fact that he or she is eighteen (18) years of age or older;

(iii) the date, time, and place when service was made;

(iv) the fact that a summons, a copy of the complaint, and any order directed by the court to the parties at the time of filing setting the case for a hearing were delivered to the person served; and

(v) if service was made by delivery to a person other than the party named in the summons, then specific facts from which the court can determine that the person to whom process was delivered meets the appropriate qualifications for receipt of process set out in Rule 4(c)(2)(A)(ii), (d)(1)(B), or (d)(1)(C).

(B) *Service by Registered or Certified Mail*. If service is made by registered or certified mail under Rule 4(c)(2)(B), the return must be accompanied by the signed receipt attached to an affidavit which must specifically state:

(i) the caption and number of the case;

(ii) the name and address of the person who posted the registered or certified letter;

(iii) the fact that the letter contained a summons, a copy of the complaint, and any order directed by the court to the parties at the time of filing setting the case for a hearing; and

(iv) if the return receipt does not purport to be signed by the party named in the summons, then specific facts from which the court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in Rule 4(c)(2)(A)(ii).

(C) *Service by Publication*. Proof of service by publication must be made by affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the document as published.

(D) *Service of a Notice of Hearing and Order Directing Appearance Under Rule 4(d)(2)*. Proof of service of a Notice of Hearing and Order Directing Appearance by certified mail and first-class mail under Rule 4(d)(2) must be made by filing, with the clerk, the signed return receipt, when available, and an affidavit, which must state:

(i) the caption and number of the case;

(ii) the name and address of the person who posted the certified and first-class mail;

(iii) the fact that the mailing contained a Notice of Hearing and Order Directing Appearance and the complaint, petition, or motion;

(iv) if the return receipt does not purport to be signed by the party named in the notice, then specific facts from which the court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in Rule 4(d);

(v) if the return receipt is not available, whether the certified mail was unclaimed or refused; and

(vi) whether the first-class mail was returned.

(2) *Proving Service by Acknowledgement*. Proof of service by acknowledgment must be made by notice to the clerk filed by the serving party or the person to be served.

(3) *Proving Service by Alternative Methods*. Proof of service by an alternative method specified in Rule 4(c)(3) must demonstrate that the plaintiff or petitioner complied with the order authorizing the alternative method.

(4) *Validity of Service*. Failure to ~~make proof of~~prove service does not affect the validity of ~~the~~ service.

(5k) *Amendingment Proof*. -- At any time in its discretion and upon such terms as it deems just, tThe Ccourt may allow any process orpermit proof of service to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process was issued.

(il) Time limit for serviceTIME LIMIT FOR SERVICE. --

(1) *In General*. Within 60 days of the filing of the complaint, the plaintiff must file proof of service of the summons, the complaint, and any order directed by the Ccourt to the parties at the time of filing. TheA separate proof shallmust be filed as to each defendant who has not responded to the complaint.

(2) *Motion for Extension of Time*. Prior to the expiration of the foregoing60-day time period, a request may be made by praecipethe party may file a motion to extend the time for service. The praecipe shall include a certificate of good faith efforts to complete service by the attorney. Upon presentation of the request and certification the Clerk shall re-issue a summons for one additional 60 day period. If time in excess of the 120 days is required the party may file a motion for additional time.

(3) *Dismissal*. The plaintiff's Ffailure to comply with the requirements of this Rrule shallmay result in the dismissal without prejudice of the complaint. The Cclerk shallmay enter the dismissal and shall serve notice of it on all the parties entitled to such notice.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the general restyling of the civil rules. The rule was also reorganized and expanded. While the rule is modeled after Civil Rule 4, the provisions concerning the method and proof of service reflect the statutes governing service in domestic relations cases, including cases involving child support and parentage.

Consistent with Civil Rule 4, subsection (a)(1)(D) now requires the summons to include the date and time of the initial hearing in a new case. Unlike Civil Rule 4, subsection (a)(1)(D) also requires the summons to state the time by which the defendant must file a response to a complaint so that self-represented defendants are aware of their obligation to file a written response to a complaint as well as to appear at the initial hearing.

Subsection (a)(1)(E) was added to require the summons to specify that not only a failure to answer on a timely basis but also a failure to appear at the initial or other scheduled hearing may result in entry of a default judgment against a defendant.

Subsection (b)(2)(B) was added to provide for issuance of a Notice of Hearing and order Directing Appearance ("NOHODA") if the court orders a hearing on a motion for contempt or a post-disposition motion. This provision was moved from Rule 7 and amended to reflect the fact that the court would schedule the hearing.

Subsection (d)(2) provides for service of a NOHODA by certified mail, return receipt requested, and first-class mail. However, D.C. Code § 46-206 (b)(2) (2012 Repl.) provides that "[s]ervice by certified mail that is unclaimed or refused and first-class mail alone shall not be a sufficient basis to permit the entry of a default order of paternity in a case where the respondent fails to file an answer or otherwise fails to respond appropriately." *See also* Rule 55(b)(2)(B)(i) (requiring compliance with D.C. Code § 46-206 (b) for entry of default parentage order).

Subsection (c)(2)(C) was added consistent with Civil Rule 4(c)(5) to authorize service by first-class mail with notice and acknowledgement and to include a related cost-shifting provision if the defendant does not appear or respond.

New subsection (c)(2)(H) permits the parties to agree to other methods of service. New subsection (c)(3) authorizes alternative methods of service if the court makes the appropriate determination. Among the alternative methods listed are service by electronic means or posting on the court's website.

Finally, subsection (i)(2) now requires a party to file a motion if the party wants more time to serve. The provision allowing the clerk to grant one 60-day extension was deleted because it is unnecessary and created practical problems.

COMMENT

Subparagraph (a)(2) of this Rule provides for the use of a Notice of Hearing and Order Directing Appearance (NOHODA) in cases initiated by petition. Pursuant to SCR-General Family H, this process is signed by the Clerk of the Division and has the same force and effect as a civil subpoena. In cases seeking to establish paternity, D.C. Code § 46-206(b) permits personal service of the NOHODA by a combination of first class and certified mail. Such service is not, however, a sufficient basis for issuance of a bench warrant for failure of the defendant to appear.

Paragraph (i) incorporates the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, and other applicable international agreements on service of process. The applicability of an international agreement on service of process in a foreign country should be checked before other methods of service are attempted.

Where a party has been granted leave to proceed in forma pauperis, the 60-day time period in which proof of service of process must be filed under paragraph (l) will start to run at the time the summons is issued by the Clerk. See SCR-Dom. Rel.54(f). For waiver of prepayment of costs, including filing fees, see SCR-Dom. Rel. 54(f).

Rule 4-I. ~~Service by publication.~~ [Deleted].

COMMENT

SCR-Civil 4-I has been deleted since its requirement is already covered in SCR-Dom. Rel. 4(j).

Rule 5. Servingce and fFiling of oOther pPleadings and pPapers.

(a) Service: When required. --SERVICE: WHEN REQUIRED.

(1) *In General*. Unless these rules provide otherwise, each of the following papers must be served on every party: Except as otherwise provided in these Rules,

(A) an order stating that service is required;every order required by its terms to be served,

(B) a pleading filed after every pleading subsequent to the original complaint or petition, unless the court orders otherwise;

(C) every paper relating toa discovery paper required to be served upon a party, unless the Ccourt orders otherwise orders,;

(D) every a written motion, other thanexcept one whichthat may be heard ex parte,; and

(E) every a written notice, appearance, andor similar paper shall be served upon each party.

(2) *If a Party Fails to Appear*. Any pleading or motion that assertsing a new or additional claim for relief filed after a default has been entered pursuant to SCR-Dom Rel 55(a) against any party in default shall must be served upon thate party in default in the manner provided for service of summons in SCR-Dom. Rel.Rule 4.

(3) *Post-Judgment Motion Requiring Service Under Rule 4*. If a post-judgment motion is filed 60 days or more after judgment has been entered, the motion must be served in the manner provided for service of summons in Rule 4. If a post-judgment motion has been served and the motion is pending, any subsequent filings may be served in the manner provided in Rule 5(b).

(b) Service: How made SERVICE: HOW MADE.

(1) *Serving an Attorney.* Whenever under these Rules service is required or permitted to be made uponIf a party is represented by an attorney of record, whose appearance is not deemed to be terminated pursuant tounder SCR-Dom. Rel. Rule 101(fe)(4), the service under Rule 5 shall must be made upon the attorney unless the court orders service upon the party is ordered by the Ccourt.

(2) *Service in General*. Except as provided in subparagraph (b)(23) of this Rule,A paper is served service upon the attorney under this rule by:

(A) handing it to the party or attorney;

(B) leaving it at the party's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) leaving it at the attorney's office with a clerk or other person in charge;

(D) mailing it by first-class mail to the party's or attorney's last known address—in which event service is complete upon mailing;

(E) sending it by electronic means as permitted or required by administrative order or as consented to in writing by the party or attorney—in which event service is complete on transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(F) delivering it by any other means that the party or attorney consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

or upon a party shall be made by delivering, transmitting by facsimile machine, or mailing a copy to the attorney or party at the attorney's or party's current address, if

known. Delivery of a copy within this Rule means: Handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then living there. Service by mail or facsimile machine is complete upon mailing or transmission, respectively. This Rule shall not require a facsimile machine to be maintained in the office of an attorney or party. In the event of a dispute concerning service by facsimile machine, the burden of proof is upon the party transmitting the paper by facsimile machine to prove that the transmission was successful.
(2) Any post-judgment motion filed (1) after the appearance of counsel of the party to be served has been terminated pursuant to SCR-Dom. Rel. 101(e)(4), or (2) 60 or more days after judgment and the party to be served was not represented by counsel at the time of the entry of judgment, the motion shall be served in the manner provided for service of summons in SCR-Dom. Rel. 4.

(c) PROVING SERVICEProof of service. --

(1) *In General*. Proof of service of papersfilings required or permitted to be served, (other than those for which a method of proof is prescribed elsewhere in these Rrules or by statute), shall must be filed before any other action is taken on that filing. normally be made by affixing a certificate of service to the paper to be served and filing the certificate with the paper. The certificate of serviceproof shall must stateshow the date and manner of service on the parties, and be signed by a member of the Bar of this Court or a party, if not represented by counsel.
In matters requiring a different method of proof of service or when a party elects to make proof of service by an alternative method, it may be made by:

(A) written acknowledgment or waiver of service signed by the person to be served;, by

(B) affidavit of the person making the service or delivery:, or by

(C) certificate of a member of the Bar of this court; or

(D) other proof satisfactory to the Ccourt.

(2) *Rule 4 Service*. When a party is required to serve the other party in the manner provided for service of summons in Rule 4, Such proof of service shallmust be made in accordance with SCR-Dom. Rel.Rule 4.

(3) *Amending Proof*. The Ccourt may at any time allow the proof of service to be amended or supplied, unless to do so would result in material prejudice to a party.

(4) *Failure to Make Proof of Service*. Failure to make proof of service will not affect the validity of service.

(d) Filing. ---FILING.

(1) *Required Filings*. Anyll papers after the complaint or petition that is required to be served upon a party, and for which the proof of service is a certificate of service, shall must be filed with the Ccourt within 7 calendar days after service.; When proof of service is by acknowledgment or waiver of service or by affidavit of the person making service, the paper may be filed with the court prior to the filing of the proof of service. The following discovery requests and responses must not be filed except as provided in Rule 5(d)(2) or until they are used in the proceeding: however, the Clerk shall not accept for filing deposition transcripts, interrogatories, requests for documents or

tangible things or to permit entry onto land, and requests for admission~~, and answers and responses thereto except as set forth below~~.

(2) *Discovery Papers and Deposition Transcripts*.

(A) *Without Leave of Court*. Discovery requests and responses may be filed, without leave of court, if they are appended to a motion or opposition to which they are relevant.

(B) *By Court Order*. If not appended to a motion or opposition under Rule 5(d)(2)(A), a party may only file discovery requests and responses by court order.

(C) *Retaining Discovery Papers*. The requesting party must retain the original discovery paper, and must also retain personally, or make arrangements for the reporter to retain, in their original and unaltered form, any deposition transcripts until the case is concluded in this court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any appeal or petition has been decided.

(D) *Certificate Regarding Discovery*. ~~The party serving such a discovery paper (e.g. a set of interrogatories or a request for production of documents) or noticing a deposition must, however, file with the Court a~~A "CERTIFICATE REGARDING DISCOVERY," setting forth all discovery that has occurred, must be filed with the court as an attachment to:

(i) any motion regarding discovery;

(ii) any opposition to a dispositive motion based on the need for discovery; and

(iii) any motion to extend scheduling order dates.~~which shall indicate the title of the discovery paper served and the date on which it was served. The requesting party must retain the original discovery paper, and must also retain personally, or make arrangements for the reporter to retain, in their original and unaltered form, any deposition transcripts which have been made at the party's request. Such discovery papers and deposition transcripts must be retained until the case is concluded in this Court, and the time for noting an appeal or petitioning for a writ of certiorari has expired, or any such appeal or petition has been decided. Discovery papers and deposition transcripts may be filed, without leave of court, if they are appended to a motion or opposition to which they are relevant and may otherwise be filed if so ordered by the Court sua sponte or pursuant to motion.~~

~~When proof of service is by acknowledgment or waiver of service or by affidavit of the person making service the paper may be filed with the Court prior to the filing of the proof of service.~~

~~Where neither proof of service nor a responsive pleading has been filed, the Court shall take no action on the merits of a paper. The Court may impose sanctions for failure of a party to file a paper within the time limits of this paragraph.~~

(3) *How Non-Electronic Filing Is Made*. A paper is filed by delivering it to the clerk's office.

(4) *How Electronic Filing Is Made*.

(A) *In General*. As permitted or required by statute, rule, or administrative order, pleadings and filings may be electronically filed. A paper filed electronically is a written paper for the purposes of these rules. Electronic filing is complete on transmission, unless the filing party learns that the attempted transmission was undelivered or undeliverable.

(B) *Form of Electronically Filed Documents*.

(i) *Format*. All electronic filings must, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper filings, and in any other format as the court may require.

(ii) *Signatures*. Every document filed electronically through the court's authorized eFiling system is deemed to have been signed by the attorney who made or authorized the filing. Each filing must have either "/s/" or a typographical or imaged signature on the signature line. Below the signature line, the filing attorney must list his or her typed name, address, telephone number, email address, and District of Columbia Bar number.

(iii) *Self-Represented Parties*. If a self-represented party chooses to use the court's authorized eFiling system, the same format and signature requirements listed in Rule 5(d)(4)(B)(i) and (ii) apply to him or her except that no District of Columbia Bar number is required. A self-represented party will be responsible for the filing under Rule 11.

(C) *Maintenance of Original Document*. Unless the court orders otherwise, an original of all electronically filed documents, including original signatures, must be maintained by the filing party during the pendency of the case and through exhaustion of any appeals or appeal times, and the original documents must be made available, on reasonable notice, for inspection by other counsel or the court.

(D) *Service of Original Complaint and Related Documents*. After electronically filing the original complaint, a plaintiff is responsible for serving the defendant(s) in accordance with these rules. Except as provided in Rule 5(d)(5)(B), proof of service must be filed electronically.

(E) *Electronic Filing and Service of Orders and Other Papers*. The court may issue, file, and serve notices, orders, and other documents electronically, subject to the provisions of these rules, statutes, or administrative order.

(F) *Who Must Electronically File*. By statute, rule, or administrative order, all attorneys representing parties may be required to electronically file.

(G) *Who May Electronically File*. By statute, rule, or administrative order, any self-represented party, who has consented in writing, may electronically file and serve documents and may be electronically served, if such activities are provided for by the court's eFiling program.

(H) *Failure to Process Transmission*. If the electronic filing is not filed because of a failure to process it, through no fault of the filing party, the court must enter an order allowing the document to be filed nunc pro tunc to the date it was electronically filed, as long as the document is filed within 14 days of the attempted transmission.

(5) *Exceptions to Electronic Filing*.

(A) *Documents Filed Under Seal*. A motion to file documents under seal must be electronically filed and served. But the documents to be filed under seal must be filed in paper form, unless a different procedure is required by statute, rule, the court, or administrative order. Documents filed under seal should be clearly marked as such by the filing party.

(B) *Affidavits of Service of Process*. Affidavits of service of process must be filed in paper form, unless a different procedure is required by statute, rule, the court, or administrative order.

(C) *Exhibits and Real Objects*. Exhibits to declarations or other documents that are real objects (e.g., x-ray film or vehicle bumper) or which otherwise may not be

comprehensibly viewed in an electronic format may be filed and served by non-electronic means, unless a different procedure is required by statute, rule, the court, or administrative order.

(D) *Chambers Copies*.

(i) Paper chambers copies of electronically filed documents exceeding 25 pages must be delivered to the clerk. Otherwise, unless specifically requested by the court or required by administrative order, paper chambers copies of electronically filed documents do not need to be delivered to the court.

(ii) When motions are served, unless otherwise provided by administrative order, a copy of any proposed order must be emailed to the judge's eService email address in a format that can be edited (i.e., a non-write protected format).

~~(e) Filing with the Court defined. -- The filing of pleadings and other papers with the Court as required by these Rules shall be made by filing them with the Clerk, except that the judicial officer may permit papers to be filed with the judicial officer, in which event the judicial officer shall note thereon the filing date and forthwith transmit them to the office of the Clerk. On the date of the filing of any motion or any paper related to a motion (i.e., an opposition to a motion, memorandum of points and authorities, related exhibits or proposed order), the party filing such motion or paper shall deliver a chambers copy thereof to a depository designated by the Clerk of the Court for receipt of such papers by the assigned judicial officer. If the original document has been mailed, the chambers copy may be mailed to chambers. No pleadings or papers shall be delivered to the judicial officer's chambers unless the assigned judicial officer so orders.~~

COMMENT TO 2018 AMENDMENTS

This rule was amended to make it more consistent with Civil Rule 5. A provision for electronic service was added, and the provision for service by facsimile was deleted. Consistent with current practice in the domestic relations branch, the provision for filing with a judge or magistrate judge, who would then transmit the papers to the clerk, was deleted, but it does not affect the court's discretion to regulate the delivery of papers, letters, or emails to chambers.

Filing and service of reports by guardians ad litem are generally left to orders in individual cases. These reports are also subject to the *Practice Standards for Guardians ad Litem In Custody and Related Consolidated Cases*, D.C. Super. Ct. Admin. Order No. 14-01 (January 24, 2014).

COMMENT

Pursuant to paragraph (a), if a new or additional claim is asserted against a party in default, that party must be served in the manner provided for service of summons in SCR-Dom. Rel. 4. Paragraph (b)(2) requires that service of post-judgment motions also be made by summons pursuant to SCR-Dom. Rel. 4 where the appearance of counsel of the party to be served has been terminated, or where the party was not represented by counsel and 60 days has elapsed since the judgment. Paragraph (d) specifies the time within which papers must be filed with the Court and provides that discovery

papers or deposition transcripts shall not be filed unless relevant to a motion or opposition or authorized to be filed by order of the Court. Paragraph (e) requires that any party filing a motion, or any paper related to a motion, hand-deliver a copy of such motion or paper to the chambers of the judicial officer assigned to the case unless the original paper has been mailed, in which instance the courtesy copy can likewise be mailed. Note, however, that original papers shall not be filed with a judicial officer, unless expressly permitted by a Court order, oral or written.

Rule 5-I. [Deleted].

Rule 5-II. [Deleted].

COMMENT

Civil Rule 5-II has been deleted since there are no veterans estates in Family Court.

Rule 5-III. Sealed or Confidential Documents

(a) SEALING.

(1) *In General*. Absent statutory authority, no case or document may be sealed without a written court order. Any document filed with the intention of being sealed must be accompanied by a motion to seal or an existing written order. The document will be treated as sealed, pending the ruling on the motion.

(2) *Electronically-Filed Cases*. For cases that are electronically filed, the motion to seal must be electronically filed and redacted as necessary for the public record. If the motion to seal is granted, an unredacted motion to seal with the materials sought to be placed under seal must be delivered in paper form to the clerk's office for filing. Any subsequent documents allowed to be filed under seal must be filed in paper with the clerk's office.

(3) *Failure to Comply With This Rule*.

(A) *Failure to File Motion to Seal*. Failure to file a motion to seal will result in the pleading or document being placed in the public record.

(B) *Failure to Redact Electronically Filed Documents*. Filing an unredacted document electronically before or after a motion to seal is granted will result in the document being placed in the public record.

(b) IN CAMERA INSPECTION.

(1) *Submission*. Unless otherwise ordered or provided in these rules, all documents submitted for a confidential in camera inspection by the court must be submitted to the clerk securely sealed if they are:

(A) the subject of a protective order;

(B) subject to an existing written order that they be sealed; or

(C) the subject of a motion requesting that they be sealed.

(2) *Required Notation*. The envelope or box containing documents being submitted for in camera inspection must contain a conspicuous notation such as "DOCUMENT UNDER SEAL" or "DOCUMENTS SUBJECT TO PROTECTIVE ORDER" or something equivalent.

(c) OTHER FILING REQUIREMENTS. The face of the envelope or box must also contain the case number, the title of the court, a descriptive title of the document and the case caption unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope or box must also contain the date of any written order or the reference to any statute permitting the item to be sealed.

(d) HOW TO SUBMIT SEALED MATERIALS. Sealed materials must be filed in the clerk's office during regular business hours. Filing of sealed materials at the security desk is prohibited.

COMMENT TO 2018 AMENDMENTS

Rule 5-III is new. It is based on the corresponding Superior Court Rule of Civil Procedure. Rule 5-III(a)(3) does not prohibit the court, in the appropriate exercise of its discretion, from sealing documents already in the public record on motion of a party or on its own initiative.

Rule 5.1. Challenge to Validity or Constitutionality of a District of Columbia Statute, Order, Regulation, or Enactment—Constitutional Challenge to a Federal or State Statute—Notice, Certification, and Intervention

(a) NOTICE BY A PARTY. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute, or the constitutionality or validity under the District of Columbia Self-Government and Government Reorganization Act of 1973, of a District of Columbia statute, order, regulation, or enactment of any type, must promptly:

(1) file a notice of constitutional question or notice of question of validity stating the question and identifying the paper that raises it, if:

(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity;

(B) a District of Columbia statute, order, regulation, or enactment of any type is questioned and the parties do not include the District of Columbia, one of its agencies, or one of its officers or employees in an official capacity; or

(C) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned—or on the Attorney General of the District of Columbia if a District of Columbia statute, order, regulation, or other enactment is questioned—or on the state attorney general if a state statute is questioned—either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) CERTIFICATION BY THE COURT. Where a notice is required under Rule 5.1(a), the court must certify to the appropriate attorney general that a federal or state statute—or a District of Columbia statute, order, regulation, or other enactment—has been questioned.

(c) INTERVENTION; FINAL DECISION ON THE MERITS. Unless the court sets a later time, the appropriate attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the challenge, but may not enter a final judgment holding the statute, regulation, order, or other enactment unconstitutional or otherwise invalid.

(d) NO FORFEITURE. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a claim or defense that is otherwise timely asserted.

COMMENT TO 2018 AMENDMENTS

This rule is new. Consistent with the approach taken by the civil rules, the rule moves requirements to Rule 5.1 from Rule 24(d), which addresses the criteria and procedures for intervention.

Rule 5.1-I. Intervention by the United States or the District of Columbia

In any case in which the court has sent a notification to the Attorney General of the United States or the Attorney General of the District of Columbia under Rule 5.1, the court must permit the United States or the District of Columbia, respectively, to intervene for the presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States, or the District of Columbia, as appropriate, must, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

COMMENT TO 2018 AMENDMENTS

This rule is new. It is based on the corresponding Superior Court Rule of Civil Procedure.

Rule 5.2. Privacy Protection for Filings Made with the Court

(a) REDACTED FILINGS. 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 any financial-account number, except that a party or nonparty making the filing may include the following:

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

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

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

(b) [Omitted].

(c) [Omitted].

(d) 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.

(e) 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.

(f) 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.

(g) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) WAIVER OF PROTECTION OF IDENTIFIERS. A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

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

COMMENT TO 2018 AMENDMENT

This rule is new and is based on the corresponding Superior Court Rule of Civil Procedure. However, this rule does not require redaction of birthdates or minor's names—information which is needed in domestic relations cases.

Rule 6. Computing and Extending Time; Time for Motion Papers

(a) ~~Computation. --~~COMPUTING TIME. The following rules apply ~~i~~in computing any time period ~~of time~~ specified ~~by~~in these ~~R~~rules, ~~or by C~~court order, or ~~by~~in any ~~applicable~~ statute that does not specify a method of computing time.~~, the following shall apply:~~

(1) *Period Stated in Days or a Longer Unit*. When the period is stated in days or a longer unit of time:

(A) exclude ~~Computation of the specified time period shall begin on~~ the day ~~after~~of the ~~operative act,~~ event that triggers the period;~~, or default;~~

(B) count every day, including intermediate Saturdays, Sundays and legal holidays; and

(~~2~~C) include ~~T~~the last day of the ~~specified time~~ period~~,~~ but if the last day ~~shall be included in the computation unless: (A) it~~ is a Saturday, Sunday, or a legal holiday~~,; or (B) the act to be done is the filing of a paper in Court, and the last day of the specified time period is a business day when the office of the Clerk is closed for all or part of the day. If the last day is one specified under subparagraph (A) or (B) above, then~~ the ~~time~~ period ~~extends~~continues to run until the end of the next day ~~which~~that is not ~~so specified;~~a Saturday, Sunday, or legal holiday.

~~(3) When the specified time period is 10 days or fewer, Saturdays, Sundays, and legal holidays within that time period shall not be included in the computation. Accordingly, for the purposes of these Rules, periods of 10 days or fewer shall be computed by business days and periods over 10 days shall be computed by consecutive calendar days.~~

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined*. "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(B) any day declared a holiday by the President or Congress, or observed as a holiday by the court.

(C) [Omitted].

(b) ~~Extension of time. --~~EXTENDING TIME.

(1) *In General*. When an act ~~is required to~~may or must be done ~~or allowed to be done by a party at or~~ within a specified time ~~period~~, ~~either by these Rules, or by notice or order of the Court,~~ the ~~C~~court may, for good cause, extend the time ~~at any time in its discretion~~:

(A~~1~~) ~~order an extension of the specified time period upon oral or written~~with or without motion or notice if the court acts, or if the request is made, before ~~the expiration of~~ the original ~~specified~~ time ~~period~~ or ~~an earlier~~its extension expires; or

(B~~2~~) on motion made after ~~notwithstanding the expiration of~~ the ~~specified~~ time has expired if the party failed to act because of excusable neglect.~~period, permit the act to be done by the party upon oral or written motion and for good cause shown;~~

(2) *Exceptions*. ~~however, the~~A ~~C~~court ~~may~~must not extend the time ~~allotted to a party to take any action if such extension is not in accordance with~~to act under ~~SCR-Dom. Rel.~~Rules 50(b) and (d), 52(b), 59(b) and (d), and 60(b)~~, and the conditions stated in them~~.

(c) TIME FOR SERVING AFFIDAVITS. Any affidavit supporting a motion or opposition must be served with the motion or opposition unless the court orders otherwise.

(d~~c~~) ~~Additional time after service by mail. --~~ADDITIONAL TIME AFTER CERTAIN KINDS OF SERVICE. When~~ever~~ a party ~~has the right to act or is required to~~may or must act within a specified time ~~period~~ after being served~~ice~~ and service is made under Rule 5(b)(2)(D) (mail) or (F) (other means consented to), ~~of a notice or other paper upon the party, if the notice is by regular first class mail, then the party shall have three additional~~ 3 days are added after the period would otherwise expire under Rule 6(a).~~, separately computed pursuant to paragraph(a) of this Rule, to act. For the purpose of this Rule service by facsimile transmission is not service by mail.~~

COMMENT TO 2018 AMENDMENTS

This rule was amended to conform with the corresponding civil rule, which provides a new method for calculating time.

COMMENT

Pursuant to paragraph (a), if a pleading is served on the 10th day of the month, the first day of the applicable time period is the 11th day of the month. If the pleading was served by mail, paragraph (c) permits three additional business days to be added to the specified time period after the initial period has been computed pursuant to paragraph (a). *See Wallace v. Warehouse Employees Union No. 730*, 482 A.2d 801 (D.C. App. 1984). For example, if the specified time period ended on Saturday, the 10th day of the month, the operative due date would become Monday, the 12th, which is the next

business day. If paragraph (c) is applicable, the three additional days extends the prescribed time period to Thursday the 15th. The same computation applies when an order or judgment is rendered outside the presence of the parties and notice is mailed pursuant to SCR-Dom. Rel. 77(b). *Id*.

Rule 6-I. [Deleted].

TITLE III. PLEADINGS AND MOTIONS.

Rule 7. Pleadings Allowed; Form of Motions and Other Papers; Stipulations.
(a) PleadingsPLEADINGS. All pleadings must be signed under oath by the party on whose behalf it is filed. The followingOnly these pleadings are allowed:
(1) a complaint or petition; and
(2) an answer to a complaint or petition;
(3) a counterclaim as provided in SCR-Dom RelRule 13; and
(4) a replyan answer to a counterclaim. All such pleadings shall be signed under oath by the party in whose behalf the pleading is filed.
(5) No other pleading shall be allowed, except thatif the Ccourt may orders one, a reply to an answer.
(b) Motions and other papersMOTIONS AND OTHER PAPERS.
(1) *Motions*.
(A) *GenerallyIn General*. -- With the exception of motions made in open court, or otherwise with leave of the Ccourt, every petition or motion to the Ccourt shall must be in writing and filed with the Cclerk. Every motion shall must state clearly its object and the facts on which it is based or the reasons for the relief sought.
(B) *Consent*. If a motion is consented to by all affected parties consent to a motion, that fact shall must be indicated in the title of the motion, e.g., "Consent Motion to Extend Time for Filing Opposition." A party may request an oral hearing by endorsing at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested"; but the Court in its discretion may decide the motion without a hearing. Each motion shall be accompanied by the specific points and authorities to support the motion. The points and authorities shall, where appropriate, contain a discussion of the application of the legal authorities to the facts. All citations to cases decided by the United States Court of Appeals for the District of Columbia Circuit shall include the volume number and page of both U.S. App. D.C. and the Federal Reporter. The statement of points and authorities shall be captioned as such and placed either on a separate paper or below all other material including signature, on the last page of the motion. It shall be a part of the record. With each motion there shall also be filed and served a proposed order for the Court's signature which shall contain a list of all persons with their current addresses to whom copies of the Court's order should be sent.
(C) *Points and Authorities*. Each motion must include or be accompanied by a statement of the specific points and authorities that support the motion.
(D) *Proposed Order Not Required*. Unless specifically ordered by the court or required by administrative order, the moving party is not required to submit a proposed order.
(EB) *For tTemporary aAlimony, temporary mMaintenance, temporary cChild sSupport, and temporary cCustody, and contempt*. -- Motions for temporary alimony, temporary maintenance, child support, and temporary custody of minor children under D.C. Code §§ 16-831.09 and -911 (2012 Repl. & 2018 Supp.), and contempt shall must be made under oath, and proof of service may be by certificate of service. If with a motion for contempt, the movant wishes to invoke the Court's power to issue a bench warrant, the motion shall be filed without a certificate of service and personally served

with a Notice of Hearing and Order Directing Appearance. Motions for temporary child support shall be made under oath and, in lieu of being filed with a certificate of service, may be personally served with a Notice of Hearing and Order Directing Appearance in accordance with SCR-Dom. Rel. 4(a)(2).

___(FC) *To eEnlarge a dDecree of lLegal sSeparation*. -- A motion to enlarge a decree of legal separation under D.C. Code § 16-905 (b) (2012 Repl.) shall must be supported by an affidavit of essential facts and served in the manner of an original complaint and summons.

___(GD) *For aApproval of pPriority for wWrits of aAttachment*. -- In cases of attachment (under D.C. Code § 16-577 (2012 Repl.)) before or upon a judgment, order or decree of theis Domestic Relations Branch for the payment of any sum for the support or maintenance of a spouse, or former spouse, or children, where priority over any other execution is desired, application for such priority shall must be by written motion.

__(2) *Oppositions*. -- Within 14 days after service of the motion or at such other time as the court may direct, Aan opposing party must file and serve an opposition including a statement of opposing points and authorities shallbe similarly filed and served within 10 days after the date of service of the original motion or such further time as the Court may grant. If a statement of opposing points and authoritiesan opposition is not filed within the prescribed time the Ccourt may treat the motion as conceded. If a statement of opposing points and authoritiesan opposition is filed, the motion shall must be treated as submitted unless an oral hearing is requested and granted by the Ccourt.

(3) *Form*.

(A) The Rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these Rules. All motions shall be signed in accordance with SCR-Dom. Rel. 11.

(B) The Clerk shall not accept for filing any motion which is not in accordance with this Rule.

(c) StipulationsSTIPULATIONS. -- A stipulation shall must be in writing and signed by the parties or their attorneys, or made at a reported hearing, or made at a recorded deposition.

(d) HEARINGHearing. -- A party may request an oral hearing by stating at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested." The court in its discretion may decide any motion without a hearing. If the judge or magistrate judgejudicial officer assigned to the case decidesetermines to hold a hearing on a motion, that judge or magistrate judgejudicial officer shallmust give to all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing. Unless otherwise permitted by the judge, 10 minutes will be allowed each side at the hearing of a motion. If a pending motion is resolved by counsel, the movant must immediately notify the Ccourt by telephone.

(e) Order. -- Notwithstanding that a proposed order was submitted with the motion as provided in subparagraph (b)(1)(A) of this Rule, counsel prevailing at oral argument shall, unless otherwise directed by the Court, within 5 days after the Court has ruled on any motion submit a proposed order in accordance with the Court's ruling, having previously transmitted a copy thereof to opposing counsel.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the general restyling of the civil rules. The provision addressing the statement of points and authorities has been amended to allow the statement of points and authorities to be included as part of the motion; there is no requirement that it be a separate document. Citation requirements for cases decided by the United States Court of Appeals for the District of Columbia Circuit were eliminated as unnecessary and inconsistent with general practice.

As with prior versions of the rule, the amended rule does not include the requirement in Civil Rule 12-I(a) that the moving party attempt to get the consent of the other party before filing a motion. This requirement was omitted from these rules because it is unlikely to be productive in most domestic relations cases—where one or both parties do not have lawyers and the conflict that brings them to court makes it unlikely that they will reach agreement about the relief sought in motions. Omission of this requirement does not affect the court's discretion to require lawyers or self-represented parties in any case to make diligent efforts to seek and obtain consent before filing all or specified types of motions. It is preferable for the parties or their lawyers to attempt to resolve an issue before filing a motion.

The requirement of submission of a proposed order was eliminated as unnecessary, particularly in cases where a party is not represented by counsel. The provisions of any administrative order requiring a proposed order, including in electronic form, still apply. The former provision for post-argument submission of a proposed order was also eliminated as unnecessary.

Provisions relating to service were eliminated because Rule 5 addresses service of motions. Subsection (b)(3) addressing the form of motions and other papers was also deleted because Rule 10 already includes similar provisions.

The provision addressing issuance of a Notice of Hearing and Order Directing Appearance for a contempt motion was narrowed and moved to Rule 4(b)(2)(B). The assigned judge may decide on a case-by-case basis whether a party should be directed to appear for a hearing on the motion.

Section (d), which requires the movant to notify the court when a motion is resolved, was modified to permit the movant to notify the court in any manner that is not inconsistent with instructions from the judge or magistrate judge.

COMMENT

Paragraph (a) of this Rule lists the pleadings which are permissible in a domestic relations action; use of demurrers, pleas, and exceptions for insufficiency of a pleading are no longer allowed. Where a party has requested child support in the complaint, rather than a motion, a Notice of Hearing and Order Directing Appearance will be issued and a hearing will be held on that issue within 45 days; no motion is necessary. D.C. Code § 46-206. Paragraph (b)(1)(A)'s requirement that motions be in writing except when made in open court or otherwise with leave of the Court is meant to leave open the possibility, at the Court's discretion, that motions be made by telecommunication. With regard to subparagraph (b)(1)(B), see *Richardson v. Richardson*, 276 A.2d 231 (D.C. App. 1971), which makes personal service of motions for contempt unnecessary.

However, if a party wishes to invoke the Court's power to issue a bench warrant for failure of a party to appear at a contempt or temporary child support hearing, the motion must be personally served with a Notice of Hearing and Order Directing Appearance. [Note that although D.C. Code § 46-206(b) defines personal service of process in a paternity case to include a combination of first-class and certified mail, such service is not a sufficient basis for issuance of a bench warrant for failure of the defendant to appear.] In addition, no hearing is under subparagraph (b)(1)(C), although the subparagraph does require that the motion to enlarge a decree of legal separation be served in the same manner as an original summons and complaint.

Rule 7-I. [Deleted].

Rule 8. General ~~r~~Rules of ~~p~~Pleading~~.~~

(a) CLAIM FOR RELIEF~~Claims for relief~~. ~~--~~ A pleading that states a claim for relief~~,~~ ~~whether an original claim or a counterclaim, shall~~ must contain:

(1) a short and plain statement of the ~~factual and legal~~ grounds ~~upon which~~for the ~~C~~court's jurisdiction ~~depends~~, unless the ~~C~~court already has jurisdiction and the claim needs no new ~~grounds of jurisdiction to~~ jurisdictional support~~;~~ ~~it,~~

(2) a short and plain statement of the claim~~, including appropriate facts,~~ showing that the pleader is entitled to relief~~;~~ and

(3) a demand for judgment for the relief or remedy ~~the pleader seeks~~sought, which may include~~. A~~ alternative, inconsistent, or multiple reliefs or remedies, whether legal or equitable~~, may be demanded~~.

(b) DEFENSES; ADMISSIONS AND DENIALS~~Defenses; form of denials~~. ~~--~~

(1) *In General*. In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) *Denials—Responding to the Substance*. A denial must fairly respond to the substance of the allegation.

(3) *Denying Part of an Allegation*. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

~~A party responding to a claim for relief shall admit or deny each statement or averment in the adverse party's claim for relief and shall state in short and plain terms any defenses to the claim.~~

(4) *Lacking Knowledge or Information*. ~~If~~ A party ~~is~~that ~~without~~lacks knowledge or information sufficient to form a belief ~~as to~~about the truth of an allegation ~~statement or averment, the party shall~~must so state, and the~~is~~ statement has the effect of a denial.

~~Denials shall fairly meet the substance of the statements or averments denied. If a statement or averment is not admitted in full, the party shall specify so much of it as is true and shall deny only the remainder. Alternative, inconsistent, or multiple defenses, whether legal or equitable, may be raised.~~

(5) *Effect of Failing to Deny*. An allegation is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) AFFIRMATIVE DEFENSES~~Affirmative defenses~~. ~~--~~ In responding to a pleading, a party ~~shall~~ must ~~set forth~~ affirmatively state any avoidance or affirmative defense~~s~~, including:

- accord and satisfaction~~;~~
- arbitration and award~~;~~
- ~~discharge in bankruptcy,~~ duress~~;~~
- estoppel~~;~~
- failure of consideration~~;~~
- fraud~~;~~
- illegality~~;~~
- laches~~;~~
- payment~~;~~
- release~~;~~
- res judicata~~;~~

- statute of frauds;,
- statute of limitations;, and
- waiver., and any other matter constituting an avoidance or affirmative defense.

(d) Effect of failure to deny. -- Statements or averments in a pleading to which a response is required are deemed admitted when not denied in the responsive pleading. Statements or averments in a pleading to which no response is required or permitted shall be taken as denied or avoided.

(ed) PLEADING TO BE CONCISE AND DIRECT; ALTERNATIVE STATEMENTS; INCONSISTENCY.Consistency.

(1) *In General*. Each allegation must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statement of a Claim or Defense*. A party may set forthout 2 or more statements of a claim or defense alternately or hypothetically, either in 1a single count or defense or in separate counts or defensesones. When 2 or more statements are made in theIf a party makes alternative statements and 1 of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of 1 or more of the alternative statementsif any one of them is sufficient.

(3) *Inconsistent Claims or Defenses*. A party may also state as many separate claims or defenses as the partyit has, regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in SCR-Dom. Rel. 11.

(fe) CONSTRUING PLEADINGS Construction of pleadings. -- All pPleadings must shall be so construed so as to do substantial justice.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the civil rule.

Rule 9. Pleading ~~s~~Special ~~m~~Matters~~.~~

(a) CAPACITY OR AUTHORITY TO SUE; LEGAL EXISTENCE.~~Capacity. -- It is not necessary to aver the capacity of a party to sue or be sued, the authority of a party to sue or be sued in a representative capacity, or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the Court. A party who desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity shall do so by specific negative statement or averment, with particularity.~~

(1) *In General*. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) *Raising Those Issues*. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) ~~Fraud, mistake, condition of the mind. --~~ FRAUD OR MISTAKE; CONDITIONS OF MIND. In ~~all averments of~~ alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake~~ shall be stated with particularity~~. Malice, intent, knowledge, and other conditions of a person's mind ~~of a person~~ may be ~~averred~~alleged generally.

(c) ~~Conditions precedent. --~~ CONDITIONS PRECEDENT. In pleading ~~the performance or occurrence of~~ conditions precedent, it ~~is sufficient to aver~~suffices to allege generally that all conditions precedent have occurred or been performed~~ or have occurred~~. ~~A denial of performance or occurrence shall be made specifically and with particularity~~But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) ~~Official document or act. --~~OFFICIAL DOCUMENT OR ACT. In pleading an official document or official act, it ~~is sufficient to aver~~suffices to allege that the document was legally issued or the act legally done~~ in compliance with the law~~.

(e) ~~Judgment. ---~~JUDGMENT. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or~~ of~~ a board or officer, it ~~is sufficient to aver~~suffices to plead the judgment or decision without ~~setting forth matter~~ showing jurisdiction to render it.

(f) ~~Time and place. --~~ TIME AND PLACE. ~~For the purpose of~~An allegation of time or place is material when testing the sufficiency of a pleading~~, averments of time and place are material and shall be considered like all other averments of material matter~~.

(g) SPECIAL DAMAGES. If an item of special damage is claimed, it must be specifically stated.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the civil rule.

Rule 9-I. [Deleted].

COMMENT TO 2018 AMENDMENTS

Unsworn declarations are addressed in Rule 2(c).

COMMENT

SCR-Civil 9-I has been deleted, since verifications are not applicable to Family Division, nor is it felt that affidavits need be spelled out in manner specified.

Rule 10. Form of ~~p~~Pleadings, ~~m~~Motions, and ~~o~~Other ~~p~~Papers~~.~~

(a) ~~Stationery. --~~STATIONERY. Pleadings, motions, and other papers ~~shall~~ must be on opaque white paper, approximately 11 inches long and 8 1/2 inches wide, without a back or cover~~, and fastened at the top~~.

(b) ~~Caption; names of parties; locational information. --~~CAPTION; NAMES OF PARTIES; LOCATIONAL INFORMATION.

(1) *In General*. Except as provided in Rule 10(b)(2), every pleading, motion, or other paper ~~shall~~must contain a caption setting forth:

(A~~1~~) ~~T~~the name of the Superior Court of the District of Columbia Family ~~Division~~Court Domestic Relations Branch;

(B~~2~~) ~~T~~the title of the action, which ~~shall~~ must include:

(i) in the complaint, petition, and answer, the names and residence addresses of all parties; or

(ii) in pleadings, motions, and papers, other than the complaint, petition, and answer, ~~it is sufficient to state~~ the name of the first party on each side with an appropriate indication of other parties;

(C~~3~~) ~~T~~the case number;

(D~~4~~) ~~T~~the name of the pleading, motion, or other paper and, if a request for child support is made in the pleading, the inscription ~~"~~"ACTION INVOLVING CHILD SUPPORT"~~"~~ immediately below the name of the pleading;

(E~~5~~) ~~W~~where necessary to avoid confusion, the name or names of the party or parties on whose behalf the pleading or other paper is filed; and

(F~~6~~) ~~I~~if the case has been assigned to a specific calendar or a ~~single judicial officer~~specific judge or magistrate judge, the calendar number or the ~~judicial officer~~judge or magistrate judge's name ~~shall~~ must appear below the file number.~~;~~

(2~~7~~) *Substituted Address*. A party who has a reasonable basis to fear harassment or harm to the party or the party's family from disclosure of the party's residence address ~~shall not be~~is not required to state the address ~~provided that~~if the party substitutes the name and residence or other address of the party's attorney or a third person willing to accept service copies for the party and in care of whom such service copies may be sent. A paper which has a substituted address ~~shall~~must be clearly marked to indicate that such a substitution has been made. In using a substitute address, a party ~~shall be deemed to have certified~~certifies that the party may be notified of court proceedings and receive service copies of papers at that address.

(3) *Parties' Information Deemed Correct and Current.* Except as modified by ~~praecipe~~a notice filed with the ~~C~~court and served ~~up~~on the parties ~~pursuant to~~under ~~SCR-Dom. Rel.~~Rule 5, the names, addresses, and telephone numbers represented in the pleading, motion, or other paper ~~shall be~~are deemed conclusively correct and current.

~~(8) The last paragraph of a party's initial pleading shall either~~

~~(1) identify the court and docket number of any prior or pending action based on or including the same claim or subject matter, or~~

~~(2) state that there are no such cases.~~

(c) ~~Signing of pleading, motion or other paper. --~~SIGNING OF PLEADING, MOTION, OR OTHER PAPER. Every pleading, motion, or other paper ~~shall~~ must be signed in

accordance with ~~SCR-Dom. Rel.~~Rule 11. Below the signature, the paper must~~shall~~ contain:

(~~i~~1) if the party is represented by counsel, the attorney's name, office address, telephone number, e-mail address~~fax number~~, if any, and District of Columbia Bar number~~ of the attorney,~~; or

(~~ii~~2) if the party is not represented by counsel, the name, full residence address, ~~and~~ telephone number, and e-mail address of the party by whom the paper was filed, or a substitute name, address and telephone number if a substitution has been made ~~pursuant to~~under ~~subparagraph~~ Rule 10(b)(2~~7~~)~~ of this Rule~~.

(d) ~~Paragraphs. --~~PARAGRAPHS.

(1) *In General*. Each claim or defense ~~shall~~ must be made in a separate paragraph. The contents of each paragraph ~~shall~~ must be limited as far as practicable to a statement of a single set of circumstances.

(2) *Prior or Pending Action*. The last paragraph of a party's initial pleading must

(A) identify the court and docket number of any prior or pending action based on or including the same claim or subject matter; or

(B) state that there are no such cases.

(e) ~~Adoption by reference; exhibits. --~~ADOPTION BY REFERENCE; EXHIBITS. ~~S~~A s~~tatement~~s in a pleading may be adopted by reference ~~in a different part of~~ elsewhere in the same pleading or in ~~another~~ any other pleading, ~~or in any~~ motion, or ~~other~~ paper. A copy of a~~ny~~ written instrument ~~which~~that is an exhibit to a pleading, motion, or other paper is a part ~~there~~of the pleading, motion, or paper for all purposes.

(f) ~~Nonconformance with above. --~~NONCONFORMANCE WITH ABOVE. A pleading, motion, or other paper not conforming to the requirements of this ~~R~~rule ~~sha~~will not be accepted for filing.

COMMENT TO 2018 AMENDMENTS

This rule contains provisions from both Civil Rules 10 and 10-I, and it has been amended to conform to those civil rules. Many parties, including self-represented parties, prefer to receive communications electronically, and the rule requires parties with email addresses to provide them.

COMMENT

Subparagraph (b)(7) of this Rule allows a party to use a substitute address on pleadings where the party fears that disclosing a residence address will pose a risk of harassment or harm to the party or his or her family. A party who uses a substitute address will be deemed to have certified that the party may receive notice of court proceedings and papers at that address.

Rule 10-I. [Deleted].

Rule 11. Signing of ~~p~~Pleadings, ~~m~~Motions, and ~~o~~Other ~~p~~Papers; Representations to the Court; ~~s~~Sanctions~~.~~

(a) SIGNATURE. Every pleading, written motion, and other paper ~~of a party represented by an attorney shall~~must be signed by at least one attorney of record in the attorney's ~~individual~~ name~~—or.~~ by ~~A~~a party personally if the party ~~who~~ is ~~not~~ unrepresented. ~~by an attorney shall sign the party's pleading, motion, or other paper.~~ The paper must state the signer's address, e-mail address, and telephone number. If the filing is submitted through the court's authorized eFiling program, Rule 5(d)(4)(B)(ii) and (iii) will govern the signing of any electronic filing. A name affixed by a rubber stamp ~~shall~~will not be deemed a signature. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper, including an electronic filing—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies ~~The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper;~~ that to the best of the ~~signer~~person's knowledge, information, and belief, formed after ~~reasonable~~an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) ~~it is well grounded in fact and is~~the claims, defenses, and other legal contentions are warranted by existing law or ~~a good faith~~by a nonfrivolous argument for ~~the~~ extending~~sion~~, modifying~~ication~~, or reversing~~al of~~ existing law or for establishing new law;~~, and that it is not interposed for any improper purpose, such as to harass, embarrass, or cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of this Rule, the Court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.~~

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) SANCTIONS.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the

court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions.* The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) INAPPLICABILITY TO DISCOVERY. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the civil rule.

COMMENT

In recognition of the potential for unnecessary embarrassment of persons involved in the Domestic Relations proceedings, this Rule has been amended to permit the Court to impose sanctions where a party's pleading, motion or other paper is interposed with the intention of embarrassing another party.

Rule 12. Defenses and ~~o~~Objections~~: --~~ When and ~~h~~How ~~p~~Presented~~; -- By pleading or motion --~~ Motion for ~~j~~Judgment on the ~~p~~Pleadings~~.~~

(a) ~~When presented.~~TIME TO SERVE A RESPONSIVE PLEADING.

(1) *In General*. The time for serving a responsive pleading is as follows:

(A) ~~The~~ A defendant ~~shall~~ must serve an answer within 21~~0~~ days after ~~the service upon the defendant of: (1)~~being served with:

(i) the summons and complaint, except when service is made under ~~SCR-Dom Rel~~ Rule 4(~~f~~e) and ~~a different~~another time is ~~prescribed in~~specified by the applicable statute or rule ~~of court~~; or

(~~2~~ii) a petition and notice of hearing and order directing appearance ~~or complaint and order to show cause pursuant to~~ under ~~SCR-Dom. Rel.~~Rule 4(d)~~; provided~~, ~~however, that the~~but unless the court orders otherwise, filing of such an answer ~~shall~~ does not relieve the defendant or respondent ~~from~~ of the obligation to appear in ~~C~~court on the day set ~~forth~~ out in the notice or order~~, unless otherwise ordered by the Court~~.

(B) A plaintiff ~~shall~~ must serve a reply within 21~~0~~ days ~~of the service upon the plaintiff of~~ after being served with an answer containing a counterclaim, unless ~~or as otherwise ordered by~~ the ~~C~~court orders otherwise.

(2) *Effect of a Motion*. Unless the court sets a different time, if a defendant files and serves a motion to dismiss under this rule, the time for the defendant to file and serve a responsive pleading is extended until 14 days after notice that the court denied the motion or postponed its disposition until trial.

(b) ~~How presented.~~HOW TO PRESENT DEFENSES. Every defense~~, in law or fact,~~ to a claim for relief in any pleading ~~shall~~ must be asserted in the responsive pleading ~~thereto~~ if one is required.~~, except that~~ But a party may assert the following defenses ~~may at the option of the pleader be made~~ by motion:

(1) ~~L~~lack of subject-matter jurisdiction~~; over the subject matter,~~

(2) lack of personal jurisdiction~~; over the person,~~

(3) [Omitted]~~;~~,

(4) insufficien~~tcy of~~ process~~;~~,

(5) insufficien~~tcy of~~ service of process~~;~~,

(6) failure to state a claim upon which relief can be granted~~;~~ and~~,~~

(7) failure to join a party under ~~SCR-Dom. Rel.~~Rule 19.

A motion ~~making~~ asserting any of these defenses ~~shall~~ must be made before pleading if a ~~further~~ responsive pleading is allowed ~~permitted~~. ~~No defense or objection is waived by being joined with 1 or more other defenses or objections in a responsive pleading or motion.~~ If a pleading sets out ~~forth~~ a claim for relief ~~to which the adverse party is not~~that does not require~~d to serve~~ a responsive pleading, ~~the~~ an opposing party may assert at ~~the~~ trial any defense ~~in law or fact~~ to that claim ~~for relief~~. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

~~If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in SCR-Dom. Rel. 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by SCR-Dom. Rel. 56.~~

(c) ~~Motion for judgment on the pleadings.~~MOTION FOR JUDGMENT ON THE PLEADINGS. After the pleadings are closed~~—~~but early enough ~~within such time as~~ not to delay ~~the~~ trial~~--,~~ a~~ny~~ party may move for judgment on the pleadings.

(d) RESULT OF PRESENTING MATTERS OUTSIDE THE PLEADINGS. If, on a motion under Rule 12(b)(6) or 12(c), ~~for judgment on the pleadings,~~ matters outside the pleadings are presented to and not excluded by the ~~C~~court, the motion ~~shall~~must be treated as one for summary judgment ~~and disposed of as provided in SCR-Dom. Rel.~~under Rule 56.~~,~~ ~~and a~~All parties ~~shall~~ must be given a reasonable opportunity to present all the material that is~~made~~ pertinent to ~~such a~~the motion ~~by SCR-Dom. Rel. 56~~.

~~(d) Pretrial hearings. The defenses specifically enumerated (1)-(7) in paragraph (b) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in paragraph (c) of this Rule shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.~~

(e) ~~Motion for more definite statement.~~MOTION FOR A MORE DEFINITE STATEMENT. ~~If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the~~ A party may move for a more definite statement ~~before filing the responsive~~of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion ~~shall~~ must point out the defects complained of and the details desired. If the motion is granted and the court's order ~~of the Court~~ is not obeyed within 1~~4~~0 days after notice of the order or within ~~such other~~ the time ~~as~~ the ~~C~~court ~~may fix~~ sets, the ~~C~~court may strike the pleading or issue any other appropriate order~~to which the motion was directed or make such order as it deems just~~.

(f) ~~Motion to strike~~MOTION TO STRIKE. ~~Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the Court's own initiative at any time, t~~The Court may ~~order stricken~~strike from a~~ny~~ pleading an~~y~~ insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) ~~Consolidation of defenses in motion.~~JOINING MOTIONS.

(1) *Right to Join.* A ~~party who makes a~~ motion under this ~~R~~rule may be join~~ed~~ with ~~it~~ any other motion~~s~~ ~~herein provided for and then available to the party~~allowed by this rule.

(2) *Limitation on Further Motions*. Except as provided in Rule 12(h)(2) or (3), ~~If~~ a party that makes a motion under this ~~R~~rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.~~but omits therefrom any defense or objection then available to the party which this Rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subparagraph (h)(2) hereof on any of the grounds there stated.~~

(h) ~~Waiver or preservation of certain defenses~~WAIVING AND PRESERVING CERTAIN DEFENSES.

(1) *When Some Are Waived.* A ~~defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived~~party waives any defense listed in Rule 12(b)(2)-(5) by:

(A) ~~if omitted~~omitting it from a motion in the circumstances described in ~~paragraph~~ Rule 12(g)(2)~~g~~);~~,~~ or

(B) failing to either:

(i) ~~if it is neither made~~make it by motion under this ~~R~~rule~~; or nor~~

(ii) include~~d~~ it in a responsive pleading or in an amendment ~~thereof permitted~~allowed by ~~SCR-Dom. Rel.~~Rule 15(a)(1) ~~to be made~~ as a matter of course.

(2) *When to Raise Others.*~~A defense of f~~ Failure to state a claim upon which relief can be granted, ~~a defense of failure~~ to join a ~~party indispensable under~~person required by ~~SCR-Dom. Rel.~~Rule 19, ~~and an objection of failure~~or to state a legal defense to a claim may be ~~made~~ raised:

(A) in any pleading ~~permitted~~ allowed or ordered under ~~SCR-Dom. Rel.~~Rule 7(a)~~, or~~

(B) by a motion ~~for judgment on the pleadings~~under Rule 12(c)~~,~~ or

(C) at ~~the~~ trial ~~on the merits~~.

(3) *Lack of Subject-Matter Jurisdiction.* ~~Whenever it appears that the Court~~ If the court determines at any time that it lacks subject-matter jurisdiction ~~of the subject matter~~, the ~~C~~court ~~shall~~must dismiss the action.

(i) HEARING BEFORE TRIAL. If a party so moves, any defense listed in Rule 12(b)(1)-(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

(~~i~~j) ~~Non-appearance of parties~~NON-APPEARANCE OF PARTIES. If at the time set for hearing of any motion, there is no appearance by a party or counsel for a party, the ~~C~~court may treat the motion as submitted, withdrawn, or conceded by the non-appearing party, and rule on it~~thereon~~.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the civil rule.

Rule 12-I. [Deleted].

Rule 13. Counterclaim.

(a) Compulsory counterclaims. --COMPULSORY COUNTERCLAIM.

(1) *In General*. A pleading A party shall must state as a counterclaim any claim whichthat —at the time of its servicesing a responsive pleading, or thereafter in accordance with paragraph (e) of this Rule, —the partypleader has against any opposing party, if itthe claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over for its adjudication the presence of third parties of whom the Ccourt cannot acquire jurisdiction.

(2) *Exceptions.* The claimpleader need not be stated as a counter the claim if:

(1A) at the timewhen the action was commenced, the claim was the subject of another pending action;,

(2B) the opposing party initiated the suitsued on its claim by attachment or other process by which the Court did not acquirethat did not establish personal jurisdiction to render a personal judgment on the opposing party's claimover the pleader on that claim, and the pleader isdoes not stating assert any other counterclaim pursuant tounder this Rrule;, or

(3C) the claimit is not within the jurisdiction of theis Ccourt.

(b) Permissive counterclaims. --PERMISSIVE COUNTERCLAIMS. A party pleading may state as a counterclaim any claim against an opposing party any claim not arising out of the transaction or occurrence that is the subject matter of the opposing party's claimthat is not compulsory if such counterclaim is within the jurisdiction of the Ccourt.

(c) Counterclaim exceeding opposing claimRELIEF SOUGHT IN A COUNTERCLAIM. -- A counterclaim may claim request relief that exceedsing in amount or differsent in kind from theat relief sought in the pleading ofby the opposing party.

(d) Counterclaim maturing or acquired after pleading. --COUNTERCLAIM MATURING OR ACQUIRED AFTER PLEADING. When a claim which otherwise would be a

(1) *Compulsory Counterclaim Maturing or Acquired*. If a compulsory counterclaim under paragraph (a) of this Rule either matured or was acquired by a party after serving an responsiveearlier pleading but prior to trial, the claim shallthe party must be stated file a supplemental pleading asserting the compulsory as a counterclaim. by supplemental pleading pursuant to SCR-Dom. Rel. 15(d). If, upon motion of any party, the Ccourt determines that litigation of the counterclaim in the current proceeding will result in substantial prejudice to any party, it may continue the proceeding for trial on all the claims or order a separate trial of the counterclaim.

(2) *Permissive Counterclaim Maturing or Acquired*. The court may permit a party to file a supplemental pleading asserting a permissive counterclaim that matured or was acquired by the party after serving an earlier pleading. Any other claim which either matured or was acquired by a party after serving a pleading may, with the permission of the Court, be stated as a counterclaim by supplemental pleading.

(e) Omitted counterclaim. -- When a party fails to plead a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the party may by leave of Court plead the counterclaim by amendment pursuant to SCR-Dom. Rel.15(a).

(~~f~~e) ~~Request for change of name on divorce. --~~REQUEST FOR CHANGE OF NAME ON DIVORCE. In an action for divorce, a party may in a responsive pleading request restoration of the party's birth-given or other previously-used name.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to closely conform to the civil rule. In conformance with the civil rule, the provision regarding omitted counterclaims has been deleted. Section (e), formerly section (f), was retained from the previous domestic relations rule. The provision for requesting a name change in a pleading does not affect the court's authority to grant an oral request for a name change.

COMMENT

Paragraph (d) provides that when a claim which would otherwise be a compulsory counterclaim either matures or is acquired by a party after serving a responsive pleading but before trial, it must be pleaded. An example of such a claim is one for absolute divorce where the ground of one year separation had not been reached until after the party filed an answer in a suit for legal separation. If, upon motion, the Court determines that litigation of the counterclaim in the instant proceeding would result in substantial prejudice to any party, it may either continue the trial date to allow the parties to prepare to litigate all claims, or it may order the separate trial of the counterclaim. This deviation from SCR-Civil 13 accommodates the unique nature of actions in the Domestic Relations Branch, and furthers the purpose of the rule by promoting complete litigation of all claims between the parties in one action. Paragraph (f) makes it clear that a party need not file a counterclaim for a change of name upon divorce. The request may be included in the party's responsive pleading.

Rule 14. [Deleted].

Rule 15. Amended and ~~s~~Supplemental ~~p~~Pleadings~~.~~

(a) ~~Amendments. --~~AMENDMENTS BEFORE TRIAL.

(1) *Amending as a Matter of Course*. A party may amend its pleading~~A pleading may be amended~~ once as a matter of course within:

(A) 21 days after serving it; or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. ~~at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the pleading may be amended at any time within 20 days after it is served or before the initial status hearing has been held, whichever occurs first.~~

(2) *Amending Dismissed or Stricken Pleading*. If a pleading is dismissed or stricken with leave to amend, an amended pleading must be filed within 21 days unless otherwise ordered by the court.

(3) *Other Amendments*. In all other cases, a party may amend its pleading ~~Otherwise a pleading may be amended~~ only with the opposing party's~~by leave of court or by~~ written consent or the court's leave. ~~of the adverse party; and leave shall be freely given~~The court should freely give leave when justice so requires.

(4) *Time to Respond*. ~~No motion to amend will be granted unless it recites that the movant sought to obtain the consent of parties affected, and that such consent was denied. If a pleading is dismissed or stricken with leave to amend, an amended pleading must be filed within 20 days unless otherwise provided by order of court.~~ Unless the court orders otherwise, any required response to an amended pleading must be made~~A party shall plead in response to an amended pleading~~ within the time remaining ~~for~~ to respond~~se~~ to the original pleading or within 1~~4~~40 days after service of the amended pleading, whichever is later. ~~period may be the longer, unless the Court otherwise orders.~~

(5) *Consent*. No motion to amend will be considered unless it recites that the movant sought to obtain the consent of parties affected and that such consent was denied.

(b) ~~Amendments to conform to the evidence. --~~AMENDMENTS DURING AND AFTER TRIAL.

(1) *Based on an Objection at Trial*. ~~When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. The pleadings may be amended to conform to the evidence and to raise those issues upon motion made by any party before or after judgment, but failure so to amend does not affect the result of the trial of those issues.~~ If~~, evidence is objected to~~ at ~~the~~ trial, a party objects that evidence ~~on the ground that it~~ is not within the issues raised ~~by~~in the pleadings, the ~~C~~court may ~~allow~~permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence ~~unless amendment~~ would ~~unduly~~ prejudice ~~the party in maintaining~~ th~~at~~e party's action or defense ~~up~~on the merits. The ~~C~~court may grant a continuance to enable the objecting party to meet ~~such~~the evidence.

(2) *For Issues Tried by Consent*. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the

pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issues.

(c) Relation back of amendments. --RELATION BACK OF AMENDMENTS. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the An amendment to a pleading relates back to the date of the original pleading. when:

(1) the law that provides the applicable statute of limitations allows relation back; or

(2) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading.

(d) Supplemental pleadings. --SUPPLEMENTAL PLEADINGS. Upon On motion and reasonable notice, of a party the Ccourt may, upon reasonable notice and upon suchjust terms, as are just, permit thea party to serve a supplemental pleading setting forthout any transaction,s or occurrence,s or events which have that happened sinceafter the date of the pleading sought to be supplemented. A supplemental pleading stating a claim required to be made pursuant to SCR Dom Rel13(e) shall be permitted in accordance with that rule. Permission may be granted The court may permit supplementation even though the original pleading is defective in stating its statement of a claim for relief or defense. In accordance with Rule 13(d)(1), the court must permit a party to serve a supplemental pleading that states a claim required to be made under that rule. If the Court deems it advisable that the adverse party respond to the supplemental pleading, it shall so order, specifying the time therefor.The court may order that the opposing party plead to a supplemental pleading within a specified time.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the civil rule. The prior reference to former Rule 13(e) was corrected.

Rule 16. Pretrial ~~p~~Procedure in ~~d~~Domestic II ~~c~~Cases~~.~~

(a) APPLICABILITY~~Applicability~~. ~~--~~ Unless otherwise ordered by the ~~judicial officer~~ judge or magistrate judge to whom the case is assigned, the provisions of this ~~R~~rule ~~shall~~ apply to all cases assigned to the Domestic II Calendar.

(b) INITIAL STATUS CONFERENCE~~Initial status conference~~. ~~--~~

(1) *In General*. In every case assigned or assignable to a domestic relations calendar, the court must hold an initial status conference ~~shall be held~~ as soon as practicable after the case is filed~~at issue~~. At the~~at~~ conference, the ~~judicial officer~~ judge or magistrate judge ~~shall~~will ascertain the status of the case; explore the possibilities for early resolution through settlement or alternative dispute resolution or for expediting the case by use of stipulations; explore issues of service, notice, and identity of necessary parties; and determine a reasonable time frame for bringing the case to conclusion.

(2) *Disclosure of Information*. The ~~judicial officer~~ judge or magistrate judge may require that the parties exchange information pursuant to ~~SCR Dom. Rel.~~Rule 26(a)(1)(A).

(3) *Motions*. The ~~judicial officer~~ judge or magistrate judge ~~shall either~~must determine any outstanding motions~~, if time allows and the parties are prepared,~~ or set a date for hearing the motions.

(4) *Certification*. The ~~judicial officer~~ judge or magistrate judge ~~shall~~ must also consider whether the complexity of the case, the need for ~~C~~court supervision of discovery, or other relevant factors warrant certification to the Domestic I Calendar ~~pursuant to SCR Dom. Rel. 40(c)~~.

(5) *Scheduling*. After consulting with the attorneys for the parties and with any ~~un~~self-represented parties, the ~~judicial officer~~ judge or magistrate judge ~~shall~~ may set dates for ~~future~~ the following events ~~in the case, which may include~~:

(~~1~~A) *Close of Discovery.* After this date, no deposition or other discovery may be had, nor motion relating to discovery filed, except by leave of court on a showing of good cause.~~*A deadline by which discovery must be completed, which may be modified only by leave of Court or agreement of the parties*~~;

(~~2~~B) *Filing Motions*. ~~A deadline by which motions must be filed~~By this date, all motions must be filed, except motions in limine, motions to bifurcate, or motions for which leave to file has been obtained.

~~(3) Dates for the filing of legal memoranda and, if custody is or may be an issue, dates for appropriate motions, including those for Social Services investigations and appointment of guardians ad litem.~~

(6) *Modification*. The schedule set at the initial status conference may be modified by the parties' agreement ~~of the parties~~, ~~except that~~but dates for court proceedings may not be modified without the court's leave. ~~of Court.~~

(c) APPEARANCE. Unless excused by the court, each party and an attorney of record for each party must appear at each hearing.

(d) TELEPHONIC CONFERENCES~~Telephonic conferences~~. ~~--~~ In the court's discretion ~~of the Court and with the consent of the parties~~, any pretrial communications may be conducted by telephone or other reliable electronic means.

(~~d~~e) SANCTIONS~~Sanctions~~. ~~--~~

(1) *In General*. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or a party's attorney:

(A) fails to appear at a hearing or pretrial conference;
(B) is substantially unprepared to participate or does not participate in good faith in the hearing or conference; or
(C) fails to obey a scheduling or other pretrial order.
(2) *Imposing Fees and Costs*. Instead of or in addition to any other sanction, the court must order the party, the party's attorney, or both, to pay the reasonable expenses including attorney's fees incurred because of any noncompliance with this rule unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.~~If a party or a party's attorney fails to comply with the requirements of this Rule, the Court, upon motion or its own initiative, may make such orders with regard thereto as are just, including any of the orders provided in SCR-Dom. Rel. 37(b)(2)(B), (C), and (D). The Court may require the party or the attorney representing the party, or both, to pay the reasonable expenses, including attorneys' fees, incurred because of any noncompliance with this Rule unless the Court finds that the noncompliance was substantially justified or that other circumstances make an award unjust.~~

COMMENT TO 2018 AMENDMENTS

This rule has been amended to more closely conform to Civil Rule 16 while maintaining practices and procedures distinct to domestic relations actions. Section (c) is new. It makes explicit that a party and at least one attorney of record for a represented party must appear at all hearings, unless excused by the court. Section (d) was amended to clarify that the court may permit a party or attorney to participate by telephone in a pretrial proceeding even if other parties do not consent.

COMMENT

This Rule provides a flexible pretrial procedure for cases set on the Domestic II Calendar. In cases whose complexity warrants a more structured pretrial procedure; SCR-Dom. Rel. 16-I should be applied.

Rule 16-I. Pretrial ~~p~~Procedure in ~~d~~Domestic I ~~c~~Cases~~.~~

(a) ~~Applicability. --~~APPLICABILITY. Unless otherwise ordered by the ~~judicial officer~~ judge to whom the case is assigned, the provisions of this ~~R~~rule ~~shall~~ apply to all cases assigned to the Domestic I Calendar.

(b) ~~Initial status conference. --~~INITIAL STATUS CONFERENCE.

(1) *In General*. In every case assigned or assignable to a domestic relations calendar, the court must hold an initial status conference ~~shall be held~~ as soon as practicable after the case is filed~~at issue~~. At the~~at~~ conference the ~~judicial officer~~judge ~~shall~~will ascertain the status of the case; explore the possibilities for early resolution through settlement or alternative dispute resolution, or for expediting the case by use of stipulations; explore issues of service, notice and identity of necessary parties; and determine a reasonable time frame for bringing the case to conclusion.

(2) *Disclosure of Information*. The ~~judicial officer~~judge may require that the parties exchange information pursuant to ~~SCR-Dom. Rel.~~Rule 26(a)(1)(A).

(3) *Scheduling*. After consulting with the attorneys for the parties and with any ~~un~~self-represented parties, the ~~judicial officer~~ judge ~~will~~ may set dates for ~~future~~ the following events ~~in the case, which may include~~:

(~~1~~A) ~~Deadline for d~~*Discovery ~~r~~Requests; Depositions*. ~~and close of discovery. -- If a deadline for discovery requests is set, n~~

(i) No interrogatories, requests for admission, requests for production or inspection, or motions for physical or mental examinations may be served after the~~at date~~ deadline for discovery requests.

(ii) ~~Only p~~Party depositions ad testificandum and nonparty depositions duces tecum or ad testificandum ~~may~~must be noticed ~~after that date~~not less than 5 days before the date scheduled for the deposition and no deposition may be noticed to take place after the date set for the conclusion of discovery. ~~If a deadline for close of discovery is set, no deposition or other discovery may be had after that date. Deadlines established pursuant to this subparagraph subsection may only be extended by leave of Court or agreement of the parties.~~

(~~2~~B) *Exchang~~e~~ing~~ ~~l~~Lists of ~~f~~Fact ~~w~~Witnesses*.~~ --~~ By this date, each party must file and serve a listing, by name and address, of all fact witnesses to be called by that party.

(~~3~~C) ~~*Exchange lists of expert witnesses. --*~~*Proponent's Rule 26(a)(2)(B) Report*. By this date~~,~~ ~~a statement comporting with the requirements of~~a report required by ~~SCR-Dom. Rel.~~Rule 26~~(a)(2)(B)(b)(4)~~ must be filed and served by any proponent of an issue (a party asserting a claim or an affirmative defense) who will offer an expert opinion on such an issue ~~even if the names and information were not requested in a party's discovery~~.

(D) *Opponent's Rule 26(a)(2)(B) Report*. By this date, a report required by Rule 26(a)(2)(B) must be filed and served by any opponent who will offer an expert opinion on such an issue.

(E) *Close of Discovery*. After this date, no deposition or other discovery may be had, nor motion relating to discovery filed, except by leave of court on a showing of good cause.

(~~4~~F) ~~Deadline for f~~*F~~iling ~~m~~M~~otions*.~~ --~~ By this date~~,~~ all motions must be filed, except motions in limine, motions to bifurcate, or motions for which leave to file has been obtained.

(5G) *Other Dates*matters. -- Consideration should also be given to setting The judge may also set dates for the filing of legal memoranda, trial briefs, and pretrial statements;, the need dates for appraisals;, and, if custody is or may be an issue, dates for requests for Social Services investigations, appointment of guardians ad litem, and forensic evaluations.

(4) *Modification*. The schedule set at the initial status conference may be modified by the parties' agreement of the parties, except thatbut dates for court proceedings may not be modified without the court's leave. of Court.

(c) Pretrial discussion. --PRETRIAL DISCUSSION. Unless otherwise orderedthe court orders otherwise, not less than 14 days prior to the trial date, or 14 days prior to the pretrial conference, if one is scheduled, trial counsel for each represented party and any unrepresented parties shall must confer not less than 14 days prior to the trial date, or 14 days prior to the pretrial conference, if one is scheduled. They must make a good faith effortshall endeavor to reach agreement on the following matters:

(1) the formulationon and simplifyingication of the issues, and including the eliminationon of insupportable claims or defenses;

(2) amending the pleadings if necessary or desirablethe necessity or desirability of amendments to the pleadings;

(3) obtaining admissions and stipulations ofabout facts and documentsor stipulations which will to avoid unnecessary proof, and the authenticity of documentsruling in advance on the admissibility of evidence;

(4) the identifyingication of witnesses and documents;

(5) the advisability of referring matters to a commissionermagistrate or a master;

(6) settlement of the case or the use of extrajudicialsettling the case or using alternative dispute resolution procedures to resolve the dispute;

(7) the resolution ofdisposing of pending motions;

(8) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(9) such other matters as may aid in the facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) Service of exhibits one week prior to trial. --SERVING EXHIBITS ONE WEEK PRIOR TO TRIAL. One week before prior to the trial date, each party shall must serve on all other parties copies of all known documentary exhibits which that party may offer at trial, unless the court orders otherwise ordered. Where If a party proposes to offer more than 15 exhibits at trial, that party shallmust place a numbered exhibit sticker on each exhibit and identify the exhibits, by exhibit number, on an exhibit summary form (copies of which are available in the Cclerk's Ooffice) served with the exhibits. The exhibit summary form, and the original exhibits, separated by tabbed divider pages, shall must be fastened or placed in a notebook. By this date, each party shall also must make all non-documentary exhibits available for inspection by other parties. Except for rebuttal or impeachment purposes, no party may offer at trial any exhibit not served as required by this Rrule, without leave of court or agreement of the parties.

(e) Pretrial and settlement conference. --PRETRIAL AND SETTLEMENT CONFERENCE. In cases in which the assigned judicial officer If the judge has sets pretrial and/or settlement conferences, all parties and trial counsel for each represented

party ~~shall~~must attend the pretrial and/or settlement conference, unless excused by the ~~judicial officer~~judge~~-~~ for good cause~~ shown~~. The parties must bring~~ to the conference~~ their trial exhibits to the conference. ~~and~~If a pretrial conference is scheduled after the date for exchange of exhibits, the parties also must be prepared to make~~ any~~ objections to the other parties' exhibits~~ of the other party if the pretrial conference is scheduled after the date for exchange of exhibits~~.

(f) ~~Pretrial order. --~~PRETRIAL ORDER. If there is a pretrial conference, the court must issue an order~~ shall be entered~~ reciting the action taken. Insofar as possible, the ~~C~~court will resolve all pending disputes in the pretrial order. With respect to some matters, it may be necessary to reserve ruling until the time of trial or to require additional briefing by the parties prior to trial. The pretrial order may set limits with respect to the time for opening statement, examination of witnesses, and closing argument and may also limit the number of lay and expert witnesses who can be called by each party, or the total amount of time each party may have for ~~presentation of~~presenting the party~~'~~'s case.

(g) ~~Authority of counsel. --~~AUTHORITY OF COUNSEL. Counsel for each party participating in any conference before trial, or in the discussion described in ~~paragraph~~ Rule 16-I(c)~~ of this Rule~~, must have authority to enter into stipulations, to make admissions regarding all matters that the participants may reasonably anticipate may be discussed, and to participate fully in all settlement discussions.

(h) ~~Telephonic conferences. --~~TELEPHONIC CONFERENCES. In the ~~discretion of the C~~court's discretion and with the parties' consent~~ of the parties~~, any pretrial communications may be conducted by telephone or other form of electronic communication.

(i) ~~Sanctions. --~~SANCTIONS.

(1) *In General*. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), ~~I~~if a party or ~~a party's~~its attorney:

(A) fails to appear at a scheduling or pretrial conference;

(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or

(C) fails to obey a scheduling or pretrial order~~., or fails to appear at a scheduling or pretrial conference, or is substantially unprepared to participate in the conference, or fails to participate in good faith or has otherwise not complied with the requirements of this Rule, the Court, upon motion or its own initiative, may make such orders with regard thereto as are just, including any of the orders provided in SCR Dom. Rel.~~Rule 37(b)(2)(B), (C), and (D)~~.

(2) *Imposing Fees and Costs*. ~~T~~Instead of or in addition to any other sanction, the Court may require the party, its~~ or the~~ attorney~~ representing the party~~, or both, to pay the reasonable expenses~~--,~~ including attorney's~~'~~ fees~~--,~~ incurred because of any noncompliance with this ~~R~~rule unless ~~the Court finds that~~ the noncompliance was substantially justified or ~~that~~ other circumstances make an award of expenses unjust.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform more closely to Civil Rule 16 while maintaining practices and procedures distinct to domestic relations actions.

COMMENT

This rule provides a more structured pretrial procedure than SCR-Dom. Rel. 16 for those domestic relations cases whose complexity or need for Court supervision warrants such treatment. The rule provides more flexible scheduling periods than the corresponding civil rule to accommodate the more fluid nature of Domestic Relations cases. It is in the Court's discretion, of course, to allow even more flexibility when appropriate in a particular case.

While subparagraph (b)(2) requires a party to file a listing of all fact witnesses the party intends to call, the party should not be precluded from calling at trial other witnesses for purposes of rebuttal or impeachment.

TITLE IV. PARTIES

Rule 17. Parties pPlaintiff and dDefendant; cCapacity.

(a) Real party in interest. --REAL PARTY IN INTEREST. Every

(1) *Designation in General*. An action shallmust be brought in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) Aa personal representative;,

(B) a guardian;,

(C) a trustee;,

(D) a party with whom or in whose name a contract has been made for theanother's benefit; of another, andor

(E) a party authorized by statute. may sue in that person's own name without joining the party for whose benefit the action is brought; and

(2) *Action in the Name of the United States or the District of Columbia for Another's Use or Benefit*. wWhen an applicable statute so provides, an action for theanother's use or benefit of another shall must be brought in the name of the United States or the District of Columbia.

(3) *Curing Defect*. The court may not No action shall be dismissed an action for failure to bring on the ground that it is not brought in the name of the real party in interest until, after an objection, a reasonable time has been allowed after objection for curing the defect., and any suchAfter revision, the action proceeds shall have the same effect as if the actionit had been originally commenced byin the name of the real party in interest.

(b) Capacity to sue or be sued. --CAPACITY TO SUE OR BE SUED. Capacity to sue or be sued is determined as follows: The capacity of

(1) for an individual who is not, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile;.

(2) for The capacity of a corporation, to sue or be sued shall be determined by the law under which it was organized;. and

(3) forIn all other parties,cases capacity to sue or be sued shall be determined by the law of the District of Columbia, except that

(1A) that a partnership or other unincorporated association, which has with no such capacity under by the law of the District of Columbia's laws, may sue or be sued in its common name tofor the purpose of enforceing for or against it a substantive right existing under the United States Constitution or laws; of the United States, and

(2B) *28 U.S.C. §§ 754 and 959 (a)* govern that the capacity of a receiver appointed by a United States court of the United States to sue or be sued. in a court of the United States is governed by Title and 959(a).

(c) Representation of minors or incompetent persons. --MINOR OR INCOMPETENT PERSON.

(1) *With a Representative*. The following representatives may sue or defend on behalf of a minor or an incompetent person: Whenever a minor or incompetent person has a representative, such as

(A) a general guardian;,

(B) a committee;,

(C) a conservator;, or

(D) a ~~other~~ like fiduciary.~~, the representative may sue or defend on behalf of the minor or incompetent person.~~

(2) *Without a Representative*. ~~A~~Unless otherwise permitted by law, a minor or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The ~~C~~court must~~shall~~ appoint a guardian ad litem—or issue another appropriate order—to protect ~~for~~ a minor or incompetent person who is ~~not otherwise~~ unrepresented in an action ~~or shall make such other order as it deems proper for the protection of the minor or incompetent person~~. ~~Where~~If a substantial question of incompetency is raised, the court must give the parties ~~and after~~ an opportunity ~~for all parties~~ to be heard, and the ~~C~~court ~~shall~~ may appoint a guardian ad litem—or issue another appropriate order—to protect the person who is unrepresented ~~for a person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the person~~.

COMMENT TO 2018 AMENDMENTS

This rule has been modified to more closely conform to the civil rule while maintaining practices and procedures distinct to domestic relations actions. For instance, Rule 17(c)(2) allows a minor to sue without a next friend or guardian ad litem where permitted by law. D.C. Code § 16-914 (a-3) (2018 Supp.) permits a parent who is under 18 years of age to initiate a custody proceeding; it also permits initiation of a custody proceeding by the parent, guardian, or other legal representative of a minor parent. The amendment makes appointment of a guardian ad litem discretionary if a substantial question of incompetency is raised about a party who does not have a representative. Rule 17(c)(2) requires appointment of a guardian for a minor or incompetent person only when the minor or incompetent person is a party.

Rule 18. Joinder of ~~c~~Claims~~.~~

(a) IN GENERAL. A party asserting a claim, ~~or~~ counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, ~~any other~~as many claims as it ~~the party~~ has against an opposing party.

(b) JOINDER OF CONTINGENT CLAIMS. A party may join 2 claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights.~~Whenever a claim is one formerly cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action.~~

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 18.

COMMENT

SCR-Dom. Rel. 18 permits joinder of all claims a party has against an opposing party, regardless of whether they arise out of the marriage or would otherwise be cognizable in the Family Division. *See* SCR-Dom. Rel. 1. Where the Court deems it appropriate, it may sever the claims pursuant to SCR-Dom. Rel. 42(b).

Rule 19. Joinder of ~~p~~Persons~~.~~

(a) IN GENERAL. ~~Upon~~ On a party's motion ~~of a party~~ or o~~f~~n its own ~~initiative~~, the ~~C~~court ~~shall~~must order the joinder of all indispensable persons and may order, on just terms, the ~~dismissal or~~ joinder of other persons at any stage of the action ~~and on such terms as are just~~.

(b) WHEN JOINDER IS NOT FEASIBLE. If a person who is required to be joined if feasible cannot be ~~made a party~~joined, ~~and~~ the ~~C~~court must determine~~s~~ ~~that~~whether, in equity and good conscience, the action should ~~not~~ proceed among the existing parties ~~before it, the Court shall~~ or should be dismisse~~d the action~~d. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 19. The factors for the court to consider when deciding whether dismissal is appropriate have been moved from the comment to the text of the rule. The provision in the former rule for dismissal as well as joinder of other persons at any stage of the action was deleted. Dismissal of claims against persons is addressed in Rule 12.

COMMENT

SCR-Dom. Rel. 19 as amended consolidates the joinder provisions of former SCR-Dom. Rel. 19, 20 and 21. The amendments reflect the statutory framework for Domestic Relations actions, which provides for joinder in stated circumstances (e.g. D.C. Code § 16-4510 (additional parties in custody proceedings)). As to the joinder of indispensable persons, the factors to be considered by the Court may include: (1) the extent to which a judgment rendered in the person's absence might be prejudicial to the person or those already parties; (2) the extent to which the prejudice can be lessened or avoided by protective provisions in the judgment, by the shaping of relief, or other measures; (3) whether a judgment rendered in the person's absence will be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Should a joinder issue arise which is not otherwise addressed, reference should be made to the applicable civil rule.

Rule 20 [Deleted].

Rule 21 [Deleted].

Rule 22 [Deleted].

Rule 23 [Deleted].

COMMENT

SCR-Civil 23 has been deleted as not appropriate to the Family Division.

Rule 23-I [Deleted].

COMMENT

SCR-Civil 23-I has been deleted as not appropriate to the Family Division.

Rule 23-II [Deleted].

COMMENT

SCR-Civil 23-II has been deleted as not appropriate to the Family Division.

Rule 23.1 [Deleted].

COMMENT

SCR-Civil 23.1 has been deleted as not appropriate to the Family Division.

Rule 23.2 [Deleted].

COMMENT

SCR-Civil 23.2 has been deleted as not appropriate to the Family Division.

Rule 24. Intervention.

(a) Intervention of right. -- INTERVENTION OF RIGHT. Upon On timely application motion, the court must anyone shall be permitted anyone to intervene who: in an action

(1) when applicable law confers is given an unconditional right to intervene by an applicable law;, or

(2) when the applicant claims an interest relating to the subject of the action, and is so situated that and the disposition of the action may as a practical matter impair or impede the applicant movant's ability to protect that its interest, unless existing parties the applicant's interest is adequately represented that interest by existing parties.

(b) Permissive intervention. -- PERMISSIVE INTERVENTION.

(1) *In General*. Upon On timely application motion, the court may permit any person or governmental entity may be permitted to intervene who: in an action

(1A) when applicable law confers is given a conditional right to intervene by an applicable law;, or

(2B) when the applicant asserts has a claim or defense that shares with the pending action a common which has a question of law or fact in common with the pending action.

(2) *Delay or Prejudice*. In exercising its discretion, the Cc court shall must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights of the original parties.

(c) Procedure. -- NOTICE AND PLEADING REQUIRED. Requests A motion to intervene shall be by motion must be served upon the parties as provided in SCR-Dom. Rel Rule 5. The motion must state the grounds for intervention and shall be accompanied by a pleading that sets outting forth the claim or defense for which intervention is sought.

(d) Constitutional question.

(1) Notice to government. -- When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the Court shall notify the Attorney General of the United States in the manner provided in Title Similar notice shall be provided to the Corporation Counsel of the District of Columbia when the constitutionality, or the validity under the District of Columbia Self-Government and Governmental Reorganization Act of 1973, of an order, regulation, or enactment of any type affecting the public interest of the District of Columbia is drawn in question in any action to which the District of Columbia or an officer, agency, or employee thereof is not a party. Any pleading raising an issue under this subparagraph shall bear immediately below the caption the inscription "RULE 24 NOTIFICATION REQUIRED".

(2) Intervention by the United States or the District of Columbia. -- In any case in which the Court has sent a notification to the Attorney General of the United States or the Corporation Counselof the District of Columbia pursuant to subparagraph (d)(1) of this Rule, the Court shall permit the United States, or the District of Columbia, respectively, to intervene for the presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States, or the District of Columbia, as appropriate, shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to

~~the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.~~

COMMENT TO 2018 AMENDMENTS

This rule has been modified to conform to Civil Rule 24. In accordance with amendments to the civil rules, the notification provisions for challenges to the constitutionality or validity of 1) federal or state statutes, or 2) acts, orders, regulations, or enactments exclusively applicable to the District of Columbia, which were formerly found in section (d), have been moved to Rule 5.1.

In section (b), the reference to "governmental entity" was deleted as unnecessary and potentially confusing because the term "person" as used in other rules includes entities—both governmental and private. Section (b) differs from the corresponding civil provision, which specifies under what circumstances the court may permit governmental intervention.

Rule 24-I. [Deleted].

Rule 25. Substitution of ~~p~~Parties~~.~~

(a) ~~Death~~DEATH.

(1) *Substitution if the Claim Is Not Extinguished*. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative.~~a suggestion of death may be filed and served upon the parties as provided in SCR-Dom. Rel. 5. The suggestion of death shall include a statement of the fact of the death. If the claim is not extinguished, the Court may order substitution of the proper parties upon motion made by any party or by the successors or representatives of the deceased party and served on the parties as provided in SCR-Dom. Rel. 5 and upon the persons to be substituted as provided in SCR-Dom. Rel. 4. Unless~~If the motion ~~for substitution~~ is not made within 90 days after service of a statement noting the death ~~is suggested upon the record~~, the action by or against the decedent ~~shall~~must be dismissed~~ as to the deceased party~~.

(2) *Continuation Among the Remaining Parties*. After a party's~~If upon the~~ death~~, of a party~~ if the action survives only ~~as~~ to or against the remaining ~~co-plaintiff(s) or co-defendant(s)~~parties, the action does not abate, but ~~the death shall be suggested upon the record and the action shall~~ proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) *Service*. A motion to substitute must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

(b) ~~Incompetency. --~~INCOMPETENCY. If a party becomes incompetent, the ~~C~~court may, ~~up~~on motion, ~~made and served as provided in paragraph (a) of this Rule may allow~~permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) ~~Transfer of interest. --~~TRANSFER OF INTEREST. ~~In case of any transfer of~~If an interest is transferred, the action may be continued by or against the original party, unless the ~~C~~court, ~~up~~on motion, ~~directs the person to whom the interest is transferred~~orders the transferee to be substituted in the action or joined with the original party. ~~Service of t~~The motion must be served~~shall be made~~ as provided in ~~paragraph (a) of this~~ Rule 25(a)(3).

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 25. The phrase "suggestion of death" has been eliminated as archaic and confusing.

TITLE V. ~~DEPOSITIONS~~DISCLOSURES AND DISCOVERY~~.~~

Rule 26. Duty to Disclose; General ~~p~~Provisions ~~g~~Governing ~~d~~Discovery~~; disclosure of information.~~

(a) ~~Disclosure of information~~DISCLOSURES~~Methods to discover additional matter~~.

(1) *Pretrial ~~d~~Disclosures*. ~~--~~

(A) *In General*. At the initial hearing~~status conference~~, the ~~judicial officer~~judge or magistrate judge ~~shall determine whether to~~may order the parties to exchange information and documents, and, if so, set the dates and sequence. If so ordered, ~~each~~a party ~~shall~~must provide to the other parties the following information ~~regarding~~ about the evidence that ~~the party~~it may present at trial other than solely for impeachment ~~purposes~~:

(~~A~~i) ~~T~~the name, the address, and telephone number of each witness~~, --~~separately identifying those ~~whom~~ the party expects to present and those ~~whom the party~~it may call if the need arises;~~.~~

(~~B~~ii) ~~A~~a copy of each exhibit, with a list of all exhibits which separately identifies those ~~which~~ the party expects to offer and those ~~which the party~~it may offer if the need arises;~~.~~

~~(C) The identity of any expert witness, and copies of any exhibits to be used in connection with the expert's testimony.~~

(~~D~~iii) ~~F~~financial information in accordance with a form(s) provided by the ~~C~~court.

(B) *Protective Order*. An order for pretrial disclosures ~~shall~~ does not preclude a subsequent motion for a protective order, where appropriate.

(2) *Disclosure of Expert Testimony*.

(A) *In General*. A party must disclose to the other parties the identity of any witness it may use at trial to present expert testimony.

(B) *Witnesses Who Must Provide a Written Report*. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition;

(vi) a statement of the compensation to be paid for the study and testimony in the case; and

(vii) the following certification, signed by the witness: “I hereby certify that this report is a complete and accurate statement of all of my opinions, and the basis and reasons for them, to which I will testify under oath.”

(C) *Witnesses Who Do Not Provide a Written Report*. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this

disclosure must state:

(i) the subject matter on which the witness is expected to present evidence; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) *Time to Disclose Expert Testimony*. A party must make these disclosures at the times and in the sequence ordered by the court.

(E) *Supplementing the Disclosure*. The parties must supplement these disclosures when required under Rule 26(e).

(3) [Omitted].

(4) *Form of Disclosures*. Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

~~(2) *Discovery methods*. -- In addition to any disclosures made pursuant to subparagraph (a)(1), parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; requests for production or for permission to enter property for inspection and other purposes; physical and mental examinations; and requests for admission.~~

(b) ~~*Discovery scope and limits*. --~~DISCOVERY SCOPE AND LIMITS.

~~Unless limited by~~ court ~~order of the judicial officer in accordance with these Rules, the scope of discovery is as follows:~~

(1) ~~*I*~~*Scope i*~~*n g*~~*General*. ~~--~~ Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter~~, not privileged, which~~ that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.~~an issue involved in the pending action, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.~~

(2) *Limitations on Frequency and Extent*.

(A) *When Permitted*. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or length of depositions under Rule 30. By order, the court may also limit the number of requests under Rule 36.

(B) *Specific Limitations on Electronically Stored Information*. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C~~2~~) ~~*Limitations*. --~~*When Required*. On motion or on its own, the court must limit ~~T~~the frequency or extent ~~of use~~ of ~~the~~ discovery ~~methods~~ otherwise ~~permitted~~

underallowed by these rules shall be limited by the judicial officer if the judicial officerit determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or iscan be obtainedable from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information soughtby discovery in the action; or

(iii) the burden or expense of the proposed discovery is outside the scope permitted by Rule 26(b)(1). outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues in the litigation, and the importance of the proposed discovery in resolving the issue. The judicial officer may act upon his or her own initiative or pursuant to a motion under paragraph (c).

(3) *Trial Preparation: Materials*.Discovery of trial preparation materials. --

(A) *Documents and Tangible Things*. AOrdinarily, a party may not obtain discovery of discover documents and tangible things that are relevant, and not privileged, and were prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) only upon a showing that the party seeking discovery shows that it has substantial need for of the materials to prepare its case and cannot, that the party is unable without undue hardship, to obtain their substantial equivalent of the materials by other means.

(B) *Protection Against Disclosure*. In ordering If the court orders discovery of such those materials, when the required showing has been made, the judicial officer shall it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an party's attorney or other representative of a party concerning the litigation.

(C) *Previous Statements*. Any party or other person may, on request and obtain without the required showing, obtain the person's own previous a statement about concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order, and . The provisions of SCR-Dom. Rel.Rule 37(a)(45) appliesy to the award of expenses incurred in relation to the motion. For purposes of this paragraph, aA previous statement previously made is either

(Ai) a written statement that the person has signed or otherwise adopted or approved; by the person making it, or

(Bii) a contemporaneous stenographic, mechanical, electrical, or other recording, -- or a transcription of it—that recites substantially verbatim athe person's thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Discovery of t*Trial* p*Preparation*: of e*Experts*.

(A) *Deposition of an Expert Who May Testify*. -- Discovery of facts known and opinions held by an expert, otherwise relevant and not privileged, and acquired or

developed in anticipation of litigation or for trial, may be obtained only as follows: A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) *Trial-Preparation Protection for Draft Reports or Disclosures*. Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) *Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses*. Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) A party may by deposition require a person whom any other party expects to call as an expert witness at trial to state the substance of the facts and opinions to which the expert is expected to testify and the grounds for each opinion. (iii) Upon motion, the judicial officer may order discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subparagraph (b)(4)(C) of this Rule, concerning fees and expenses as the judicial officer may deem appropriate.

(BD) *Expert Employed Only for Trial Preparation*. AOrdinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare preparation for trial and who is not expected to be called as a witness at trial. But a party may do so only:, only

(i) as provided in SCR Dom. Rel. 35Rule 35(b); or

(ii) upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(CE) *Payment*. Unless manifest injustice would result, the court must upon motion the judicial officer shall require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under this rRule 26(b)(4)(A) or (D); and

(ii) for discovery under Rule 26(b)(4)(D), also pay the other party a fair portion of the fees and expenses it reasonably incurred by the latter party in obtaining the expert's facts and opinions. from an expert who has been retained or specially employed by the other party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial. The judicial officer may also order the party seeking

discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from an expert who is expected to be called as a witness at trial.

(5) *Claiming Privilege or Protecting Trial Preparation Materials.*

(A) *Information Withheld.* When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed − and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) *Information Produced*. If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party 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 to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

~~Claims of privilege or protection of trial preparation materials. -- When a party withholds information otherwise discoverable under these Rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.~~

(c) PROTECTIVE ORDERS.~~Protective orders. --~~

(1) *In General*. ~~Upon motion by a~~A party or any ~~by the~~ person from whom discovery is sought may move for a protective order in this court~~—~~or as an alternative on matters relating to a deposition, in the court for the jurisdiction where the deposition will be taken. The motion must include ~~, accompanied by~~ a certification that the movant has ~~made~~ in ~~a~~ good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may~~, and~~ for good cause ~~shown~~, issue an ~~the judicial officer may make any~~ order ~~which justice requires~~ to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense~~, . In matters relating to a deposition, the court in the district where the deposition is to be taken may make such an order. The protective order may include~~ including one or more of the following:

(~~1~~A) forbidding the disclosure or discovery;

(B) specifying terms~~that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions~~, including ~~a designation of the~~ time ~~or~~and place or the allocation of expenses, for the disclosure or discovery;

(~~3~~C) prescribing a ~~that the~~ discovery ~~may be had only by a~~ method ~~of discovery~~ other than the one ~~that~~ selected by the party seeking discovery;

(4D) forbidding inquiry into that certain matters not be inquired into, or that limiting the scope of the disclosure or discovery be limited to certain matters;

(5E) designating the persons who may be present while the discovery is conductedthat discovery be conducted with no one present except persons designated by the Court;

(6F) requiring that a deposition after being be sealed and be opened only byon court order of the Court;

(7G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated specified way; and

(8H) requiring that the parties simultaneously file specified documents or information enclosed in sealed envelopes, to be opened as the court directsed by the Court.

(2) *Stay*. When Upon the filing of the a motion for a protective order is filed, further action with respect to the matter in dispute shall beis stayed until the Ccourt's determination ofdecides the motion.

(3) *Awarding Expenses*. The provisions of SCR-Dom. Rel.Rule 37(a)(45) appliesy to the award of expenses incurred in relation to the motion.

(d) TIMING AND SEQUENCE OF DISCOVERY. Sequence and timing of discovery. --

(1) *Timing*. Methods of discovery may be used in any sequence unless otherwise ordered by the judicial officer, and the fact that a party is conducting discovery shall not operate to delay any other party's discovery. Time limitations for completion of discovery will be set by court order of the judicial officer. For good cause, the court may order an enlargement of time limitations for the completion of discovery.

(2) *Sequence*. Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

(e) Motion to enlarge time for discovery. -- A motion for an enlargement of time for discovery shall require a showing of good cause and shall specify the discovery to be sought and the time within which the discovery is expected to be completed.

(fe) SUPPLEMENTING DISCLOSURES AND RESPONSES Supplementation of disclosures and responses. --

(1) *In General*. A party who has made an expert disclosure under Rule 26(a)—or who has responded to an interrogatory, request for production, or request for admission—must request for discovery is under a duty to supplement or correct the its disclosure or response to include information thereafter acquired if ordered by the judicial officer or in the following circumstances:

(1A) in a timely manner if the party learns in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) *Expert Witness*. For an expert whose report must be disclosed under Rule 26(a)(2), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Where there was a question directly addressed to (A) the identity and location of persons having knowledge

~~of specific discoverable matter, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.~~
~~(2) Where the party obtains information upon the basis of which (A) the party knows that the disclosure or response was incorrect when made, or (B) the party knows that the disclosure or response though correct when made is no longer true and the circumstances are such that a failure to amend it is in substance a knowing concealment.~~

COMMENT TO 2018 AMENDMENTS

This rule has been amended to more closely conform to Civil Rule 26 while maintaining practices and procedures distinct to domestic relations actions.

COMMENT

Subparagraph (a)(1) of this Rule allows the Court, in appropriate cases, to require the parties to disclose certain information and documents whether or not requested in discovery. It is intended to provide automatically for basic information likely to be needed to fairly determine the issues. The parties may employ traditional discovery methods to obtain the same or additional information to prepare for trial or make an informed decision about settlement.

Rule 27. Depositions ~~before action or pending appeal~~to Perpetuate Testimony~~.~~

(a) ~~Before action~~BEFORE AN ACTION IS FILED.

__(1) *Petition*. ~~--~~A person who ~~desires~~wants to perpetuate testimony ~~regarding~~about any matter ~~that may be~~ cognizable in this ~~C~~court may file a verified petition in this ~~C~~court, in an appropriate state court in the place where any expected adverse party resides, or in the United States District Court in the district where ~~or in a court of competent jurisdiction for the place of residence of~~ any expected adverse party resides. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition ~~shall~~must be ~~en~~titled in the petitioner's name ~~of the petitioner~~ and ~~shall~~must show:

___(~~1~~A) that the petitioner expects to be a party to an action cognizable in this ~~C~~court but ~~is~~ cannot presently ~~unable to~~ bring it or cause it to be brought;~~,~~

___(~~2~~B) the subject matter of the expected action and the petitioner's interest; ~~therein,~~

___(~~3~~C) the facts ~~which~~ that the petitioner ~~desires~~ wants to establish by the proposed testimony and the reasons ~~for desiring~~ to perpetuate it;~~,~~

___(~~4~~D) the names or a description of the persons whom the petitioner expects ~~will~~to be adverse parties and their addresses, so far as known;~~,~~ and

___(~~5~~E) the name~~,s and~~ address, and~~es of the persons to be examined and the~~ expected substance of the testimony of each deponent. ~~which the petitioner expects to elicit from each. The petition shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined for the purpose of perpetuating testimony.~~

__(2) *Notice and ~~s~~Service*. ~~--~~At least 21 days before the hearing date, ~~T~~the petitioner ~~shall~~must serve each expected adverse party ~~a notice upon each person named in the petition as an expected adverse party, together~~ with a copy of the petition~~,~~ and a notice stating that the ~~petitioner will apply to the Court at a specified~~ time and place of the hearing ~~for the order described in the petition~~. ~~At least 20 days before the date of hearing t~~The notice ~~shall~~may be served either ~~within~~inside or ~~without~~outside the district or state in the manner provided in ~~SCR-Dom. Rel.~~Rule 4~~.(d) for service of summons; but i~~ If ~~such~~that service cannot be made with ~~due~~reasonable diligence ~~be made up~~on an~~y~~ expected adverse party ~~named in the petition~~, the ~~C~~court may ~~make such~~ order ~~as is just for~~ service by publication or otherwise~~.,~~ ~~and shall~~The court must appoint an attorney~~, for~~ to represent persons not served in the manner provided in ~~SCR-Dom. Rel.~~Rule 4~~(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall~~ and to cross-examine the deponent if an unserved person is not otherwise represented. If any expected adverse party is a minor or is incompetent~~,~~ ~~the provisions of SCR-Dom. Rel.~~Rule 17(c) applies~~y~~.

__(3) ~~*Order and e*~~*Examination*. ~~--~~If ~~the Court is~~ satisfied that ~~the~~ perpetuating ~~on of~~ the testimony may prevent a failure or delay of justice, the court must issue ~~it shall make~~ an order that designates~~ing~~ or describes~~ing~~ the persons whose depositions may be taken~~,~~ ~~and~~ specifies~~ying~~ the subject matter of the examinations, and states whether the depositions ~~shall~~will be taken ~~upon~~ orally ~~examination~~ or by written interrogatories. The depositions may then be taken ~~in accordance with~~under these ~~R~~rules~~,~~; and the ~~C~~court may ~~make~~issue orders ~~of the character provided for~~like those authorized by ~~SCR-Dom. Rel.~~Rules 34 and 35. ~~For the purpose of applying these Rules to depositions for perpetuating testimony, each reference~~A reference in these rules to this ~~C~~court means, for the purposes of this rule, ~~shall be deemed to refer to~~ the court ~~in which~~where the

petition for ~~such~~ the deposition was filed.

(4) *Us~~e~~ing ~~of~~the ~~d~~Deposition*. ~~-- If a~~A deposition to perpetuate testimony may be used under Rule 32(a) in any later-filed action in this court~~is taken under these Rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action~~ involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible in evidence in the courts of the state where it was taken~~subsequently brought in this Court, in accordance with the provisions of SCR-Dom. Rel. 32(a)~~.

(b) ~~Pending appeal. --~~ PENDING APPEAL.

(1) *In General*. The court after rendering judgment may, ~~i~~If an appeal has been taken or may still be taken, ~~from a judgment of the Court or before the taking of an appeal if the time therefor has not expired, the Court may allow the taking of the depositions of~~ permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in the ~~C~~court.

(2) *Motion*. ~~In such case t~~The party who ~~desires~~wants to perpetuate ~~the~~ testimony may ~~make a motion~~ move for leave to take the depositions, ~~up~~on the same notice and service as if the action were~~as~~ pending in the ~~C~~court. The motion ~~shall~~must show:

(~~1~~A) the name~~,s and~~ address~~,es of persons to be examined~~ and ~~the~~expected substance of the testimony of each deponent~~which the party expects to elicit from each~~; and

(~~2~~B) the reasons for perpetuating the~~ir~~ testimony.

(3) *Court Order*. If the ~~C~~court finds that ~~the~~ perpetuati~~ng~~on ~~of~~ the testimony ~~is proper to avoid~~may prevent a failure or delay of justice, ~~it~~the court may ~~order~~permit the depositions to be taken and ~~make~~may issue orders ~~of the character provided for~~like those authorized by ~~SCR-Dom. Rel.~~Rules 34 and 35. ~~A~~The depositions ~~pending appeal~~ may be taken and used ~~in the same manner and under the same conditions as these Rules prescribe for~~as any other deposition~~s~~ taken in a pending court action~~s~~.

(c) ~~Perpetuation by action. --~~PERPETUATION BY AN ACTION. This ~~R~~rule does not limit ~~the~~a court's power ~~of a court~~ to entertain an action to perpetuate testimony.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 27.

COMMENT

SCR-Domestic Relations 27 provides auxiliary proceedings for the perpetuation of testimony either before an action is initiated or after judgment and before the expiration of the time for taking an appeal or pending appeal, for use in the event of further proceedings in the Superior Court. Paragraphs (a) and (b). Paragraph (c) makes it clear that the rule does not preclude an action for perpetuating testimony. However, an action to perpetuate testimony requires service of process in the same manner as in the expected action. Consequently, an action cannot proceed unless service of process is effected and personal jurisdiction obtained over the defendant.

Rule 28. Persons ~~b~~Before ~~w~~Whom ~~d~~Depositions ~~m~~May ~~b~~Be ~~t~~Taken~~; depositions outside the forum jurisdiction.~~

(a) ~~Persons before whom depositions may be taken.~~WITHIN THE UNITED STATES.

(1) ~~*Within the United States. --*~~ *In General*. Within the United States or ~~within~~ a territory or insular possession subject to ~~the~~United States jurisdiction ~~of the United States~~, a deposition~~s~~ ~~shall~~must be taken before:

(A) an officer authorized to administer oaths either by ~~the~~federal law~~s of the United States~~ or by the law in~~of~~ the place ~~where the~~of examination ~~is held,~~; or

(B) ~~before~~ a person appointed by the ~~C~~court~~. A person so appointed has power~~ to administer oaths and take testimony.

(2) *Definition of "Officer."* The term "officer" ~~as used~~ in ~~SCR-Dom. Rel.~~Rules 30, 31, and 32 includes a person appointed by the ~~C~~court under this rule or designated by the parties under ~~SCR-Dom. Rel.~~Rule 29(a).

(~~2~~b) ~~*In foreign countries. --*~~IN A FOREIGN COUNTRY.

(1) *In General*. ~~D~~A deposition~~s~~ may be taken in a foreign country:

(~~1~~A) ~~pursuant to~~under any~~y~~ applicable treaty or convention;~~, or~~

(~~2~~B) ~~pursuant to~~under a letter of request, ~~(~~whether or not captioned a "letter rogatory";~~), or~~

(~~3~~C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place ~~where the~~of examination ~~is held, either by the law thereof or by the law of the United States,~~; or

(~~4~~D) before a person commissioned by the court~~, which person shall have the power by virtue of the commission~~ to administer any necessary oath and take testimony.

(2) *Issuing a Letter of Request or a Commission*. A letter of request, a commission or both ~~a letter of request shall~~may be issued:

(A) on appropriate terms after an application and notice of it; and ~~on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request~~

(B) without a showing that ~~the~~ taking ~~of~~ the deposition in ~~any~~ another manner is impracticable or inconvenient.~~; and both a commission and a letter of request may be issued in proper cases.~~

(3) *Form of a Request, Notice, or Commission*. When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. ~~A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title.~~ A letter of request may be addressed ~~"~~"To the Appropriate Authority in [~~here~~ name ~~the~~of country]."~~"~~ ~~When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention.~~ A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) *Letter of Request—Admitting Evidence*. Evidence obtained in response to a letter of request need not be excluded merely because:

(A) it is not a verbatim transcript;~~,~~

(B) ~~because~~ the testimony was not taken under oath;~~,~~ or

(C) ~~because of~~ any similar departure from the requirements for depositions taken within the United States ~~under these Rules~~.

(3c) *Disqualification* for interestDISQUALIFICATION. -- NoA deposition shallmust not be taken before a person who is:

(1) any party's relative, or employee or attorney; of a party, or

(2) is a relative or employee of suchrelated to or employed by any party's attorney;, or

(3) is financially interested in the action.

(b) Depositions outside the forum jurisdiction.

(1) Actions in this Court. -- Any party to a domestic relations action pending in this Court may file with the Court a motion for appointment of an examiner to take the testimony of a witness who resides outside the District of Columbia. The motion shall state the name and address of each witness sought to be deposed and the reasons why the testimony of such witness is required in the action. The motion shall be served on all other parties to the action who may within five days file opposition to the motion as prescribed in SCR-Dom. Rel. 12. If the motion is granted, the Court shall appoint an examiner to take the testimony of such witnesses as are designated in the order of appointment and shall issue a commission to the examiner who shall take the testimony in the manner prescribed in these Rules.

(2) Actions in other jurisdictions. -- When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in a court of a state, territory, commonwealth, possession, or place under the jurisdiction of the United States, the party seeking that testimony may file with this Court a certified copy of the commission or notice. If the commission or notice is in order, the Clerk shall, upon approval by the judge-in-chambers of the commission or notice and the proposed subpoena, issue a subpoena compelling the designated witness to appear for deposition at a specified time and place. Testimony taken under this subparagraph shall be taken in the manner prescribed in these Rules and the Court may entertain any motion, including motions for quashing service of a subpoena and for issuance of protective orders, in the same manner as if the action were pending in this Court.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 28. Consistent with the civil rules, the provisions that were in the former section (b) concerning depositions outside the forum jurisdiction have been moved to Rules 28-I and 28-II.

Rule 28-I. ~~[Deleted].~~Interstate Depositions and Discovery Procedures

(a) IN GENERAL. In seeking to conduct interstate depositions and discovery, parties may proceed under any of the following provisions.

(b) INTERSTATE DEPOSITIONS AND DISCOVERY PROCEDURES UNDER THE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT, D.C. CODE §§ 13-441 to -448.

(1) *Issuance of Subpoena*.

(A) To request a subpoena under D.C. Code § 13-443 (2012 Repl.), a party must submit a foreign subpoena to the clerk. A request for the issuance of a subpoena under the Uniform Interstate Depositions and Discovery Act does not constitute an appearance in the courts of the District of Columbia.

(B) When a party submits a foreign subpoena to the clerk, the clerk, in accordance with these rules, must promptly issue a subpoena for service on the person to which the foreign subpoena is directed.

(C) A subpoena under Rule 28-I(b)(1)(B) must:

(i) incorporate the terms used in the foreign subpoena; and

(ii) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(2) *Service of Subpoena*. A subpoena issued by a clerk under Rule 28-I(b)(1) must be served in compliance with D.C. Code § 11-942 (2012 Repl.) and Rule 45.

(3) *Deposition, Production, and Inspection*. The rules applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under Rule 28-I(b)(1).

(4) *Motions Regarding Subpoena.* A motion for a protective order or to enforce, quash, or modify a subpoena issued by a clerk under Rule 28-I(b)(1) must comply with these rules and laws of the District of Columbia and must be submitted to the Superior Court.

(c) ASSISTANCE TO TRIBUNALS AND LITIGANTS OUTSIDE THE DISTRICT OF COLUMBIA PURSUANT TO D.C. CODE § 13-434.

(1) *Pursuant to Court Order*. Upon application by any interested person or in response to letters rogatory issued by a tribunal outside the District of Columbia, the Superior Court may order service on any person who is domiciled or can be found within the District of Columbia of any document issued in connection with a proceeding in a tribunal outside the District of Columbia. The order must direct the manner of service.

(2) *Without Court Order.* Service in connection with a proceeding in a tribunal outside the District of Columbia may be made inside the District of Columbia without an order of the court.

(3) *Effect*. Service under Rule 28-I(c) does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside the District of Columbia.

(d) COMMISSIONS OR NOTICES FOR TESTIMONY UNDER D.C. CODE § 14-103. When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in a court of a state, territory, commonwealth, possession, or a place under the jurisdiction of the United States, the party seeking that testimony may file with this court a certified copy of the

commission or notice. Upon approval by the judge in chambers of the commission or notice and the proposed subpoena, the clerk must issue a subpoena compelling the designated witness to appear for deposition at a specified time and place. Testimony taken under this section must be taken in the manner prescribed in these rules and the court may entertain any motion, including motions for quashing service of a subpoena and for issuance of protective orders, in the same manner as if the action were pending in this court.

COMMENT TO 2018 AMENDMENTS

Rule 28-I is new. It conforms to Civil Rule 28-I and to the Uniform Interstate Depositions and Discovery Act, which was adopted in 2010.

Rule 28-II. Appointment of Examiner to Take Testimony of a Witness Residing Outside the District of Columbia; Commissions

(a) APPOINTMENT OF EXAMINER; ISSUING COMMISSION. Any party to a domestic relations action pending in this court may file with the court a motion for appointment of an examiner to take the testimony of any witnesses who reside outside the District of Columbia. If the motion is granted, the court must appoint an examiner to take the testimony of such witnesses as are designated in the order of appointment and must issue a commission to the examiner who will take the testimony in the manner prescribed in these rules.

(b) MOTION REQUIREMENTS. A motion for appointment of an examiner must state:

(1) the name and address of each witness sought to be deposed; and

(2) the reasons why the testimony of such witness is required in the action.

(c) SERVICE OF THE MOTION; OPPOSITIONS. The motion must be served on all other parties to the action who may within 14 days file an opposition to the motion as prescribed in Rule 7.

COMMENT TO 2018 AMENDMENTS

The substance of this rule is substantially identical to the former Rule 28(b)(1) and is derived from D.C. Code § 14-104 (2012 Repl.).

Rule 29. Stipulations ~~regarding~~ About ~~d~~Discovery ~~p~~Procedure~~.~~

Unless the court orders otherwise~~,~~ ~~directed by the judicial officer pursuant to SCR-Dom. Rel. 16,~~ the parties may ~~by written~~ stipulat~~e~~ion that:

(~~1~~a) ~~provide that~~a deposition~~s~~ may be taken before any person, at any time or place, ~~up~~on any notice, and in ~~any~~the manner specified—in which event it ~~and when so taken~~ may be used ~~like~~in the same way as any other deposition~~;~~s~~,~~ and

(~~2~~b) ~~modify the~~other procedures governing or limiting discovery be modified—but the parties may only stipulate to extend a deadline set by the court to the extent permitted by Rules 16(b) and 16-I(b).~~provided by these Rules for other methods of discovery.~~

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 29, except for the reference to Rule 16-I(b). The authority granted in Rule 29 does not affect the parties' authority under Rules 16(b) and 16-I(b) to modify the schedule set at the initial status conference.

COMMENT

Under the individual calendar system, each judicial officer will regulate the scope and limitations on discovery of cases on that judicial officer's calendar. Consequently, SCR-Dom. Rel. 29 does not attempt to delineate the permissible range of modifications to discovery procedure to which the parties may stipulate.

Rule 30. Depositions ~~upon~~by ~~o~~Oral ~~e~~Examination~~.~~

(a) ~~When depositions may be taken. --~~WHEN A DEPOSITION MAY BE TAKEN.

(1) *Without Leave*. ~~After commencement of the action, any~~A party may, by oral questions, depose ~~take the testimony of~~ any person, including a party, ~~by deposition upon oral examination.~~ without ~~L~~leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) *With Leave*. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or ~~must be obtained only if~~

(iii) the plaintiff seeks to take ~~a~~the deposition ~~prior to~~before the expiration of 30 days after service of the summons and complaint or petition upon any defendant or 70 days in any case involving the District of Columbia or its officer or agency, or the United States or its officer or agency; or ~~except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subparagraph (b)(2) of this Rule. The attendance of witnesses may be compelled by subpoena as provided in SCR-Dom. Rel. 45.~~

(B) if the deponent is~~The deposition of a person~~ confined in prison; except ~~may be taken only by leave of court on such terms as the Court prescribes.~~

(C) leave is not required under Rule 30(a)(2)(A)(iii) if:

(i) a defendant has served a notice of taking deposition or otherwise sought discovery; or

(ii) the notice states that the deponent is expected to be out of the District of Columbia and more than 25 miles from the place of trial and be unavailable for examination unless the person's deposition is taken before the expiration of the 30-day or 70-day period, and sets forth facts to support the statement.

(b) ~~Notice of examination; general requirements; special notice; nonstenographic recording; production of documents and things; deposition of organization; deposition by telephone or other remote electronic means~~NOTICE OF THE DEPOSITION; OTHER FORMAL REQUIREMENTS.

(1) *Notice in General.* A party ~~desiring~~who wants to depose~~take a deposition upon~~ a person by oral questions must~~examination shall~~ give reasonable written notice ~~in writing~~ to every other party. The notice ~~shall~~must state the time and place ~~for taking~~of the deposition and, if known, the deponent's name and address. ~~of each person to be examined, if known, and, i~~If the name is ~~not~~ unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Documents.* If a subpoena duces tecum is to be served on the deponent~~person to be examined~~, ~~the designation of~~ the materials designated for production, ~~to be produced~~ as set ~~forth~~out in the subpoena, ~~shall be attached to or included~~must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

(3) *Method of Recording.* ~~If the deposition is to be recorded by videotape pursuant to subparagraph (b)(7) of this Rule, or by other nonstenographic means, the notice shall specify the method of recording. If a videotape deposition is to be taken for use at trial pursuant to SCR-Dom. Rel.32(a)(4), the notice shall so specify.~~
~~plaintiff if the notice (A) states that the person to be examined is about to go out of the District of Columbia and more than 25 miles from the place of trial, or is about to go out of the United States, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30 or 70-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by SCR-Dom. Rel. 11 are applicable to the certification.~~

(A) *Method Stated in the Notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) *Additional Method.* With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) *By Remote Means*. The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place in the District of Columbia and where the deponent answers the questions.

(5) *Officer's Duties.*

(A) *Before the Deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:

(i) the officer's name and business address;

(ii) the date, time, and place of the deposition;

(iii) the deponent's name;

(iv) the officer's administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

(B) *Conducting the Deposition; Avoiding Distortion.* If the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)–(iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) *After the Deposition.* At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

~~(3) The parties may stipulate in writing or the Court may upon motion order that the testimony at a deposition be recorded by nonstenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may~~

~~arrange to have a stenographic transcription made at the party's own expense. Any objection under paragraph (c), any changes made by the witness, the witness's signature identifying the deposition as the witness's own or the statement of the officer that is required if the witness does not sign, as provided in paragraph (e), and the certification of the officer required by paragraph (f) shall be set forth in a writing to accompany a deposition recorded by nonstenographic means.~~

~~(4) The notice to a party deponent may be accompanied by a request made in compliance with SCR-Dom. Rel. 34 for the production of documents and tangible things at the taking of the deposition. The procedure of SCR-Dom. Rel. 34 shall apply to the request.~~

(~~5~~6) *Notice or Subpoena Directed to an Organization*. ~~A~~In its notice or subpoena, a party may ~~in the party's notice and in a subpoena~~ name as the deponent a public or private corporation~~, or~~ a partnership~~, or~~ an association~~, or~~ a governmental agency, or other entity and must describe with reasonable particularity the matters for examination ~~on which examination is requested~~. ~~In that event, t~~The named organization ~~so named shall~~must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf~~:,~~ and it may set out~~forth, for each person designated,~~ the matters on which ~~the~~each person designated will testify. A subpoena ~~shall~~must advise a non-party organization of its duty to make ~~such a~~this designation. The persons ~~so~~ designated ~~shall~~must testify ~~as to matters~~about information known or reasonably available to the organization. ~~This subparagraph~~ Rule 30(b)(~~6~~5) does not preclude ~~taking~~ a deposition by any other procedure authorized in these ~~R~~rules.

~~(6) The parties may stipulate in writing or the Court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this Rule and SCR-Dom. Rel. 28(a), 37(b)(1) and 45(a), a deposition taken by such means is deemed to be taken at the place where the deponent is to answer questions propounded to the deponent.~~

~~(7) A videotape deposition of a witness other than an expert may be taken only (1) upon written stipulation, (2) upon order of the Court for good cause shown, or (3) in the case of a non-party witness who is not subject to subpoena for trial or is otherwise unavailable for trial, upon notice.~~

(c) ~~Examination and cross-examination; record of examination; oath; objections. --~~ EXAMINATION AND CROSS-EXAMINATION; RECORD OF THE EXAMINATION; OBJECTIONS; WRITTEN QUESTIONS.

(1) *Examination and Cross-Examination*. The ~~E~~examination~~s~~ and cross-examination of ~~witnesses~~a deponent ~~may~~ proceed as ~~permitted~~ they would at trial under the provisions of ~~SCR-Dom. Rel.~~Rule 43(~~c~~b). After putting the deponent under oath or affirmation, ~~T~~the officer ~~before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence,~~ must record the testimony by the method designated under Rule 30(b)(3)(A). ~~of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subparagraph (b)(3) of this Rule.~~ The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer. ~~The testimony shall be transcribed if requested by a party.~~

(2) *Objections.* An~~ll~~ objection~~s made~~ at the time of the examination~~—whether to evidence, to a party's conduct,~~ to the officer's qualifications~~ of the officer taking the deposition~~, ~~or~~ to the manner of taking the deposition~~it~~, or to any other aspect of the deposition~~the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall—~~must be noted on the record, but the examination still proceeds; ~~by the officer upon the deposition. Evidence objected to shall be~~the testimony is taken subject to ~~the~~any objection~~s~~. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) *Participating Through Written Questions*. Instead~~ lieu~~ of participating in the oral examination, a party~~ies~~ may serve written questions in a sealed envelope on the party taking~~noticing~~ the deposition~~,~~ ~~and the party taking the deposition shall transmit~~who must deliver them to the officer~~. ~~, who shall propound them to the witness~~~~The officer must ask the deponent those questions~~ and record the answers verbatim.

(d) DURATION; SANCTION; MOTION TO TERMINATE OR LIMIT.

(1) *Duration.* Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanction.* The court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

(~~d~~3) *Motion to ~~t~~Terminate or ~~l~~Limit* ~~examination~~. ~~--~~

(A) *Grounds*. At any time during ~~the taking of the~~a deposition, ~~on motion of a party or of~~ the deponent or a party may move to terminate or limit it ~~and upon a showing~~on the ground that ~~the examination~~it is being conducted in bad faith or in ~~such~~a manner ~~as~~that unreasonably ~~to~~ annoys, embarrasses, or oppresses the deponent or party.~~,~~ The motion may be filed in this ~~C~~court or the court in the district where the deposition is being taken. ~~may order the termination or suspension of the examination, or may limit the scope and manner of the taking of the deposition as provided in SCR-Dom. Rel. 26(c). Upon demand o~~If the objecting deponent or party so demands ~~or deponent~~, ~~taking of~~ the deposition ~~shall~~must be suspended for the time necessary to obtain~~make a motion for~~ an order. ~~The provisions of SCR-Dom. Rel. 37(a)(4) apply to the award of expenses incurred in relation to the motion.~~

(B) *Order*. The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of this court, except as provided in Rule 45(e).

(C) *Award of Expenses*. Rule 37(a)(5) applies to the award of expenses.

~~(e) Submission to witness; changes; signing. -- When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. The officer shall note separately any changes in form or substance which the witness desires to make, along with the reasons given by the witness for making them, and append the changes to the deposition. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or~~

cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under SCR-Dom. Rel. 32(d)(4) the Court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(e) REVIEW BY THE WITNESS; CHANGES.

(1) *Review; Statement of Changes.* On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes Indicated in the Officer's Certificate.* The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) Certification by officer; exhibits; copies.CERTIFICATION AND DELIVERY; EXHIBITS; COPIES OF THE TRANSCRIPT OR RECORD; FILING.

(1) *Certification and Delivery.* The officer shall must certify on the depositionin writing that the witness was duly sworn by the officer and that the deposition is a trueaccurately records of the witness's testimony given by the witness. The certificate must accompany the record of the deposition. Unless the court orders otherwise, Tthe officer shall then securelymust seal the deposition in an envelope or package endorsed withbearing the title of the action and marked "Deposition of [here insert witness's name of witness]" and must promptly send it to the attorney who arranged for the transcript or recording. The officer shallmust comply with the requirements of SCR-Dom. Rel.Rule 5(d) for the processing of such materials. If the deposition is recorded by nonother than stenographic means, the cassette or tape shallstorage media must be clearly markedidentified with the name of the deponent, the date of the deposition, and the title of the action. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and Tangible Things.*

(A) *Originals and Copies.* Documents and tangible things produced for inspection during the examination of the witness shalla deposition must, upon thea party's request of a party, be marked for identification and appendedattached to the deposition. and may beAny party may inspected and copyied them. by any party, except that But if the person who produceding them materials desires to retain themwants to keep the originals, the person may:

(Ai) offer copies to be marked, for identification and appendedattached to the deposition, and then used as originals—after givingto serve as originals if the person affords to all parties a fair opportunity to verify the copies by comparingson them with the originals;, or

(Bii) offer the originals to be marked for identification, after giveing to eachall partiesy an fair opportunity to inspect and copy the originals after they are markedm —in

which event the originalsmaterials may then be used in the same manner as if attachedappended to the deposition.

(B) *Order Regarding the Originals*. Any party may move for an order that the originals be appended to and returned withattached to the deposition to the Court, pending final disposition of the case.

(23) *Copies of the Transcript or Recording*. Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, Tthe officer shallmust furnish a copy of the depositiontranscript or recording to any party or to the deponent upon payment of reasonable charges.

(g) Failure to attend or to serve subpoena; expensesFAILURE TO ATTEND A DEPOSITION OR SERVE A SUBPOENA; EXPENSES. A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith the deposition; or and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon a nonparty deponent, who consequently the witness and the witness because of such failure doesdid not attend., and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(h) Transcription of deposition taken by nonstenographic means. --FILING TRANSCRIPTION OF DEPOSITION TAKEN BY NONSTENOGRAPHIC MEANS. If a party intends to use in the proceeding a deposition recorded by nonother than stenographic means, the party shallperson must have prepared a typewritten, verbatim transcript of the testimony. The original transcription shallmust not be filed with the Ccourt unless otherwise ordered. If so ordered, a copy shallmust be served upon all parties, at least 30 days before suchthe proceeding.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 30.

Rule 31. Depositions ~~upon~~by ~~w~~Written ~~q~~Questions~~.~~

(a) ~~Serving questions; notice~~WHEN A DEPOSITION MAY BE TAKEN.

(1) *Without Leave*. ~~After commencement of the action, any~~A party may, by written questions, depose ~~take the testimony of~~ any person, including a party, without leave of court except as provided in Rule 31(a)(2). ~~by deposition upon written questions.~~ The deponent's attendance ~~of witnesses~~ may be compelled by ~~the use of~~ subpoena ~~as provided in~~under ~~SCR-Dom. Rel.~~Rule 45.

(2) *With Leave*. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the plaintiff seeks to take the deposition before the expiration of 30 days after service of the summons and complaint or petition upon any defendant or 70 days in any case involving the District of Columbia or its officer or agency, or the United States or its officer or agency; or

(B) if the deponent is ~~The deposition of a person~~ confined in prison; except ~~may be taken only by leave of Court on such terms as the Court prescribes.~~

(C) leave is not required under Rule 31(a)(2)(A)(iii) if:

(i) a defendant has served a notice of taking deposition or otherwise sought discovery; or

(ii) the notice states that the deponent is expected to be out of the District of Columbia and more than 25 miles from the place of trial and be unavailable for examination unless the person's deposition is taken before the expiration of the 30-day or 70-day period, and sets forth facts to support the statement.

(~~2~~3) *Service; Required Notice*. A party who wants to depose a person by ~~desiring to take a deposition upon~~ written questions ~~shall~~must serve them ~~up~~on every other party, with a notice stating, if known, ~~(1)~~ the deponent's name and address. ~~of the person who is to answer them, if known, and i~~If the name is ~~not~~ unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs., ~~and (2)~~The notice must also state the name or descriptive title and the address of the officer before whom the deposition ~~is to~~will be taken.

(4) *Questions Directed to an Organization*. A ~~deposition upon written questions may be taken of a~~public or private corporation, ~~or~~ a partnership, ~~or~~an association, or a governmental agency may be deposed by written questions in accordance with ~~the provisions of SCR-Dom. Rel.~~Rule 30(b)(6~~5~~).

~~(3) W~~(5) *Questions from Other Parties*. Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and ~~written~~direct questions ~~are served, a party may serve cross questions upon all other parties. W~~; redirect questions, within 7 days after being served with cross-questions, ~~a party may serve redirect questions upon all other parties. W~~; and recross-questions, within 7 days after being served with redirect questions, ~~a party may serve recross questions upon all other parties~~. The ~~C~~court may, for good cause, ~~shown enlarge~~extend or shorten these times.

(b) ~~Officer to take responses and prepare record. --~~DELIVERY TO THE OFFICER;

OFFICER'S DUTIES. The party who noticed the deposition must deliver to the officer ~~A~~a copy of ~~the notice and copies of~~ all the questions served and of the notice. The officer must ~~shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed~~ promptly proceed~~,~~ in the manner provided in ~~by SCR-Dom. Rel.~~Rule 30(c), (e), and (f), to:

(1) take the deponent's testimony ~~of the witness~~ in response to the questions;~~.~~

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and of the notice.

(c) FILING. The deposition ~~shall~~must not be filed except as provided in ~~SCR-Dom. Rel.~~Rule 5(d).

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 31.

Rule 32. Usinge of dDepositions in cCourt pProceedings.

(a) Use of depositions. ---USING DEPOSITIONS.

(1) *In General*. At thea hearing or trial or upon the hearing of a motion or an interlocutory proceeding, allny or part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against anny party on these conditions:

(A) whothe party was present or represented at the taking of the deposition or who had reasonable notice of it; thereof, in accordance with any of the following provisions:

(B) it is used to the extent it would be admissible under the law of evidence if the deponent were present and testifying; and

(C) the use is allowed by Rule 32(a)(2)-(9).

(12) *Impeachment and Other Uses*. Any party may use a deposition may be used by any party for the purpose of to contradicting or impeaching the testimony ofgiven by the deponent as a witness, or for any other purpose allowed by the law of evidence.

(23) *Deposition of the Party, Agent, or Designee*. An adverse party may use for any purpose Tthe deposition of a party or of anyone who, when deposed, at the time of taking the deposition was anthe party's officer, director, or managing agent, or a person designeeated under SCR-Dom. Rel.Rule 30(b)(65) or 31(a)(4). to testify on behalf of a corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(34) *Unavailable Witness*. A party may use for any purpose Tthe deposition of a witness, whether or not a party, may be used by any party for any purpose if the Ccourt finds:

(A) Tthat the witness is dead; or

(B) that the witness is at a greater distancemore than 25 miles from the place of trial or hearing or trial, or is outside of the United States, unless it appears that the witness's absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to cannot attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable tocould not procure the witness's attendance of the witness by subpoena; or

(E) upon applicationmotion and notice, that such exceptional circumstances exist as to make it desirable, --in the interest of justice and with due regard to the importance of presenting thelive testimony of witnesses orally in open court, --to allowpermit the deposition to be used.

(5) *Limitations on Use*.

(A) *Deposition Taken on Short Notice*. A deposition taken without leave of court pursuant to a notice under SCR-Dom. Rel. 30(b)(2) shallmust not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken. demonstrates that, when served with the notice, the party was unable through the exercise of diligence to obtain representation of counsel at the taking of the deposition.

(B) *Unavailable Deponent; Party Could Not Obtain an Attorney.* A deposition taken without leave of court under the unavailability provision of Rule 30(a)(2)(C)(ii) must not

be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.
~~(4) A videotape deposition of an expert witness may be used for any purpose, unless otherwise ordered by the Court for good cause shown, even though the witness is available to testify, if the notice of that deposition specified that it was to be taken for use at trial.~~
(~~5~~6) *Using Part of a Deposition*. If a party offers in evidence only part of a deposition ~~is offered in evidence by a party~~, an adverse party may require the offeror to introduce ~~any~~ other parts ~~which ought~~that in fairness ~~to~~should be considered with the part introduced, and any party may itself introduce any other parts.
(~~6~~7) *Substituting a Party*. Substituti~~on of~~ng a party~~ies pursuant to~~under ~~SCR-Dom. Rel.~~Rule 25 does not affect the right to use depositions previously taken.
(8) *Deposition Taken in an Earlier Action*. A deposition lawfully taken and, if required, filed~~When an action has been brought~~ in this ~~C~~court or ~~in~~ any federal- or state-court ~~of the United States or of any state and another~~ action may be used in a later action involving the same subject matter ~~is afterward brought~~ between the same parties, or their representatives or successors in interest, ~~all depositions lawfully taken in the original action may be used in the subsequent action as if originally taken therefor~~to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the law of evidence.
(9) *Videotape Deposition of Physicians or Experts*. A videotape deposition of a treating or consulting physician or of any expert witness may be used for any purpose, unless otherwise ordered by the court for good cause shown, even though the witness is available to testify, if the notice of that deposition specified that it was to be taken for use at trial.
(b) ~~Objections to admissibility. --~~OBJECTIONS TO ADMISSIBILITY. Subject to ~~the provisions of SCR-Dom. Rel.~~Rules 28(b) and ~~subparagraph~~ 32(d)(3)~~ of this Rule~~, an objection may be made at ~~the~~a hearing or trial~~ or hearing to receiving in evidence~~ to the admission of any deposition testimony~~or part thereof for any reason which~~ that would ~~require the exclusion of the evidence if the witness were then~~ be inadmissible if the witness were present and testifying.
(c) ~~Effect of taking or using depositions. --~~EFFECT OF TAKING OR USING DEPOSITIONS. A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part ~~thereof~~of it for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this ~~shall~~ does not apply to the use by an adverse party of a deposition under ~~subparagraph~~ Rule 32(a)(~~2~~3)~~ of this Rule~~. At the hearing or trial, ~~or hearing~~ any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.
(d) ~~Effect of errors and irregularities in depositions~~WAIVER OF OBJECTIONS.
(1) ~~As t~~*To the ~~n~~Notice*. ~~--~~A~~n~~ll objection to an error~~s and~~or irregularity~~ies~~ in ~~the~~a deposition notice ~~for taking a deposition are~~ is waived unless ~~written objection is~~ promptly served in writing ~~up~~on the party giving the notice.
(2) ~~As to disqualification of officer. --~~*To the Officer's Qualification*. An ~~O~~objection ~~to~~

taking a deposition because ofbased on disqualification of the officer before whom itta deposition is to be taken is waived unlessif not made:

(A) before the taking of the deposition begins; or

(B) promptly as soon thereafter as the basis for disqualification becomes known or, could be discovered with reasonable diligence, could have been known.

(3) *As tTo the tTaking of the dDeposition*.

(A) *Objection to Competence, Relevance, or Materiality*. An Ooobjections to thea deponent's competencey of a witness or to the competencey, relevancey, or materiality of testimony—is are not waived by a failure to make them objection before or during the taking of the deposition, unless the ground of the objection is one whichfor it might have been obviated or removed if presentedcorrected at that time.

(B) *Objection to an Error or Irregularity*. An objection to an Eerrors andor irregularityies occurring at thean oral examination is waived if:

(i) it relates toin the manner of taking the deposition, in the form of thea questions or answers, in the oath or affirmation, or in thea party's conduct of parties, or other mattersand errors of any kind which that might have been corrected at that time; and be obviated, removed, or cured if promptly presented, are waived unless objection is

(ii) it is not timely made at the taking ofduring the deposition.

(C) *Objection to a Written Question*. An Ooobjections to the form of a written questions submitted under SCR-Dom. Rel.Rule 31 areis waived unlessif not served in writing upon the party propounding themsubmitting the question within the time allowed for serving the succeeding cross or otherresponsive questions or, if the question is a recross-question, within 7 days after being served with it. and within five days after service of the last questions authorized.

(4) *As tTo cCompletingon and rReturning ofthe dDeposition*. -- Errors and irregularities in the manner in which the testimony isAn objection to how the officer transcribed the testimony—or or the deposition is prepared, signed, certified, sealed, endorsed, transmittedsent, or otherwise dealt with the deposition—is by the officer under SCR-Dom. Rel. 30 and 31 are waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(e) Form of presentation. --FORM OF PRESENTATION. Except asUnless the court orders otherwise directed by the Court, a party offering deposition testimony pursuant to this Rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall alsomust provide the Court with a transcript of the portions so offeredany deposition testimony the party offers, but may provide the court with the testimony in nontranscript form as well.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 32.

Rule 33. Interrogatories to ~~p~~Parties~~.~~

(a) ~~Availability. --~~IN GENERAL.

(1) *Number*. Unless otherwise stipulated or ordered by the court, ~~Any~~a party may serve ~~up~~on any other party no more than 40 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2). ~~to be answered by the party served or, if the party served is a corporation or partnership or association or governmental agency, by any officer or agency, who shall furnish such information as is available to the party. Interrogatories may, without leave of Court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint or petition upon that party.~~

~~No party shall serve upon another party, at one time or cumulatively, more than 40 written interrogatories, including parts and subparts, unless otherwise ordered by the Court upon motion for good cause shown or upon its own motion, or unless the parties have agreed between themselves to a greater number.~~

(2) *Scope*. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(3) *Electronic Format*. A party, represented by counsel, serving interrogatories must, upon request of any other party, promptly transmit to such other party an electronic version of the interrogatories in a format that will enable the receiving party to copy the language of the interrogatories electronically. A self-represented party may participate in electronic discovery pursuant to this rule, provided that the party files a form provided by the clerk's office, which includes the party's email address and confirms the party's capacity to file documents and receive the filings of other parties electronically and on a regular basis.

(b) ~~Answers and objections~~ANSWERS AND OBJECTIONS.

(1) *Responding Party*. The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

~~(1) Each interrogatory shall be copied and answered separately and fully in writing under oath unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.~~

~~(2) The answers are to be signed by the person making them, and the objections signed by the attorney or unrepresented party making them.~~

(~~3~~2) *Time to Respond*. The responding party ~~upon whom the interrogatories have been served shall~~must serve ~~a copy of the~~its answers~~,~~ and any objections ~~if any,~~ within 30 days after ~~the service of~~being served with the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint or petition upon that defendant or within 75 days after service of the summons and complaint or petition upon the District of Columbia or its officer or

agency or the United States or its officer or agency. A shorter or longer time may be stipulated to under Rule 29 or directedbe ordered by the Ccourt or, in the absence of such an order, agreed to in writing by the parties.

(3) *Answering Each Interrogatory*. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath. Answers and objections to interrogatories must identify and quote each interrogatory in full immediately preceding the answer or objection.

(4) *Objections*. AllThe grounds for an objectingon to an interrogatory shallmust be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the Ccourt, for good cause, shownexcuses the failure.

(5) The party submitting the interrogatories may move for an order under SCR-Dom. Rel. 37(a) with respect to any objection or other failure to answer in an interrogatory.

(5) *Signature*. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) Scope; use at trial. --USE. Interrogatories may relate to any matters which can be inquired into under SCR-Dom. Rel. 26(b)(1), and theAn answers to an interrogatory may be used to the extent permittedallowed by the ruleslaw of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(d) Option to produce business records. --OPTION TO PRODUCE BUSINESS RECORDS. WhereIf the answer to an interrogatory may be determinedrived or ascertained from the business records of the party upon whom the interrogatory has been served or from an by examiningation, auditing, compiling, abstracting, or summarizing a party's or inspection of such business records (including electronically stored information), including a compilation, abstract or summary thereof, and if the burden of deriving or ascertaining the answer iswill be substantially the same for theeither party, the responding party may answer by: serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to

(1) specifying the records that must be reviewed,from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permitenable the interrogating party to locate and to identify, them as readily as the responding party could; and can the party served, the records from which the answer may be ascertained.

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

(e) Filing. --FILING. Except as provided for in SCR-Dom. Rel.Rule 5(d), interrogatories, answers, and any objections and responses thereto shall must not be filed with the Ccourt.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 33.

Rule 34. Produc~~tion of~~ing ~~d~~Documents, Electronically Stored Information, and Tangible ~~t~~Things, or ~~and e~~Enteringry ~~upon~~onto ~~l~~Land, for ~~i~~Inspection and ~~o~~Other ~~p~~Purposes~~.~~

(a) ~~Scope. --~~IN GENERAL. A~~ny~~ party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative ~~making the request, or someone acting on the requestor's behalf,~~ to inspect~~,~~ and copy, test or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information ~~(--~~including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations~~—~~stored in any medium from which information can be obtained either directly or~~, translated~~, if necessary, after translation by the respondingparty~~ent~~ into reasonably usable form~~; or), or to inspect and copy, test, or sample~~

(B) any designated tangible things ~~which constitute or contain matters within the scope of SCR-Dom. Rel. 26(b) and which are in the possession, custody or control of the party upon which the request is served~~; or

(2) to permit entry ~~upon~~onto designated land or other property ~~in the~~ possessedion or controlled ~~of~~by the responding party, so that the requesting party may ~~upon whom the request is served for the purpose of~~ inspect~~,ion and~~ measureing, surveying, photographing, testing, or sampleing the property or any designated object or operation on it. ~~thereon, within the scope of SCR-Dom. Rel. 26(b).~~

(b) ~~Procedure. --~~ PROCEDURE.

(1) *Contents of the Request*. The request~~: may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the complaint or petition upon that party. The request shall set forth, either by individual~~

(A) must describe with reasonable particularity each item or ~~by~~ category~~, the~~ of items to be inspected~~;, and describe each with reasonable particularity. The request shall~~

(B) must specify a reasonable time, place, and manner ~~of making~~for the inspection and for performing the related acts~~;.~~ and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) *Responses and Objections*.

(A) *Time to Respond*. The party ~~upon~~to whom the request is ~~served shall~~directed must respond in writing ~~serve a written response~~ within 30 days after ~~the service of the request~~being served, except that a defendant may serve a response within 45 days after service of the summons and complaint or petition upon that defendant or within 75 days after service of the summons and complaint or petition upon the District of Columbia or its officer or agency or the United States or its officer or agency. A shorter or longer time may be stipulated to under Rule 29 or be ~~directed~~ordered by the ~~C~~court~~. or, in the absence of such an order, agreed to in writing by the parties.~~

(B) *Responding to Each Item*. For each item or category, ~~T~~the response ~~shall~~must either state~~, with respect to each item or category,~~ that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce

copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.~~, unless the request is objected to, in which event the reasons for objection shall be stated.~~

(C) *Objections*. An objection must state whether any responsive materials are being withheld on the basis of that objection. ~~If~~An objection ~~is made~~ to part of a request must specify~~an item or category,~~ the part ~~shall be specified~~ and permit inspection ~~permitted~~ of the rest.~~remaining parts. The party submitting the request may move for an order under SCR Dom. Rel. 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.~~

(D) *Responding to a Request for Production of Electronically Stored Information*. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

(E) *Producing the Documents or Electronically Stored Information*. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party ~~who~~must produce~~s~~ documents ~~for inspection shall produce them~~ as they are kept in the usual course of business or ~~shall~~must organize and label them to correspond ~~with~~to the categories in the request;~~.~~

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(F) *Quoting Each Request in Full*. Responses and objections to requests for production of documents must identify and quote each request in full immediately preceding the response or objection.

(3) *Electronic Format*. A party, represented by counsel, requesting production must, upon request of any other party, promptly transmit to such other party an electronic version of the request in a format that will enable the receiving party to copy the language of the request electronically. A self-represented party may participate in electronic discovery pursuant to this rule, provided that the party files a form provided by the clerk's office, which includes the party's email address and confirms the party's capacity to file documents and receive the filings of other parties electronically and on a regular basis.

(c) ~~Persons not parties. --~~NONPARTIES. As provided in Rule 45, ~~A person not~~ a nonparty ~~to the action~~ may be compelled to produce documents and tangible things or to ~~submit to~~permit an inspection.~~ as provided in SCR Dom. Rel. 45. A copy of the subpoena and any other accompanying documents served on the person shall be served on each party.~~

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 34.

Rule 35. Physical and ~~m~~Mental ~~e~~Examinations ~~of persons.~~

(a) ~~Order for examination. --~~ORDER FOR AN EXAMINATION.

(1) *In General*. The court may order a party ~~When the~~whose mental or physical condition ~~of a party, or of a person in the custody or under the legal control of a party,~~ is in controversy~~, the Court may order the party~~ to submit to a physical or mental examination by a suitable licensed or certified examiner. The court has the same authority to order a party~~or~~ to produce for examination ~~the~~a person who is in ~~the party's~~its custody or under its legal control.

(2) *Motion and Notice; Contents of the Order*. The order:

(A) may be made only on motion for good cause ~~shown~~ and ~~up~~on notice to all parties and the person to be examined; and ~~and to all parties. A showing of good cause shall include specific allegations of a mental or physical condition that is material to the Court's determination of an issue in the case. The order shall~~

(B) must specify the time, place, manner, conditions, and scope of the examination, ~~;~~ as well as the person or persons ~~by whom it is to be made~~who will perform it. ~~; and it shall set forth the limitations on the use and dissemination of the examination report as appropriate under the circumstances of the case.~~

(b) ~~Report of examiner~~EXAMINER'S REPORT.

(1) *Request by the Party or Person Examined.* The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) *Contents.* The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) *Request by the Moving Party.* After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) *Waiver of Privilege.* By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(5) *Failure to Deliver a Report.* The court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) *Scope.* Rule 35(b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. Rule 35(b) does not preclude obtaining an examiner's report or deposing an examiner under other rules.

~~(1) Unless otherwise ordered, the report of the examination shall be served on each party but shall not be filed with the Court.~~

~~(2) This paragraph does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other Rule.~~

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 35. Although Rule 26(b)(3) provides that the requesting party is entitled to the results of an examination, mental examinations in domestic relations cases may raise sensitive issues, and Rule 26(c)(1) provides authority for judges to issue protective orders in appropriate cases.

COMMENT

While this Rule by its terms provides a general framework for examinations where a person's physical or mental condition is in controversy, it is not intended to preclude the use of court-ordered medical, genetic blood and tissue grouping tests where such tests are relevant to matters at issue. These tests, when used to establish parentage, are specifically authorized by D.C. Code §16-2343.

Rule 36. Requests for ~~a~~Admission~~.~~

(a) ~~Request for admission. --~~SCOPE AND PROCEDURE.

(1) *Scope*. A party may serve ~~up~~on any other party a written request ~~for the~~to admit~~,ssion of~~ for purposes of the pending action only, the truth of ~~a statement or opinion of fact or of the application of law to fact, or the genuineness of any document described in the request, for~~ any matters within the scope of ~~SCR-Dom. Rel.~~Rule 26(b)(1) relating to:~~.~~

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) *Form; Copy of a Document*. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a ~~C~~copy~~ies~~ of the document~~s shall be served with the request~~ unless it is, or ~~they have~~has been~~, or are~~ otherwise furnished or made available for inspection and copying. The request may~~,~~ without leave of court, be served ~~up~~on the plaintiff after commencement of the action and ~~up~~on any other party with or after service of the summons and complaint or petition ~~up~~on that party.

~~Each matter of which an admission is requested shall be separately set forth.~~

(3) *Time to Respond; Effect of Not Responding*. ~~The~~A matter is admitted unless, within 30 days after being serv~~edice of the request~~, ~~or within such shorter or longer time as the Court may allow,~~ the party to whom the request is directed serves ~~up~~on the requesting party ~~requesting the admission~~ a written answer or objection addressed to the matter~~,~~ and signed by the party ~~and by the party's~~or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court. ~~,~~ ~~but~~However, unless the ~~C~~court shortens the time, a defendant ~~shall~~is not ~~be~~ required to serve answers or objections before the expiration of 45 days after service of the summons and complaint or petition upon that defendant or before the expiration of 75 days after service of the summons and complaint or petition upon the District of Columbia or its officer or agency or the United States or its officer or agency. ~~The response shall state verbatim each request for an admission. If objection is made, the reasons therefor shall be stated.~~

(4) *Answer*. If a matter is not admitted, ~~T~~the answer ~~shall~~must specifically deny ~~the matter~~it or ~~set forth~~state in detail ~~the reasons~~ why the answering party cannot truthfully admit or deny ~~the matter~~it. A denial ~~shall~~must fairly ~~meet~~respond to the substance of the ~~requested admission~~matter;~~,~~ and when good faith requires that a party qualify an answer or deny only a part of ~~the~~a matter ~~of which an admission is requested~~, the ~~party shall~~answer must specify ~~so much of it as is true~~the part admitted and qualify or deny the ~~remainder~~rest. ~~An~~The answering party may ~~not give~~assert lack of ~~information or~~ knowledge or information as a reason for fail~~ingure~~ to admit or deny ~~unless~~only if the party states that ~~the party~~it has made reasonable inquiry and that the information it know~~sn~~ or can readily obtain~~able by the party~~ is insufficient to enable ~~the party~~it to admit or deny.

(5) *Objections*. The grounds for objecting must be stated. A party must not object solely on the ground that the request~~who considers that a matter of which an admission has been requested~~ presents a genuine issue for trial. ~~may not, on that ground alone, object to the request; the party may, subject to the provisions of SCR-Dom. Rel. 37(c)(2), deny the matter or set forth reasons why the party cannot admit or deny.~~

(6) *Motion Regarding the Sufficiency of an Answer or Objection*. The requesting party ~~who has requested the admissions~~ may move to determine the sufficiency of ~~the~~an answer~~s~~ or objection~~s~~. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. ~~The provisions of SCR-Dom. Rel.~~Rule 37(a)(~~4~~5) appli~~es~~~~y~~ to an~~the~~ award of expenses ~~incurred in relation to the motion~~.

(b) ~~Effect of admission. --~~EFFECT OF AN ADMISSION; WITHDRAWING OR AMENDING IT. A~~ny~~ matter admitted under this ~~R~~rule is conclusively established unless the ~~C~~court, on motion, permits the admission to be withdrawn~~al~~ or amend~~ed~~~~ment of the admission~~. The ~~C~~court may permit withdrawal or amendment ~~of an admission~~ if ~~the party who obtained the admission will not be unduly prejudiced in maintaining the action or defense on~~it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An~~y~~ admission ~~made by a party~~ under this ~~R~~rule ~~is for the purpose of the pending action only and~~ is not an admission for any other purpose and cannot~~nor may it~~ be used against the party in any other proceeding.

(c) QUOTING EACH REQUEST IN FULL. Answers and objections to requests for admissions must identify and quote each request in full immediately preceding the answer or objection.

(d) ELECTRONIC FORMAT. A party, represented by counsel, serving requests for admission must, upon request of any other party, promptly transmit to the other party an electronic version of the requests for admission in a format that will enable the receiving party to copy the language of the requests for admission electronically. A self-represented party may participate in electronic discovery pursuant to this rule, provided that the party files a form provided by the clerk's office, which includes the party's email address and confirms the party's capacity to file documents and receive the filings of other parties electronically and on a regular basis. ~~(c) Filing. -- Except as provided for in SCR-Dom. Rel. 5(d), requests for admissions and responses thereto shall not be filed with the Court.~~

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 36.

**Rule 37. Failure to ~~m~~Make ~~d~~Disclosures or to ~~c~~Cooperate in ~~d~~Discovery~~;~~; Sanctions~~.~~

(a) ~~Motion for order compelling disclosure or discovery. --~~ MOTION FOR ORDER COMPELLING DISCLOSURE OR DISCOVERY.

(1) *In General*.

(A) *Certification of Good Faith Effort*. Before any motion to compel discovery is filed, the affected parties or counsel must meet in person for a reasonable period of time in an effort to resolve the disputed matter. ~~A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as set forth below.~~ The movant ~~shall~~must accompany ~~the~~any motion to compel disclosure or discovery with a certification that ~~the movant has in~~despite a good faith effort to secure it, the disclosure or discovery material sought has not been provided. ~~conferred or attempted to confer with the party not making the disclosure or discovery in an effort to secure the disclosure or discovery without court action. Any motion to compel disclosure or discovery must set forth verbatim the question propounded and the answer given, or a description of the other disclosure required or discovery requested and the response to this request. The motion must also set forth the reason or reasons the answer or response is inadequate.~~

(B) *Content of Certification*. This certification must set out specific facts describing the good faith effort, including a statement of the date, time and place of the meeting required by Rule 37(a)(1)(A), and must be placed immediately below the signature of the attorney or party signing the motion.

(C) *Requirement of Meeting Waived*. The requirement of a meeting is waived if:

(i) the motion concerns a failure to serve any response to a Rule 33, 34, or 36 discovery request, a failure to appear for a deposition, or a Rule 35 examination, and the motion is accompanied by a copy of a letter, sent at least 10 days before the motion was filed, asking that the opposing counsel or party respond to the discovery request or that the deponent or examinee appear for a rescheduled deposition or examination;

(ii) the movant certifies that, despite having sent to the opposing counsel or party, at least 10 days before the motion was filed, a letter (a copy of which must be attached to the motion) proposing a time and place for a meeting, and despite having made two telephone calls to the office of the opposing counsel or party (the date and time of each call must be specified in the motion), the movant has been unable to convene a meeting to resolve the disputed disclosure or discovery matter; or

(iii) a meeting is prohibited by any court order.

(D) *Format of Motion to Compel*. Any motion to compel disclosure or discovery must set out verbatim the question propounded and the answer given, or a description of the other disclosure required or discovery requested and the response to this request. The motion must also set out the reason or reasons the answer or response is inadequate.

(~~1~~2) *Appropriate ~~c~~Court*. ~~--~~ A motion for an order to a party ~~shall~~must be made to this ~~C~~court, or, on matters relating to a deposition, to the court in the jurisdiction where the deposition is being taken. A motion for an order to a ~~person who is not a~~ nonparty ~~shall~~must be made ~~to~~in the court ~~in the jurisdiction~~ where the discovery is ~~being, or is to~~or will be~~,~~ taken.

(~~2~~3) *Specific Motions*.

(A) *To Compel Disclosure*. If a party fails to make a disclosure required by ~~SCR-Dom. Rel.~~Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response*. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made ~~i~~if:

(i) a deponent fails to answer a question ~~propounded or submitted~~asked under ~~SCR-Dom. Rel.~~Rule 30 or 31~~;~~, ~~or~~

(ii) a corporation or other entity fails to make a designation under ~~SCR-Dom. Rel.~~Rule 30(b)(~~5~~6) or 31(a)(~~2~~4)~~;~~, ~~or~~

(iii) a party fails to answer an interrogatory submitted under ~~SCR-Dom. Rel.~~Rule 33~~;~~, or

(iv) ~~if~~ a party~~, in response to a request for inspection submitted under SCR-Dom. Rel. 34,~~ fails to produce documents, electronically stored information, or tangible things, or fails to respond that inspection will be permitted ~~as requested –~~or fails to permit inspection ~~–~~as requested under Rule 34, ~~the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request~~.

(C) *Related to a Deposition*. When taking an oral deposition ~~on oral examination~~, the ~~proponent of the~~party asking a question may complete or adjourn the examination before ~~apply~~moving for an order.

(~~3~~4) *Evasive or ~~i~~Incomplete ~~d~~Disclosure, ~~a~~Answer or ~~r~~Response*. ~~--~~For purposes of ~~this paragraph~~ Rule 37(a), an evasive or incomplete disclosure, answer, or response ~~is to~~must be treated as a failure to disclose, answer, or respond.

(~~4~~5) *Payment of Expenses; Protective Orders ~~and sanctions~~*.

(A) *If the Motion is Granted (or Discovery Is Provided After Filing).* If the motion is granted ~~–~~or if the disclosure or requested discovery is provided after the motion was filed~~, --~~the ~~C~~court ~~shall~~must, after ~~afford~~giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, ~~or~~ the party or attorney advising ~~such~~that conduct, or both ~~of them~~ to pay ~~to~~ the movant's~~ing party the~~ reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:~~, unless the Court finds that the motion was filed without~~

(i) the movant~~'s~~ filed the motion before attempting ~~first making a~~ in good faith effort to obtain the disclosure or discovery without court action~~;~~, ~~or that~~

(ii) the opposing party's nondisclosure, response, or objection was substantially justified~~;~~, or

(iii) ~~that~~ other circumstances make an award of expenses unjust.

(B) *If the Motion Is Denied*. If the motion is denied, the ~~C~~court may ~~enter~~issue any protective order authorized under ~~SCR-Dom. Rel.~~Rule 26(c) and ~~shall~~must, after ~~afford~~giving an opportunity to be heard, require the movant~~ing party or~~, the attorney ~~advis~~filing the motion, or both ~~of them~~ to pay ~~to~~ the party or deponent who opposed the motion ~~the~~its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if ~~, unless the Court finds that the making of~~ the motion was substantially justified or ~~that~~ other circumstances make an

award of expenses unjust.

(C) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the ~~C~~court may ~~enter~~issue any protective order authorized under ~~SCR-Dom. Rel.~~Rule 26(c) and may, after ~~afford~~giving an opportunity to be heard, apportion the reasonable expenses ~~incurred in relation to~~for the motion ~~among the parties and persons in a just manner~~.

(b) ~~Failure to comply with order~~FAILURE TO COMPLY WITH A COURT ORDER.

(1) *Sanctions ~~by court~~Sought in the jJurisdiction ~~w~~Where the ~~d~~Deposition ~~i~~Is ~~t~~Taken*. If the court where the discovery is taken orders a deponent ~~fails~~ to be sworn or to answer a question and the deponent fails to obey ~~after being directed to do so by the court in the jurisdiction in which the deposition is being taken~~, the failure may be ~~considered~~treated as contempt of ~~that~~ court. If a deposition-related motion is transferred to the court where the action is pending, and that court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.

(2) *Sanctions Sought ~~by~~in ~~t~~This Court*.

(A) *For Not Obeying a Discovery Order.* If a party or a~~n~~ party's officer, director, or managing agent ~~of a party~~ or a ~~person~~witness designated under ~~SCR-Dom. Rel.~~Rule 30(b)(~~65~~) or 31(a)(~~42~~) ~~to testify on behalf of a party~~ fails to obey an order to provide or permit discovery, including an order ~~made~~ under ~~paragraph~~ Rule 26(e), 35, or 37(a) ~~of this Rule or SCR-Dom. Rel. 35, or if a party fails to obey an order entered under SCR-Dom. Rel. 26(f)~~, the ~~C~~court may ~~make such~~issue further just orders. ~~in regard to the failure as are just, and among others~~ They may include the following:

(i~~A~~) ~~An order~~directing that the matter ~~regarding which~~embraced in the order ~~was made~~ or ~~any~~ other designated facts ~~shall~~ be taken ~~to be~~as established for the purposes of the action, as the prevailing party claims ~~in accordance with the claim of the party obtaining the order~~;

(ii~~B~~) ~~An order refusing to allow~~prohibiting the disobedient party ~~to~~from supporting or opposing~~e~~ designated claims or defenses, or ~~prohibiting that party~~ from introducing designated matters in evidence;

(iii~~C~~) ~~An order~~ striking ~~out~~ pleadings in whole or in part; ~~s thereof, or~~

(iv) staying further proceedings until the order is obeyed; ~~, or~~

(v) dismissing the action or proceeding in whole or ~~any~~in part; ~~thereof, or~~

(vi) rendering a default judgment ~~by default~~ against the disobedient party; or

(vii~~D~~) ~~In lieu of any of the foregoing orders or in addition thereto, an order~~ treating as ~~a~~ contempt of ~~C~~court the failure to obey any order~~s~~ except an order to submit to a physical or mental examination.~~;~~

(~~E~~B) *For Not Producing a Person for Examination.* ~~Where~~If a party ~~has~~ fail~~s~~ed to comply with an order under ~~SCR-Dom. Rel.~~Rule 35(a) requiring ~~that party~~it to produce another person for examination, ~~such~~the court may issue any of the orders ~~as are~~ listed in ~~subparagraphs~~Rule 37(b)(2)(A)(i) – (vi) ~~(A), (B), and (C) of this paragraph~~, unless the disobedient party ~~failing to comply~~ shows that ~~party is unable to~~it cannot produce ~~such~~the other person ~~for examination~~.

(C) *Payment of Expenses.* In~~stead lieu~~ of or in addition to ~~any of~~ the ~~foregoing~~ orders ~~above or in addition thereto~~, the ~~C~~court ~~shall require~~must order the disobedient, ~~party~~

~~failing to obey the order or~~ the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless ~~the Court finds that~~ the failure was substantially justified or ~~that~~ other circumstances make an award of expenses unjust.

(c) ~~Failure to disclose; false or misleading disclosure; refusal to admit~~FAILURE TO DISCLOSE, TO SUPPLEMENT AN EARLIER RESPONSE, OR TO ADMIT.

(1) *Failure to Disclose or Supplement*. ~~A~~If a party ~~that without substantial justification~~ fails to ~~disclose~~provide information or identify a witness as required by ~~SCR-Dom. Rel.~~Rule 26(a)~~(1)~~ or ~~26~~(e~~f~~), the party is not allowed ~~shall not be permitted~~ to use that information or witness to supply~~as~~ evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless~~at a hearing, or on a motion any witness or information not so disclosed, absent a showing of good cause~~. In addition to or in~~stead lieu~~ of this sanction, the ~~C~~court, on motion and after ~~affording~~giving an opportunity to be heard:~~,~~

(A) may order ~~impose other appropriate sanctions. In addition to requiring~~ payment of the reasonable expenses, including attorney's fees, caused by the failure;~~,~~ and

(B) may impose other appropriate ~~these~~ sanctions, ~~may~~ includ~~ing~~e any of the ~~actions~~orders ~~authorized under subparagraphs~~listed in Rule 37(b)(2)(A)(i) – (vi)~~, (B), and (C) of this Rule~~.

(2) *Failure to Admit*. If a party fails to admit ~~the genuineness of any document or the truth of any matter as~~what is requested under ~~SCR-Dom. Rel.~~Rule 36~~,~~ and if the requesting party ~~requesting the admissions thereafter~~later proves ~~the genuineness of the~~a document to be genuine or ~~the truth of~~ the matter true, the requesting party may ~~apply to the Court for an order requiring~~move that the ~~other~~ party who failed to admit ~~to~~ pay the reasonable expenses, including attorney's fees, incurred in making that proof~~, including reasonable attorney's fees~~. The ~~C~~court ~~shall make the~~must so order unless: ~~it finds that~~

(A) the request was held objectionable ~~pursuant to~~under ~~SCR-Dom. Rel.~~Rule 36(a)~~;, or~~

(B) the admission sought was of no substantial importance~~;, or~~

(C) the party failing to admit had a reasonable ground to believe that ~~the party~~it might prevail on the matter~~;,~~ or

(D) there was other good reason for the failure to admit.

(d) ~~Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. --~~PARTY'S FAILURE TO ATTEND ITS OWN DEPOSITION, SERVE ANSWER TO INTERROGATORIES, OR RESPOND TO A REQUEST FOR INSPECTION.

(1) *In General*.

(A) *Motion; Grounds for Sanctions*. The court may, on motion, order sanctions ~~I~~if:

(i) a party or a~~n~~ party's officer, director, or managing agent ~~of a party~~ or a person designated under ~~SCR-Dom. Rel.~~Rule 30(b)(6~~5~~) or 31(a)(4~~2~~) ~~to testify on behalf of a party~~ fails, after being served with a proper notice, ~~(1)~~ to appear ~~before the officer who is to take the~~for that person's deposition~~;, after being served with a proper notice,~~ or

(ii~~2~~) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve answers, ~~or~~ objections ~~to interrogatories submitted under SCR-Dom. Rel. 33, after proper service of the~~

interrogatories, or (3) to serve a written response. to a request for inspection submitted under SCR-Dom. Rel. 34, after proper service of the request, the Court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (b)(2)(A), (B), and (C) of this Rule. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or the other circumstances make an award of expenses unjust.

(B) *Certification*. A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) *Unacceptable Excuse for Failing to Act*. TheA failure to act described in this paragraphRule 37(d)(1)(A) mayis not be excused on the ground that the discovery sought iwas objectionable, unless the party failing to act has a pending motion for a protective order as provided byunder SCR-Dom. Rel.Rule 26(c).

(3) *Types of Sanctions*. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)–(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) [Vacant]. FAILURE TO PRESERVE ELECTRONICALLY STORED INFORMATION. If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party; or

(B) dismiss the action or enter a default judgment.

(f) Expenses against United States or District of Columbia. --EXPENSES AGAINST UNITED STATES OR DISTRICT OF COLUMBIA. Except to the extent permitted by statute, expenses and fees may not be awarded against the United States or the District of Columbia under this Rrule.

COMMENT TO 2018 AMENDMENTS

The rule has been amended to conform to Civil Rule 37. Subsection (a)(1)(C)(iii) has been added because one self-represented party may be subject to a stay-away order that precludes an in-person meeting about discovery issues.

COMMENT

In subparagraph (a)(4), the phrase "after affording an opportunity to be heard" is intended to make it clear that the Court may award expenses or impose other sanctions

for a party's failure to disclose, answer, or respond to a discovery request after consideration of written submissions, or after a hearing.

TITLE VI. TRIALS.

Rule 38 [Deleted].

COMMENT

SCR-Civil 38 has been deleted as not appropriate to the Family Division.

Rule 38.I. [Deleted]

COMMENT

SCR-Civil 38-I has been deleted as generally inapplicable to Family Division cases. However, see General Family Rule L.

Rule 39 [Deleted].

COMMENT

SCR-Civil 39 has been deleted as not appropriate to the Family Division.

Rule 40. [Deleted].

~~**Assignment of cases for trial.**~~

~~(a) Contested and uncontested calendars.~~

~~(1) *Contested trial calendar*. -- Contested cases shall be evenly and randomly assigned to a specific contested trial calendar at the earliest of any of the following events: (1) an answer is filed; (2) a default is entered in a case involving issues of child custody, spousal support or property distribution; or (3) any motion is filed. When one of these events occurs, the Clerk shall immediately schedule a status hearing on the earliest available date on the assigned calendar, which date shall be no sooner than 30 days, and notify the parties in writing. All further proceedings in a case shall be scheduled and conducted by the judicial officer to whom the case is assigned in accordance with this Rule.~~

~~If the judicial officer determines that all matters in an assigned case appear to be uncontested, the judicial officer shall make a jacket entry so stating, and return the case to the Clerk's office for reassignment to the uncontested calendar. If the case becomes uncontested on the date of a contested trial, the judicial officer shall make a reasonable effort to conduct the uncontested trial on that date.~~

~~(2) *Uncontested calendar*. -- Upon the filing of a written stipulation by the plaintiff and defendant or attorneys of record that a case at issue or on the contested calendar is in fact uncontested as to all issues, the Clerk shall assign the case to the uncontested calendar for prompt trial. No order shall be entered on any issue which is not in fact uncontested.~~

~~If the judicial officer determines that a case on the uncontested calendar is in fact contested, the judicial officer shall certify the case to the Clerk's office for reassignment on the contested calendar. Unless the case can be heard on the date it becomes contested, the Clerk shall notify the parties by mail of the reassignment and status hearing date.~~

~~(b) Request for child custody and support. -- If a complaint or motion requests both child custody and support, the case shall be assigned to a Domestic II calendar for resolution by a judge. After resolution of the custody issue, the assigned judge may, if unable to conduct the hearing on support that day, certify the case to a hearing commissioner to determine the support issue. Nothing in this Rule shall preclude the judge from issuing an interim order for child support pending resolution of the custody issue.~~

~~(c) Assignment of cases to Domestic I Calendar.~~

~~(1) Domestic I Calendar. -- One or more judges assigned to the Family Division may be designated to maintain an individual (Domestic I) calendar. Unless otherwise provided in these Rules, the Domestic I judge will conduct all proceedings in cases on the Domestic I calendar to which that judge has been assigned.~~

~~(2) Designation of Domestic Relations I Calendar. -- It shall be the responsibility of the Presiding Judge of the Family Division to certify cases to the Domestic I Calendar. The Presiding Judge may certify cases to the Domestic I Calendar on the Presiding Judge's own initiative or his or her designee's or upon:~~

~~(A) The recommendation of any judge assigned to the Family Division; or~~

~~(B) The written motion filed by or on behalf of either party.~~

~~(3) Factors considered. -- In certifying a case to the Domestic I Calendar the Presiding Judge may consider the estimated length of trial, the number of witnesses who may~~

~~appear or exhibits that may be introduced, the nature of the factual and legal issues involved, the extent to which discovery may require supervision by the Court, the number of motions that may be filed, and any other relevant factor appropriate for the orderly administration of justice.~~

~~(4) Procedure. -- Parties who have been notified that a case has been assigned to a Domestic I judge shall place the assigned judge's name below the civil action number on all papers filed. All pleadings and papers shall be filed in the Domestic Relations Clerk's Office. On the day of filing, a chambers copy of the pleading or paper filed shall be delivered by the parties to a depository designated by the Clerk of the Court for receipt of such papers by the assigned Domestic Relations I judge. If the original document was mailed, the chambers copy may be mailed to chambers.~~

COMMENT TO 2018 AMENDMENT

Rule 40 was deleted because assignment procedures are better left to the court's case management plan, internal operating procedures, and administrative orders. The elimination of this rule does not affect the ability of a party to file a motion asking the Presiding Judge to certify a case to the Domestic I Calendar based on the estimated length of trial, the number of witnesses who may appear or exhibits that may be introduced, the nature of the factual and legal issues involved, the extent to which discovery may require supervision by the court, the number of motions that may be filed, and any other relevant factor appropriate for the orderly administration of justice.

Rule 40-I [Deleted].

Rule 40-II [Deleted].

Rule 41. Dismissal of ~~a~~Actions~~.~~

(a) ~~Voluntary dismissal: Effect thereof~~VOLUNTARY DISMISSAL.

(1) *By ~~the p~~Plaintiff~~; by stipulation~~*.

(A) *Without a Court Order*. Subject to ~~the provisions of SCR-Dom. Rel.~~Rule 66 and ~~of~~ any applicable statute, ~~a claim or counterclaim~~the plaintiff may ~~be~~ dismiss~~ed by the claimant~~ an action without a court order ~~of Court (i)~~ by filing:

(i) a notice of dismissal ~~at any time~~ before ~~service by~~ the ~~adverse~~opposing party serves either~~of~~ an answer ~~responsive pleading~~ or ~~of~~ a motion for summary judgment~~;~~, or ~~before introduction of evidence at the trial or hearing, whichever first occurs, or~~

(ii) ~~by filing~~ a stipulation of dismissal signed by all parties who have appeared ~~in the action~~.

(B) *Effect*. Unless the notice or stipulation states otherwise ~~stated in the notice of dismissal or stipulation~~, the dismissal is without prejudice.

(2) *By Court ~~o~~Order~~; Effect of Court~~*. Except as provided in ~~subparagraph~~Rule 41(a)(1) ~~of this Rule~~, ~~the claimant~~an action may ~~not~~be dismiss~~ed at the plaintiff's request only by an action or counterclaim without~~court order, on terms that the court considers proper ~~of the Court~~. If a defendant has pleaded a counterclaim ~~has been pleaded by a defendant prior to the~~before being serv~~ed~~ice ~~upon the defendant of~~with the plaintiff's motion to dismiss, the action ~~shall not~~may be dismissed ~~against~~over the defendant's objection ~~unless~~only if the counterclaim can remain pending for independent adjudication ~~by the Court~~. ~~The dismissal shall be subject to such terms and conditions as ordered by the Court, and u~~Unless the order states otherwise ~~specified in the order~~, ~~the~~a dismissal under Rule 41(a)(2) ~~shall be~~is without prejudice.

(b) ~~Involuntary dismissal: Effect thereof~~INVOLUNTARY DISMISSAL; EFFECT. ~~--~~

(1) *By the Court*.

(A) *In General*. If the plaintiff fails ~~A party may move for dismissal of an action or of any claim against the party, or the Court may, sua sponte, enter an order dismissing the action or any claim therein for failure of the claimant~~ to prosecute or to comply with these ~~R~~rules or a~~ny~~ court order~~: of the Court.~~

(i) a defendant may move to dismiss the action or any claim against it; or

(ii) the court may, on its own initiative, enter an order dismissing the action or any claim.

(B) *Result of Dismissal*. An order dismissing a claim for failure to prosecute must specify that the dismissal is without prejudice, unless the court determines that the delay in prosecution of the claim has resulted in prejudice to an opposing party. ~~Any order of dismissal entered sua sponte, including a dismissal for failure to effect service within the time prescribed by SCR-Dom. Rel. 4(l), may be vacated for good cause shown upon motion filed within 14 days from the date the order was entered on the docket.~~ Unless the ~~Court in its order for~~ dismissal order states otherwise or as provided elsewhere in these rules~~specifies~~, a dismissal by the court—except one ~~under this paragraph and any dismissal not provided for in this Rule, other than a dismissal~~ for lack of jurisdiction or ~~for~~ failure to join a party under Rule 19~~--,~~ operates as an adjudication on the merits.

(2) *By the Clerk*.

(A) *Failure to File Proof of Service*. In accordance with Rule 4(i), the clerk may, on his or her own initiative, and with written notice to the parties:

(i) in a case where there is only one defendant, dismiss the case for failure to file proof of service;

(ii) in a case where there are multiple defendants, dismiss any individual defendant for whom no proof of service has been filed;

(iii) dismiss a case for failure to comply with a court order requiring the filing of supplemental proof of service by a date certain, unless the court has ordered otherwise; and

(iv) require a supplementation, for the judge or magistrate judge to consider, of any proof of service that is incomplete, unclear, or does not on its face adequately explain why the person allegedly served was authorized to accept service on behalf of the defendant.

(~~c~~B) *Delinquency and Notice to Delinquent Party*. ~~Warning to delinquent party: Dismissal without prejudice. -- If a~~A party seeking affirmative relief is delinquent if he or she fails for 150 days from the time action may be taken, to comply with any law, ~~R~~rule, or order requisite to the prosecution of the claim, or to avail of any right arising through the default or failure of an adverse party.~~,~~ ~~t~~The ~~C~~clerk ~~shall~~must mail ~~warn~~ to the delinquent party a notice ~~by mail~~indicating that the claim will be dismissed if the party fails to comply with this ~~R~~rule~~, and shall make a note in the docket of the mailing~~. The clerk must enter the date of mailing on the docket. A party who does not receive this notice~~warning~~ is not relieved from the operation of this ~~R~~rule.

(~~d~~C) *Dismissal ~~by Clerk~~for Delinquency*. ~~-- If the delinquency described in paragraph (c) continues for 180 days~~ If the party remains delinquent for 30 days after the notice is mailed by the clerk, the clerk must dismiss the delinquent party's complaint or counterclaim~~ of said party, as the case may be, shall be dismissed without prejudice~~. The time in which the delinquent party may take appropriate action to reinstate under ~~SCR-Dom. Rel.~~Rule 60(b) ~~shall~~ will start to run from the entry of dismissal by the ~~C~~clerk or, upon appropriate motions by the ~~C~~court, and the ~~C~~clerk in either case ~~shall~~must serve notice ~~thereon~~ by mail upon every party not in default for failure to appear~~, of which mailing the Clerk shall make an entry in the docket~~. The clerk must enter the date of mailing on the docket.

(D) *Result of Dismissal*. Unless a court order specifies otherwise, a dismissal by the clerk is without prejudice.

(3) *Effect*. Any order of dismissal entered by the court or the clerk under this rule does not take effect until 14 days after the date on which it is docketed and must be vacated upon the granting of a motion filed by the plaintiff within the 14-day period showing good cause why the case should not be dismissed.

(c) DISMISSING A COUNTERCLAIM, CROSSCLAIM, OR THIRD-PARTY CLAIM. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) COSTS OF A PREVIOUSLY DISMISSED ACTION. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

COMMENT TO 2018 AMENDMENTS

The rule has been amended to conform to Civil Rule 41.

COMMENT

Unlike SCR-Civil 41, this Rule does not operate to convert a voluntary dismissal into an adjudication on the merits where the claimant has dismissed a prior action based on or including the claim in the instant case. An automatic adjudication on the merits is not appropriate due to the unique nature of domestic relations actions. New SCR-Domestic Relations 10(b)(8) requires that related prior or pending actions be identified in the party's initial pleading. This information will assist the Court in evaluating the matter before it.

Rule 41-I. [Deleted].

Rule 42. Consolidation; ~~s~~Separate ~~t~~Trials~~.~~

(a) ~~Consolidation~~CONSOLIDATION. ~~-- (1)~~ The ~~C~~court may consolidate domestic relations actions and other cases before the ~~C~~court relating to the same subject matter or parties or members of the same family or household. ~~Upo~~On consolidation, copies of the consolidation order ~~of consolidation~~ and ~~of~~ all subsequent pleadings and orders ~~shall~~ must be filed in each consolidated case ~~so consolidated~~, ~~provided~~except that all papers filed in an adoption case ~~shall~~must be maintained only in the adoption case file.

(~~2~~b) RELATED CASES. When ~~A~~an attorney or party ~~who~~ becomes aware of the existence of a related case, he or she ~~shall~~must immediately notify, in writing, the ~~judicial officers~~ judges or magistrate judges on whose calendars the cases appear.

(~~b~~c) ~~Separate trials. --~~SEPARATE TRIALS. The ~~C~~court may order a separate trial of one or more claims or counterclaims or of any separate issues when it will promote the efficient administration of justice.

COMMENT TO 2018 AMENDMENTS

This rule was amended consistent with the stylistic changes made to the civil rules.

COMMENT

Paragraph (a) provides for the consolidation of domestic relations cases and other related cases in the Superior Court. Because a number of factors affect the placement of consolidated Family Division cases on a particular calendar, no attempt is made to set forth the procedure in this Rule.

Rule 43. Evidence~~.~~

(a) IN GENERAL. The admissibility of evidence and the competency and privileges of witnesses are governed by the principles of the common law as they may be interpreted by the courts in the light of reason and experience, except when a statute or these rules otherwise provide.

(b) IN OPEN COURT~~Form and admissibility~~. At~~In all~~ trial~~s~~, the witnesses' testimony ~~of witnesses shall~~must be taken ~~orally~~ in open court~~,~~ unless otherwise provided by these r~~R~~ules. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(c) MODE AND ORDER OF EXAMINING WITNESSES AND PRESENTING EVIDENCE. *Federal Rule of Evidence 611* is incorporated herein.

(d) RULINGS ON EVIDENCE. *Federal Rule of Evidence 103* is incorporated herein.

(e) AFFIRMATION INSTEAD OF AN OATH. When these rules require an oath, a solemn affirmation suffices.

(f) EVIDENCE ON A MOTION. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

~~All evidence shall be admitted which is admissible under applicable statutes, or under the rules of evidence applied in the District of Columbia. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.~~

~~(b) Scope of examination and cross-examination. -- A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party and interrogate the witness by leading questions and contradict and impeach the witness in all respects as if the witness had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of the examination in chief.~~

~~(c) Record of excluded evidence. -- If an objection to a question propounded to a witness is sustained by the Court, the examining attorney may make a specific offer of what the attorney expects to prove by the answer of the witness. The Court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The Court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.~~

~~(d) Interpreters. -- The Court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court.~~

COMMENT TO 2018 AMENDMENTS

This rule was amended to make it more consistent with Civil Rule 43. Section (b) has been amended to provide for testimony by contemporaneous transmission from a different location in exceptional circumstances.

In accordance with D.C. Code § 16-4601.10 (b) (2012 Repl.), which is based on § 111 of the Uniform Child Custody Jurisdiction and Enforcement Act, the court may permit an individual residing in another state to testify by telephone or electronic means.

COMMENT

This Rule is intended to be consistent with D.C. Code § 14-102 (Impeachment of Witnesses). Pursuant to SCR-Dom. Rel. 2(b)(5), whenever a person is required to take an oath, the person may make a solemn affirmation instead. For provisions on the admissibility of business records, see SCR-General Family Q.

Rule 43-I. [Deleted].

Rule 43-II. [Deleted].

COMMENT

The subject matter of former Rule 43-II is now treated in Rule 7-I

Rule 44. Provingof ofan oOfficial rRecord, statutes, ordinances and regulations; determination of foreign law.

(a) Authentication of official recordMEANS OF PROVING.

(1) *Domestic Record*. Each of the following evidences an official record—or an entry in it—that is otherwise admissible and is An official record kept within the United States, or any state, district, or commonwealth, or within aany territory subject to the administrative or judicial jurisdiction of the United States:, or an entry therein, when admissible for any purpose, may be evidenced by

(A) an official publication thereofof the record; or

(B) by a copy attested by the officer having thewith legal custody of the record—, or by the officer's deputy—, and accompanied by a certificate that suchthe officer has the custody. The certificate maymust be made under seal:

(i) by a judge of a court of record of the district or political subdivision in whichwhere the record is kept; or, authenticated by the seal of the court, or may be made

(ii) by any public officer having with a seal of office and havingwith official duties in the district or political subdivision in whichwhere the record is kept, authenticated by the seal of the officer's office.

(2) *Foreign Record*.

(A) *In General*. Each of the following evidences a foreign official record—or an entry in it—that is otherwise admissible: A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by

(i) an official publication thereof the record;

(ii) the record—or a copy—that is thereof, attested by an authorized person authorized to make the attestation, and accompanied by either a final certification as to theof genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) *Final Certification of Genuineness*. A final certification must certify the genuineness of the signature and official position (i) of the attestoring person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation;, by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) *Other Means of Proof*. If all parties have had a reasonable opportunity has been given to all parties to investigate thea foreign record's authenticity and accuracy of the documents, the Ccourt may, for good cause, shown,either:

(i) admit an attested copy without final certification; or

(ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of official record.LACK OF RECORD. A written statement that after diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic

records, the statement must be ~~found to exist in the records designated by the statement,~~ authenticated ~~as provided in subparagraph~~under Rule 44(a)(1)~~. of this Rule in the case of a domestic record, or~~ For foreign records, the statement must comply~~ing~~ with ~~the requirements of subparagraph~~ Rule 44(a)(2)(C)(ii)~~. of this Rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.~~

(c) ~~Other proof. --~~OTHER PROOF. ~~This Rule does not prevent the proof of~~A party may prove an official record~~s~~ ~~—~~ or ~~of~~an entry or lack of an entry in it~~—~~ ~~therein~~ by any other method authorized by law.

~~(d) Proof of statutes, ordinances, and regulations. -- Printed books or pamphlets purporting on their face to be the statutes, ordinances, or regulations, of the United States, or of any state or territory thereof, or of any foreign jurisdiction, which are either published by the authority of any such state, territory, or foreign jurisdiction or are commonly recognized in its courts, shall be presumptively considered by the Court to constitute such statute, ordinance, or regulation. The Court's determination on such a matter shall be treated as a ruling on a question of law.~~

~~(e) Determination of foreign law. -- A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under SCR-Dom. Rel. 43. The Court's determination shall be treated as a ruling on a question of law.~~

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 44. Former section (d) related to proof of statutes, ordinances, and regulations was moved to new DR Rule 44-I. Former section (e) related to determinations of foreign law was moved to new DR Rule 44.1.

Rule 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination must be treated as a ruling on a question of law.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 44.1.

Rule 44-I. ~~[Deleted].~~ Proving Statutes, Ordinances, and Regulations

Printed books or pamphlets purporting on their face to be the statutes, ordinances, or regulations of the United States, or of any state or territory of the United States, or of any foreign jurisdiction, which are either published by the authority of the state, territory, or foreign jurisdiction or are commonly recognized in its courts, must be presumptively considered by the court to constitute the statutes, ordinances, or regulations. The court's determination must be treated as a ruling on a question of law.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 44-I.

Rule 45. Subpoena.

(a) IN GENERAL.

(1) *Form; issuance and Contents*.

(1A) *Requirements—In General.* Every subpoena shallmust:

(Ai) state the name of the Ccourt; and

(Bii) state the title of the action, and its civil actioncase number, and individualthe calendar designation when known, and if assigned to a specific judge or magistrate judge, the name of that judge or magistrate judge; and

(Ciii) command each person to whom it is directed to do the following at a specified time and place within the District of Columbia, unless the parties and person subpoenaed otherwise agree or the court, upon application, fixes another convenient location: attend and give testify;mony or to produce and permit inspection and copying of designated books, documents, electronically stored information, or tangible things in thethat person's possession, custody, or control; of that person, or to permit the inspection of premises, at a time and place specified therein; and

(Div) set forthout the text of paragraphs Rule 45(c) and (d) of this Rule.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(B) *Command to Attend a Deposition—Notice of the Recording Method*. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information*. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) *Command to Produce; Included Obligations*. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(2) [Deleted].

(2) A subpoena for a deposition, production, or inspection shall specify a place for the deposition, production, or inspection which is within the District of Columbia, unless the parties and person subpoenaed otherwise agree or the Court, upon application, fixes another location.

(3) *Issued by Whom.* An attorney authorized to practice in the District of Columbia as an officer of the court may issue and sign a subpoena. 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. The clerk may sign the subpoena if it relates to a case in which action is pending, otherwise the clerk shall refer the subpoena to a judicial officer judge or magistrate judge for consideration.

(4) *Notice to Other Parties Before Service*. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

(b) ~~Service~~SERVICE.

(1) *By Whom and How; Tendering Fees.* A ~~subpoena may be served by a~~ny person who is at least 18 years of age and not a party ~~and is at least 18 years of age~~may serve a subpoena. Servin~~gce of~~ a subpoena requires ~~upon a person named in it shall be made by~~ delivering a copy ~~of it~~ to ~~such~~the named person and, if the subpoena requires ~~the~~that person's attendance ~~is commanded~~, ~~by giving to that person~~tendering the fees for one day's attendance and the mileage allowed by law, except that:~~.~~

(A) witnesses will be subpoenaed without prepayment of witness fees if the court grants a request to proceed without prepayment of costs, fees, or security under Rule 54-II; and

(B) fees and mileage need not be tendered ~~W~~when the subpoena ~~is~~ issue~~sd~~ on behalf of the United States or the District of Columbia or any officers or agencies~~y there~~of either.~~, fees and mileage need not be tendered. A copy of any subpoena commanding production of documents and things or inspection of premises shall be served on each party in the manner prescribed by SCR-Dom. Rel. 5(b).~~

(2) *Service in the District of Columbia.* Subject to ~~the provisions of clause (ii) of subparagraph~~Rule 45(c)(3)(A)(ii) ~~of this Rule~~, a subpoena ~~for a hearing or trial~~ may be served at any place:

(A) within the District of Columbia;~~, or at any place~~

(B) outside the District of Columbia ~~that is~~but within 25 miles of the place specified for ~~of~~ the deposition, hearing, ~~or~~ trial~~; a subpoena for a deposition~~, production, or inspection; or~~may be served at any place which is within the District of Columbia or within 25 miles of the District of Columbia.~~

(C) that the court authorizes on motion and for good cause, ~~When~~if an applicable statute so provides. ~~therefor, the Court upon proper application and cause shown may authorize the service of a subpoena at any other place.~~

(3) *Service in a Foreign Country. 28 U.S.C. § 1783* governs issuing and serving ~~A~~a subpoena directed to ~~a witness in a foreign country who is~~ a United States national or resident who is in a foreign country. ~~of the United States shall issue under the circumstances and in the manner and be served as provided in Title~~

(~~3~~4) *Proof of Service.* Provin~~gof of~~ service, when necessary, ~~shall be made by~~requires filing with the clerk of the court a statement ~~of~~showing the date and manner of service and ~~of~~ the names of the persons served.~~,~~ The statement must be certified by the server~~person who made the service~~.

(c) ~~Protection of persons subject to subpoenas~~PROTECTING A PERSON SUBJECT TO SUBPOENA; ENFORCEMENT.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or ~~an~~ attorney responsible for ~~the~~ issuin~~gance~~ and servin~~gce of~~ a subpoena ~~shall~~must take reasonable steps to avoid imposing undue burden or expense on a person subject to the~~at~~ subpoena. The ~~C~~court ~~shall~~must enforce this duty and impose ~~upon the party or attorney in breach of this duty~~ an appropriate sanction~~—~~, which may include~~, but is not limited to,~~ lost earnings and ~~a~~ reasonable attorney's fees~~—on a party or attorney who fails to comply~~.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce ~~and permit inspection and copying of designated books, papers,~~ documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear

in person at the place of production or inspection unless also commanded to appear for deposition, hearing or trial.

(B) *Objections.* Subject to paragraph (d)(2) of this Rule, aA person commanded to produce documents, electronically stored information, or tangible thingsand or to permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena a written objection to inspecting,on or copying, testing or sampling of any or all of the designated materials or ofto inspecting the premises—or to producing electronically stored information in the form or forms requested. 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, following rules apply:

(i) At any time, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the Court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded person, the serving party mayto produce, move at any timethe court for an order to compelling the production or inspection.

(ii) These acts may be required only as directed in the order, and the Such an order to compel production shallmust protect anyperson who is notneither a party nor an party's officer of a party from significant expense resulting from compliancethe inspection and copying commanded.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the Ccourt shallmust quash or modify thea subpoena if itthat:

(i) fails to allow reasonable time forto compliyiance;

(ii) requires a person who is notneither a party nor an party's officer of a party to travel to a place more than 25 miles from the place where that person resides, is employed, or regularly transacts business in person—, except that, subject to the provisions of subparagraphRule 45(c)(3)(B)(iii) of this Rule, such athe person may in order to attend trial be commanded to attend a trial by traveling from any such place to the place of trial;, or

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

(iv) subjects a person to undue burden.

(B) *When Permitted*. To protect a person subject to or affected byIf a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

(i) requires disclosingure of a trade secret or other confidential research, development, or commercial information;, or

(ii) requires disclosingure of an unretained expert's opinion or information that does not describeing specific events or occurrences in dispute and resultsing from the expert's study madethat was not at the requested ofby anyparty;, or

(iii) requires a person who is notneither a party nor an party's officer of a party to incur substantial expense to travel more than 25 miles to attend trial.

(C) *Specifying Conditions as an Alternative*. In the circumstances described in Rule 45(c)(3)(B), the Ccourt may, to protect a person subject to or affected by the subpoena,instead of quashing or modifying theа subpoena, or, if the party in whose

~~behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may~~ order appearance or production ~~only upon~~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.

(d) ~~Duties in responding to subpoena~~DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents or Electronically Stored Information*. These procedures apply to producing documents or electronically stored information.

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

(B) *Form for Producing Electronically Stored Information Not Specified*. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form*. The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information*. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection*.

(A) *Information Withheld*. ~~When~~A person withholding subpoenaed information ~~subject to a subpoena is withheld on~~ under a claim that it is privileged or subject to protection as trial-~~-~~preparation material~~s,~~ must:

(i) ~~the claim shall be made~~ expressly make the claim; and

(ii) ~~shall be supported by a~~ descri~~beption of~~ the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will ~~not produced that is sufficient to~~ enable the ~~demanding~~ parties~~y~~ to ~~contest~~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.

(e) TRANSFERRING A SUBPOENA-RELATED MOTION. A subpoena-related motion may be transferred to the court where the action is pending if the person subject to the subpoena consents or if the court finds exceptional circumstances. To enforce its order, the court where the action is pending may transfer the order to the court where the motion was made

(fe) ContemptCONTEMPT. -- Failure byThe court may hold in contempt any person who, having been served, fails without adequate excuse to obey athe subpoena or an order related to it. served upon that person may be deemed a contempt of the Court. An adequate cause for A nonparty's failure to obey must be excused if exists when athe subpoena purports to require athe non-party to attend or produce at a place not withinoutside the limits provided by subparagraphof Rule 45(c)(3)(A)(ii).

COMMENT TO 2018 AMENDMENTS

This rule conforms to the corresponding civil rule. The rule now provides for discovery of electronically stored information.

COMMENT

Pursuant to subparagraph (b)(1) of this Rule, a person serving a subpoena commanding attendance in court must also give the person subpoenaed the fees for one day's attendance and the mileage allowed by law. Those fees and travel allowances can be found in Title *28 U.S.C. § 1821* et seq. See D.C. Code § 15-714. For waiver of prepayment of costs and witness fees, see SCR-Dom. Rel. 54(f). For purposes of this Rule, an attorney is not a party and may serve a subpoena. *See In re Kirk,* 413 A.2d 928 (D.C. App. 1980). However, in the event of a factual dispute over service, there is a risk that the attorney's ability to continue as counsel in the case will be affected.

Rule 46. ~~Exceptions unnecessary.~~Objection to a Ruling or Order

A ~~F~~formal exception~~s~~ to a ruling~~s~~ or order~~s of the Court are~~is unnecessary.~~;~~ ~~but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time~~When the ruling or order ~~of the Court~~ is requested or made ~~or sought~~, a party need only state the action that it wants~~makes known to the Court the action which the party desires~~ the ~~C~~court to take or ~~the party's objection to~~ the action it objects to, ~~of the Court and~~along with the grounds for the request or objection. ~~therefor; and, if~~Failing to object does not prejudice a party who has~~d~~ no opportunity to do so when ~~object to a~~the ruling or order ~~at the time it is~~was made.~~, the absence of an objection does not thereafter prejudice the party.~~

COMMENT TO 2018 AMENDMENTS

This rule was amended consistent with the stylistic changes made to the civil rules.

COMMENT

Identical to SCR-Civil 46.

Rule 47. [Deleted].

COMMENT

SCR-Civil 47 deleted as not appropriate to Family Division practice.

Rule 48. [Deleted].

COMMENT

SCR-Civil 48 deleted as not appropriate to Family Division practice.

Rule 49. [Deleted].

COMMENT

SCR-Civil 49 deleted as not appropriate to Family Division practice.

Rule 50. Judgment ~~of dismissal.~~as a Matter of Law; Related Motion for a New Trial; Conditional Ruling

(a) JUDGMENT AS A MATTER OF LAW.

(1) *In General*. If ~~A~~a party has been fully heard on an issue during a trial and the court finds that there is no legally sufficient evidentiary basis to find for the party on that issue, ~~defending a claim may move for a dismissal at the close of the claimant's evidence on the ground that upon the facts and the law the claimant has shown no right to relief. This motion does not waive the right to offer evidence in the event it is not granted. T~~the ~~C~~court may:

(A) ~~render judgment~~resolve the issue against the ~~claimant~~party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) *Motion*. A motion for judgment as a matter of law may be made at any time before the end of the trial. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) RENEWING THE MOTION AFTER TRIAL; ALTERNATIVE MOTION FOR A NEW TRIAL. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the movant may file, no later than 28 days after the entry of judgment, a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

(1) allow the judgment to stand;

(2) order a new trial; or

(3) direct entry of judgment as a matter of law.

(c) GRANTING THE RENEWED MOTION; CONDITIONAL RULING ON A MOTION FOR A NEW TRIAL.

(1) *In General*. If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) *Effect of a Conditional Ruling*. Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) TIME FOR A LOSING PARTY'S NEW-TRIAL MOTION. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after the entry of the judgment.

(e) DENYING THE MOTION FOR JUDGMENT AS A MATTER OF LAW; REVERSAL ON APPEAL. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.~~or may decline to render any judgment until the close of all the evidence. If the Court renders judgment on the merits against the claimant, the Court shall make findings as provided in SCR-~~

~~Domestic Relations 52(a). Unless the Court in its order for dismissal otherwise specifies, a dismissal under this Rule operates as an adjudication on the merits.~~

COMMENT TO 2018 AMENDMENTS

Rule 50 was amended to conform to Civil Rule 50, except that references to jury trials were eliminated.

Rule 51. [Deleted].

COMMENT

SCR-Civil 51 deleted as not appropriate to Family Division practice.

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

(a) EffectFINDINGS AND CONCLUSIONS.

(1) *In General*. Unless expressly waived by all parties, iIn allan actions tried upon the facts, the Ccourt shallmust make written findings of fact, and separate conclusions of law. and jJudgment which shallmust be entered pursuant tounder SCR-Dom. Rel.Rule 58.;

(2) *For an Interlocutory Injunction*. and iIn granting or refusing an interlocutory injunction,s the Ccourt shallmust similarly set forthstate the findings of fact and conclusions of law which constitute the grounds ofthat support its action.

(3) *For a Motion.* The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) *Effect of a Master's Findings*. TheA master's findings of a master, to the extent that the Court adopteds themby the court, shallmust be considered as the court's findings of the Court.

(5) *Questioning the Evidentiary Support.* A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) *Setting Aside the Findings.* Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. If an opinion or memorandum of decision resolves all of the issues on the merits, the judgment may be set forth separately or within the opinion or memorandum of decision. Findings of fact and conclusions of law are unnecessary on decisions of motions under SCR-Dom. Rel. 12 or 56 or any other motion except motions to modify an order of the Court and except as provided in SCR-Dom. Rel. 50.

(b) AmendmentAMENDED OR ADDITIONAL FINDINGS. On a party's motion filed not later than 1028 days after the entry of judgment, the Ccourt may amend its findings — or make additional findings — and may amend the judgment accordingly. The motion to amend may accompany a motion for a new trial under SCR-Dom. Rel.Rule 59.

(c) JUDGMENT ON PARTIAL FINDINGS. If a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

COMMENT TO 2018 AMENDMENTS

The rule was modified to make it consistent with Civil Rule 52.

COMMENT TO 2015 AMENDMENTS

Section (c), “matters taken under advisement,” was deleted; the matters previously addressed by this section are now the subject of an administrative order.

COMMENT

Paragraph (c) is not intended to trigger notices where the Court has announced a decision on the record but has yet to issue the written findings.

Rule 53. Masters.

(a) Appointment. --APPOINTMENT. There shall be a standing officer of the Court to be known as term "master" also refers to the Auditor-Master as established by D.C. Code § 11-1724 (2012 Repl.) unless otherwise noted. In lieu of or in addition to reference to the Auditor-Master, the Court may appoint a special master in any pending action. As used in these Rules the word "master" includes the Auditor-Master and a special master.

(b) Reference. --REFERENCE.

(1) *In General*. UpoOn motion or of on its own initiative, the Ccourt may refer a matter to a master. The court may appoint a master only if appointment is warranted by:

(A) some exceptional condition; or

(B) the need to perform Except in matters ofan accounting or and ofresolve a difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c2) Powers. --*Content*. TheAn order referring a matter of reference to the master may:

(A) specify or limit the master's powers; and

(B) may direct the master to report only upon particular issues; or

(C) direct the master to do or perform particular acts; or

(D) direct the master to receive and report evidence only; and may

(E) fix the time and place for beginning and closing the hearings and for the filing of the master's report.

(c) MASTER'S AUTHORITY.

(1) *In General*. Subject to the specifications and limitations stated in the orderUnless the order of reference directs otherwise, thea master has and shall exercise the power tomay:

(A) regulate all proceedings; in every hearing before the master and to do all acts and

(B) take all appropriate measures necessary or proper for the efficient to performance of the master'sassigned duties fairly and efficiently; and under the order.

(C) if conducting an evidentiary hearing, exercise the referring court's power to compel, take, and record evidence.

(2) *Sanctions*. The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in SCR-Dom. Rel. 43(c).

(d) ProceedingsPROCEEDINGS.

(1) *First Meetings*. -- When a reference is made, the Cclerk shall forthwithmust immediately furnishprovide the master with a copy of the order of reference. Upon

Unless the order of reference provides otherwise, on receipt of the order, ~~receipt thereof unless the order of reference otherwise provides,~~ the master ~~shall forthwith~~must immediately set a time and place for the first meeting of the parties or their attorneys and must notify the parties or their attorneys of this meeting. The meeting should ~~to~~ be held within 2~~8~~0 days from ~~after~~ the date of the order of reference ~~and shall notify the parties or their attorneys~~.

(2) *Duty to Proceed*. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the ~~C~~court for an order requiring the master to speed the proceedings and to make the report.

(3) *Absence of Party*. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(~~2~~4) *Witnesses*. ~~--~~The parties may procure the attendance of witnesses before the master by the issuing~~ance~~ and servingce ~~of~~ subpoenas ~~as provided in~~in accordance with ~~SCR-Dom. Rel.~~Rule 45. ~~If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in SCR-Dom. Rel. 37 and 45.~~

(~~3~~5) *Statement of ~~a~~Accounts*. ~~--~~When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts ~~shall~~must be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. ~~Upon~~ On objection of a party to any of the items ~~thus~~ submitted or ~~up~~on a showing that the form of statement is insufficient, the master may require that a different form of statement to be furnished~~,~~ or that the accounts or specific items ~~thereof to~~ be proved by oral examination of the accounting parties, ~~or upon~~by written interrogatories, or in such other manner as the master directs.

(e) ~~Report~~REPORT.

(1) *Contents and ~~f~~Filing*. ~~--~~The master ~~shall~~must prepare a report ~~up~~on the matters ~~submitt~~referred to the master~~. by the order of reference and, if required to make~~ The report must include findings of fact and conclusions of law where the master was required to make them.~~, the master shall set them forth in the report.~~ Unless otherwise directed by the order of reference, the report must be accompanied by a transcript of the evidence and proceedings as well as the original exhibits. The master ~~shall~~must file the report with the ~~C~~clerk of the ~~C~~court and serve ~~on~~ all parties with notice of the filing. ~~Unless otherwise directed by the order of reference, the master shall file with the report a transcript of the proceedings and of the evidence and the original exhibits.~~ Unless otherwise directed by the order of reference, the master must~~shall~~ also serve a copy of the report on each party.

(2) *Actions on the Master's Order, Report, or Recommendations.~~Objections.~~ ~~--~~*

(A) *Opportunity for a Hearing; Action in General*. In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(B) *Time to Object or Move to Adopt or Modify*. ~~The Court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any~~A party may ~~serve~~file ~~written~~ objections ~~there~~to~~—~~or a

motion to adopt or modify—the master's order, report, or recommendations no later than 14 days after a copy is served, unless the court sets a different timeupon the other parties. Application to the Court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in SCR Dom. Rel. 7(d). The Court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(C) *Reviewing Factual Findings*. The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:

(i) the findings will be reviewed for clear error; or

(ii) the findings of a master will be final.

(D) *Reviewing Legal Conclusions*. The court must decide de novo all objections to conclusions of law made or recommended by a master.

(E) *Reviewing Procedural Matters*. Unless the order of reference establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(3) *Stipulation as to fFindings*. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shallwill be final, only questions of law arising upon the report shallwill thereafter be considered.

(4) *Draft rReport*. Before filing the master's report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(f) Fees and compensation. --FEES AND COMPENSATION.

(1) *Fixing Fees*. The court must fix the Ffees, if any, for work performed by the Auditor-Master and the compensation to be allowed to a special master shall be fixed by the Court. Fees for work performed by the Auditor-Master shallmust bear a reasonable relation to the value of the services rendered. However, the Ccourt, if appropriate, may order that a party or parties shall be charged no fee or only a reduced fee for work performed by the Auditor-Master.

(2) *Payment*. The Ffees and compensation may be charged to such ofmust be paid, as directed by the court, either:

(A) by a party or the parties; or paid out of any

(B) from a fund or subject matter of the action, which is in the custody and within the court's control of the Court, as the Court may direct.

(3) *Failure to Pay*. The special master shall must not retain the master's report as security for the master's compensation; but when the party ordered to pay the compensation allowed by the Ccourt does not pay it after notice and within the time prescribed by the Ccourt, the special master is entitled to a writ of execution against the delinquent party.

(g) Deposit for expenses. --DEPOSIT FOR EXPENSES. A master may require the deposit of funds sufficient to defray the expenses of a reference, including a stenographic report of the testimony.

(h) Custody of exhibits. --CUSTODY OF EXHIBITS. Unless otherwise directed by the reference, the master must transmit original exhibits to the court with the report. At the conclusion of a trial or hearing, the court must return all exhibits to the party or attorney offering the exhibit. The party or attorney must provide a receipt for each exhibit

returned by the court. ~~If no appeal is perfected, each party shall retake its exhibits from the master 30 days after the date of final disposition of the case in this Court. If an appeal is perfected, each~~The party or attorney ~~shall retake~~must retain ~~its~~the exhibits ~~from the master 30 days after~~until the time for filing a notice of appeal has expired or, if an appeal is perfected, until final disposition of the case by the appellate court. ~~If any party fails to retake its exhibits in accordance with this paragraph, the master may destroy or otherwise dispose of those exhibits.~~ On request, the party or attorney must transmit the exhibits to the appellate court.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. Subsection (e)(2)(C) was modified to provide that the court must review, de novo, an objection to a finding of fact.

This rule also applies to parenting coordinators. In *Jordan v. Jordan*, 14 A.3d 1136, 1152 (D.C. 2011), the District of Columbia Court of Appeals held that "Rule 53 of the Superior Court Rules Governing Domestic Relations Proceedings authorize[s] the trial court both to appoint a parenting coordinator under [ ] exceptional circumstances … and to delegate decision-making authority to the parenting coordinator over day-to-day issues that do not implicate the court's exclusive responsibility to adjudicate the parties' rights to custody and visitation."

Rule 53-I. [Deleted].

Rule 53-II. [Deleted].

TITLE VII. JUDGMENT.

Rule 54. Judgments; cCosts.

(a) Definition; form. --DEFINITION; FORM. "Judgment" as used in these Rrules includes a decree and any order from which an appeal lies.

(b) Judgment upon multiple claims or involving multiple parties. --JUDGMENT ON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES. When an action presents more than one claim for relief — is presented in an action, whether as a claim, or counterclaim, crossclaim, or third-party claim — or when multiple parties are involved, the Ccourt may direct the entry of a final judgment as to one or more, but fewer than all, of the claims or parties only upon anif the court expressly determinesation that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and directionOtherwise, any order or other form of decision, however designated, whichthat adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shalldoes not terminateend the action as to any of the claims or parties, and may bethe order or other form of decision is subject to revisedion at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities of all the parties.

(c) Extent of relief. --DEMAND FOR JUDGMENT; RELIEF TO BE GRANTED. A default judgment by default shallmust not be different in kind from, or exceed in amount, that prayed forwhat is demanded in the pleadings seeking relief. Except as to a party against whom a judgment is entered by default, eEvery other final judgment shouldall grant the relief to which theeach party in whose favor it is rendered is entitled, even if the party has not demanded suchthat relief in the party'sits pleadings.

(d) Costs and attorneys' feesCOSTS; ATTORNEY'S FEES.

(1) *In General*. Claims for costs and attorneys' fees shallmust be made in the complaint or answer and supported in detail in a detailed motion in accordance with subparagraph Rule 54(d)(2) of this Rule.

(2) *Timing and Contents of the Motion*. Unless otherwise provided bya statute or a court order provides otherwisedirected by the Court, the motion must:

(A) be filed and served no later than 14 days after the entry of judgment; must

(B) specify the judgment and the statute, rule, or other grounds entitling the movanting party to the award; and must

(C) state the amount sought or provide a fair estimate of the amount soughtit; and

(D) If directed by the Court, the motion shall also disclose, if the court so orders, the terms of any agreement with respect toabout fees to be paid for the services for which claim is made.

(3) *Proceedings*. On a party's request, Tthe Ccourt shall affordmust give an opportunity for opposition toadversary submissions on the motion. The Ccourt shallmust find the facts and state its conclusions of law as provided in SCR-Dom. Rel.Rule 52(a) and must set forth, and a judgment shall be set forth as provided in SCR-Dom. Rel.Rule 58.

(4) *Witness Fees*. Witness fees may be awarded at the court's discretion. Proof of the attendance of witnesses shall be by certificate of the attorney of record in the form prescribed by the clerk's office. The certificate must be served upon the opposing party or counsel and filed within 5 days after the entry of any final order or judgment,

otherwise witness fees shall not be taxed or recovered as costs. Within 5 days after the certificate is served, any party may move to amend or strike it.

(5) *Costs.* Costs of depositions, reporters' transcripts on appeal, and premiums on bonds may be awarded at the court's discretion ~~of the Court~~.

(~~5~~6) *Special Procedures; Reference to a Master or a Magistrate Judge.* The ~~C~~court may establish special procedures ~~by which issues relating to such fees may be~~to resolve~~d~~ fee-related issues without extensive evidentiary hearings. ~~In addition~~Also, the ~~C~~court may refer issues ~~relat~~concerning ~~to~~ the value of services to a master under ~~SCR-Dom. Rel.~~Rule 53 without regard to the limitations of ~~to the provisions of paragraph~~ Rule 53(b)(1), ~~thereof~~ and may refer a motion for attorneys' fees to a ~~hearing commissioner~~magistrate judge as if it were a dispositive pretrial matter.

(~~6~~7) *Exceptions.* ~~The provisions of subparagraphs~~Rule 54(d)(1)~~ through~~ (~~6~~5) do not apply to claims for fees and expenses as sanctions for violating~~ons of~~ these rules.

(e) [Deleted]. ~~Costs of previously dismissed action. -- If a claimant who has once dismissed an action in any court commences an action based upon or including the same claim against the same adverse party, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the claimant has complied with the order.~~

(f) [Deleted].

COMMENT TO 2018 AMENDMENTS

This rule conforms more closely to the style of Civil Rule 54. Subsection (d)(4) conforms to Civil Rule 54-I.

COMMENT

Unlike SCR-Civil 54(d), paragraph (d) of this Rule requires that claims for attorneys' fees and costs be made in the complaint or answer, and substantiated in a motion filed and served no later than 14 days after entry of judgment.

Rule 54-I [Deleted].

Rule 54-II. Waiver of ~~c~~Costs, ~~f~~Fees, or ~~s~~Security~~.~~

(a) ~~General. --~~IN GENERAL. The court may waive the prepayment of costs, fees, or security or the payment of costs, fees, or security accruing during any action upon the presentation of Form 106A (Application to Proceed Without Prepayment of Costs, Fees, or Security) and a finding that the party is unable to pay such costs, fees, or security without substantial hardship to the applicant or the applicant's family. The court must not deny ~~such~~ an ~~A~~application solely because the applicant is at or above the federal poverty guidelines. ~~Such a~~An ~~A~~application may be submitted at any point in the proceedings. Unless the court orders otherwise, the ~~A~~application need not be served on the other parties and will be resolved ex parte. When an ~~A~~application is granted in whole or in part, a notation will be made ~~o~~in the record ~~in said~~of that action.

(b) ~~Public benefits. --~~PUBLIC BENEFITS. If an applicant receives Temporary Assistance for Needy Families ~~(TANF)~~, General Assistance for Children ~~(GAC)~~, Program on Work, Employment and Responsibility ~~(POWER)~~, or Supplemental Security Income ~~(SSI)~~, the court must grant the ~~A~~application without requiring additional information from the applicant.

(c) ~~Health care benefits. --~~HEALTH CARE BENEFITS. Consistent with Form 106A, if an applicant receives Interim Disability Assistance (IDA), Medicaid, or the D.C. HealthCare Alliance, the court may grant the ~~A~~application without requiring additional information from the applicant.

(d) ~~Significant costs. --~~SIGNIFICANT COSTS. In determining whether to waive the prepayment of costs, fees, or security, the court must take into account the likelihood that the matter may entail significant costs to the litigant, such as the costs of e-filing.

(e) ~~Merit of underlying action. --~~MERIT OF UNDERLYING ACTION. The court may not refuse to waive costs, fees, or security based ~~up~~on the perceived lack of merit of the underlying action.

(f) ~~Dismiss actions; enjoin repeat filers of frivolous matters. --~~DISMISSING ACTIONS; ENJOINING REPEAT FILERS OF FRIVILOUS MATTERS. Nothing in this rule should be construed to limit the authority of courts to dismiss actions or to enjoin repeat filers of frivolous matters from filing future cases without prior approval of the court.

(g) ~~Requiring additional information. --~~REQUIRING ADDITIONAL INFORMATION. If there is good cause to believe the information contained in Form 106A is inaccurate or misleading, or that the applicant has undergone a change of circumstances or submitted an incomplete ~~A~~application, the court may require additional evidence in support of the request to waive prepayment of costs, fees, or security accruing during any action.

(h) ~~Declaration. --~~DECLARATION. The ~~A~~application must include the signed ~~D~~declaration in Form 106A. Notarization is not required.

(i) ~~Witness fees. --~~WITNESS FEES. Where an application ~~request~~ to proceed without prepayment of costs, fees, or security is granted, witnesses will be subpoenaed without prepayment of witness fees, and the same remedies will be available as are provided for by law in other cases.

(j) ~~Ruling in writing or on the record. --~~RULING IN WRITING OR ON THE RECORD. If the court denies the ~~A~~application ~~for a waiver of~~to proceed without ~~the~~ prepayment of costs, fees, or security, the court must state its reason(s) for ~~such ruling~~denial in writing or on the record in the presence of the applicant or his or her counsel.

(k) ~~Motion for free transcripts. --~~MOTION FOR FREE TRANSCRIPTS. An applicant who has received a waiver of the prepayment of costs, fees, or security may file a motion requesting that free transcripts be prepared for appeal and explaining the basis for the motion. The court may not refuse to provide free transcripts unless the appeal is frivolous. In making this determination, the court must resolve doubt about the merits of the appeal in favor of the applicant. The court may order that only those portions of the trial proceedings necessary to resolution of the appeal be transcribed.

COMMENT TO 2018 AMENDMENTS

This rule was amended consistent with stylistic changes to the civil rules.

COMMENT TO 2010 AMENDMENT

D.C. Code § 15-712 governs *in forma pauperis* applications. There is no Federal Rule of Civil Procedure addressing such applications, but *28 U.S.C. § 1915* does. The District of Columbia statute, unlike the federal statute, does not provide the court with discretion to deny an application for *in forma pauperis* based upon the merit of the underlying action. *Compare* D.C. Code § 15-712 *with 28 U.S.C. § 1915(e)(2)*; *see In re Turkowski,* 741 A.2d 406, 407 (D.C. 1999) (per curiam) ("the court must grant the request for *in forma pauperis* status if a proper application is made, and, having done so, thereafter treat the case as any other, including, of course, any appropriate dispositive actions"); *accord Lewis v. Fulwood,* 569 A.2d 594, 595 (D.C. 1990) (per curiam).

The Rule requires applicants seeking *in forma pauperis* status to submit their request utilizing Form 106A (Application to Proceed Without Prepayment of Costs, Fees or Security), which includes citations to pertinent statutes and case law.

Subsection (k) sets forth the standards for ruling upon a motion for free transcripts. *See, e.g., P.F. v. N.C.,* 953 A.2d 1107, 1119 (D.C. 2008) (noting that an appellant proceeding *in forma pauperis* is entitled to a free transcript "if the trial judge . . . certifies that the appeal is not frivolous" and that "[d]oubts about [the] substantiality of the questions on appeal and the need for a transcript to explore them should be resolved in favor of the petitioner") (internal quotation marks and citations omitted); *Hancock v. Mut. of Omaha Ins. Co.,* 472 A.2d 867 (D.C. 1984), as discussed in *P.F.*, 953 A.2d at 1119.

The Rule is stylistically consistent with Civil Rule 54-II, which is stylistically consistent with the Federal Rules of Civil Procedure.

Rule 55. Default; Default Judgment or Order.

(a) Entry. --ENTERING A DEFAULT. Where a defendant or respondent

(1) *In General*. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, the clerk or court must enter the party's default. or to appear in Court although ordered to do so, the plaintiff or petitioner shall be entitled to an entry of default by the Clerk.

(2) *Effective Date of Default; Motion by Defendant*. Any default entered on the court's or the clerk's own initiative, including a default for failure to respond to the complaint or petition within the time prescribed in Rule 12(a), will not take effect until 14 days after the date on which it is docketed and must be vacated if the court grants a motion filed by the defendant or respondent within the 14-day period showing good cause why the default should not be entered.

(3) *Extension of Time to Plead or Otherwise Defend*. Before a default is issued, the time to plead or otherwise defend may be extended by one of the following:

(A) an order granting a motion, which shows good cause for the extension; or

(B) a document, signed by the parties or their representatives, and filed with the court, which provides for a one-time extension of not more than 21 days within which to plead or otherwise respond.

To obtain an entry of default, plaintiff or petitioner shall file with the Clerk a statement, made under oath, reciting that (i) proof of service has been filed, (ii) the time for the adverse party to plead or appear in Court has passed; and (iii) there has been compliance with the Soldiers and Sailors Civil Relief Act of 1940. The statement in support of a request for entry of default need not be served on the defendant or respondent. These procedures do not apply to proceedings otherwise covered by statute or rule, including those to determine paternity.

(b) *Notice and hearing*. -- Upon the filing of a sufficient statement as provided in paragraph (a) of this Rule, the Clerk shall enter the fact of the default on the docket and assign the case to a judicial officer pursuant to SCR-Dom. Rel. 40. Unless otherwise directed by the assigned judicial officer, the Clerk shall send written notice to all parties reciting (i) that a default was entered on the docket on the date entered; (ii) the date scheduled for a hearing on the merits; (iii) a warning that the hearing will proceed and a judgment or order may be entered against the defendant or respondent; and (iv) the terms of SCR-Dom. Rel. 55(c) for setting aside the default. Such notice need not be sent where original service of process in the case was made by publication.

(b) ENTERING A DEFAULT JUDGMENT OR ORDER.

(1) *In General*. Except as provided in Rule 55(b)(2), a party must move for entry of a default judgment or order no more than 60 days after default is entered.

(A) *Notice of Motion*. Unless the court orders otherwise, a party against whom a default judgment or order is sought must be served with written notice of the motion at least 7 days before the hearing on the motion for entry of a default judgment or order.

(B) *Servicemembers Civil Relief Act*. If the party against whom a default judgment or order is sought has not appeared in the action, the requesting party must comply with the Servicemembers Civil Relief Act (*50 U.S.C. §§ 3901-4043*).

(2) *Default Parentage Order*.

(A) *Ex Parte Hearing Not Required*. When a defendant or respondent fails to appear at a hearing in which parentage is at issue, the court may conduct an ex parte hearing

on that date to determine the issue of parentage, but an ex parte hearing is not required.

(B) *Requirements for Issuance of Default Order*. The court must issue a default order concerning parentage if:

(i) the defendant or respondent was served with notice of the action by any method permitted under D.C. Code § 46-206 (b) (2012 Repl.);

(ii) the defendant or respondent received actual notice of the first, or any other hearing, where parentage is at issue which the respondent failed to attend; and

(iii) the plaintiff or petitioner complied with the Servicemembers Civil Relief Act (*50 U.S.C. §§ 3901-4043*).

(3) *Minors and Incompetents*. Unless otherwise permitted by statute or rule, a default judgment or order may be entered against a minor or incompetent person only if represented by a general guardian, committee, conservator, or other like fiduciary who has appeared.

(4) *Members of the Military; Military Status Unknown*. If the plaintiff or petitioner indicates that the defendant or respondent is in the military or that his or her military status is unknown, the court must follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (*50 U.S.C. § 3931*).

(5) *Dismissal*. A plaintiff's or petitioner's failure to comply with Rule 55(b)(1) or (2) will result in the dismissal without prejudice of the complaint or petition.

(c) ~~Setting aside default. --~~SETTING ASIDE A DEFAULT OR A DEFAULT JUDGMENT.

(1) *By the Clerk*. The clerk may vacate a default or default judgment, within 60 days after its entry, if the claimant and the defaulted party, or their attorneys, file a signed document so requesting and bearing evidence of its service on all parties that have appeared. When required by Rule 55(c)(2), the document must be accompanied by a verified answer.

(2) *By the Court.* ~~Upon motion to set aside the default, and for good cause shown,~~ ~~t~~The ~~C~~court may set aside an entry of default for good cause on the filing of a verified answer setting up a defense sufficient, if proved, to bar the claim in whole or in part~~and, if a judgment by default has been entered, may likewise set it aside in accordance with SCR-Dom. Rel. 60(b)~~. The movant does not need to file an answer if the motion is accompanied by a settlement agreement or a proposed consent judgment signed by both parties. In addition, an answer is not required when the movant asserts a lack of subject-matter or personal jurisdiction or when the default was entered after the movant had filed an answer. The court may set aside a final default judgment or order under Rule 60(b). ~~Whether or not the default is set aside, the Court may conduct or continue the hearing, require an answer to be filed, and impose such sanctions or limitations on discovery or presentation of evidence as the Court deems appropriate. Upon the filing of a new or additional claim by any party, a party against whom a default has been entered may appear and respond without having the default set aside.~~

~~(d) Plaintiffs or counterclaimants. -- The provisions of this Rule apply whether the party entitled to the judgment by default is a plaintiff, or a party who has pleaded a counterclaim. Except with respect to child support, a judgment by default is subject to the limitations of SCR-Dom. Rel. 54(c).~~

COMMENT TO 2018 AMENDMENTS

The rule has been substantially amended, consistent with Civil Rule 55 and with current practice in the Domestic Relations Branch. The rule now provides for entry of default by the court as well as the clerk.

The former rule did not address entry of default judgments, but new section (b) addresses default judgments and orders. Consistent with current practice, final orders concerning parentage and child support are called orders rather than judgments.

Subsection (b)(1)(A) provides that the court generally may not enter a default judgment or order unless it holds a hearing after notice to the defaulting party. However, consistent with current practice, subsection (b)(1)(A) gives the court discretion to enter a default judgment at the same hearing in which it enters a default. Rule 4(a)(1)(E) requires the summons to notify the defendant that a failure to file an answer to the complaint and to appear at any scheduled hearing will result in a default judgment against the defendant for the relief demanded in the complaint. Written notice of a hearing on a motion for a default judgment or order may warn that if the defaulting party does not appear at the hearing or otherwise respond, the court may proceed with the hearing and enter a default judgment or order. Civil Rule 55 also provides for entry of a default judgment without a hearing, when it authorizes the clerk to enter a default judgment in cases where the claim is for a sum certain or a sum that can be made certain by computation. Unlike Civil Rule 55, this rule does not provide for entry of a default judgment or order by the clerk because the overwhelming majority of default judgments or orders for a sum certain involve child support and spousal support, and these default judgments or orders may be entered only by the court.

Subsection (b)(2) contains a separate provision for entry of a default order concerning parentage; this provision tracks D.C. Code § 16-2343.03 (2012 Repl.). Subsection (c)(1) incorporates the substance of Civil Rule 55-III.

Finally, consistent with Civil Rule 55(c)(2) and the 2015 amendments to the federal rule, the word “final” was added to subsection (c)(2) to indicate that the court “may set aside a final default judgment under Rule 60(b).” The inclusion of this word helps to clarify the difference between a final default judgment that could be reviewed under Rule 60(b) and a default judgment that does not dispose of all of the claims. The latter is not final until the court directs entry under Rule 54.

COMMENT

The procedures for default contained in this Rule do not apply to proceedings to determine paternity (see D.C. Code § 16-2341 et seq.; SCR-Dom. Rel. 405). The statement required under paragraph (a) of this Rule may be submitted by use of a court form, if available. Because, unlike Civil actions, Domestic Relations actions often involve issues over which the Court has continuing jurisdiction, paragraph (c) allows a party in default to appear and respond to new or additional claims raised by any party without having the default set aside.

Rule 55-I. [Deleted].

COMMENT

SCR-Civil 55-I was deleted as not necessary in Family Division.

Rule 55-II. [Deleted].

COMMENT

SCR-Civil 55-II was deleted as not necessary in Family Division.

Rule 56. Summary ~~j~~Judgment~~.~~

(a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion. ~~(a) For claimant. -- A party seeking to recover upon a claim or a counterclaim, or to obtain a declaratory judgment may, after the expiration of 20 days from service of a pleading on the adverse party or after service of a motion for summary judgment by the adverse party, but within the time prescribed by rule or Court order, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.~~

(b) TIME TO FILE A MOTION; FORMAT.

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

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

(A) *Movant's Statement*. In addition to the points and authorities required by Rule 7(b)(1)(C), the movant must file a statement of the material facts that the movant contends are not genuinely disputed. Each material fact must be stated in a separate numbered paragraph.

(B) *Opponent's Statement*. A party opposing the motion must file a statement of the material facts that the opponent contends are genuinely disputed. The disputed material facts must be stated in separate numbered paragraphs that correspond to the extent possible with the numbering of the paragraphs in the movant's statement.

~~(b) For defending party. -- A party against whom a claim or a counterclaim is asserted or a declaratory judgment is sought may, within the time prescribed by rule or Court order, or otherwise, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.~~

~~(c) Standard for summary judgment. -- The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone.~~

(c) PROCEDURES.

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

~~(d) Form of affidavits; further testimony; defense required. -- Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.~~

(~~e~~d) ~~When affidavits are unavailable. --~~WHEN FACTS ARE UNAVAILABLE TO THE NONMOVANT. ~~Should it appear from the~~If a nonmovant shows by affidavit~~s~~ or declaration that, ~~of a party opposing the motion that the party cannot~~ for specified reasons, it cannot ~~stated~~ present ~~by affidavit~~ facts essential to justify ~~the party's~~its opposition, the ~~C~~court may:

(1) defer considering the motion or deny it; ~~refuse the application for judgment or may order a continuance to permit affidavits to be~~

(2) allow time to obtain~~ed~~ affidavits or declarations or ~~or depositions to be taken or~~to take discovery; or ~~to be had or may make such~~

(3) issue any other appropriate order ~~as is just~~.

(e) FAILING TO PROPERLY SUPPORT OR ADDRESS A FACT. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) JUDGMENT INDEPENDENT OF THE MOTION. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) FAILING TO GRANT ALL THE REQUESTED RELIEF. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(~~f~~h) ~~Affidavits made in bad faith. --~~AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITH. ~~Should it appear to the~~If satisfied~~action of the Court at any time~~ that an~~y of the~~ affidavit~~s~~ or declaration ~~presented pursuant to~~under this ~~R~~rule ~~are presented~~is submitted in bad faith or solely for ~~the purpose of~~ delay, the ~~C~~court~~—after notice and a reasonable time to respond—may~~ ~~shall forthwith~~ order the submitting party ~~employing them~~ to pay ~~to~~ the other party the ~~amount of the~~ reasonable expenses ~~which the filing of the affidavits caused the other party to incur~~, including ~~reasonable~~ attorney's fees, it incurred as a result. ~~and any~~An offending party or attorney may also be ~~adjudged guilty of~~held in contempt or subjected to other appropriate sanctions.

~~(g) Motions for summary judgment. -- In addition to points and authorities there shall be served and filed with each motion for summary judgment a statement of the material facts as to which the moving party contends there is no genuine issue. Any party opposing such a motion may, within 10 days after service of the motion upon the party, serve and file a concise statement of genuine issues setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated. In determining any motion for summary judgment, the Court may assume that the facts as claimed by the moving party are admitted to exist without controversy except as and to the extent that such facts are asserted to be actually in good faith controverted in a statement filed in opposition to the motion.~~

COMMENT TO 2018 AMENDMENTS

This rule was modified to make it consistent with Civil Rule 56.

Rule 57. Declaratory ~~j~~Judgments~~.~~

These rules govern the procedure for obtaining a declaratory judgment ~~pursuant to Title~~under *28 U.S.C. § 2201* or otherwise~~. shall be in accordance with these Rules.~~ The existence of another adequate remedy does not preclude a declaratory judgment ~~for declaratory relief in cases where it~~that is otherwise appropriate. The ~~C~~court may order a speedy hearing of a ~~n action for a~~ declaratory judgment action ~~and may advance it on the calendar~~.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules.

Rule 58. Ent~~ry of j~~eringJudgment~~.~~

(a) ENTERING JUDGMENT.

(1) *Without the Court's Direction.* Subject to ~~the provisions of SCR-Dom. Rel.~~Rule 54(b) and unless the court or administrative order orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter judgment when:

(~~1~~A) ~~Upon a decision by~~ the ~~C~~court awards ~~that a party shall recover~~ only costs or a sum certain; or ~~costs or~~

(B) the court denies ~~that~~ all relief. ~~shall be denied, the Clerk, unless the Court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the Court;~~

(2) *Court's Approval Required*. ~~upon a decision by the Court granting other relief~~Subject to Rule 54(b), the ~~C~~court ~~shall~~must promptly approve the form of the judgment, which~~and~~ the ~~C~~clerk ~~shall~~must promptly ~~thereupon~~ enter, when ~~it~~ the court grants other relief not described in Rule 58(a)(1).

(b) EFFECTIVENESS. A judgment is effective ~~only when so set forth and~~ when it is entered in the docket under Rule ~~as provided in SCR-Dom. Rel.~~79(a).

(c) COST OR FEE AWARDS. Ordinarily, the ~~E~~entry of ~~the~~ judgment ~~shall~~may not be delayed for the award of costs and fees.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules.

COMMENT

The last sentence of this Rule makes it clear that the Court should not delay the finality of the judgment until a claim for costs and fees is decided.

Rule 59. Amend~~ment of~~ing a jJudgment~~s~~; ~~n~~New ~~t~~Trial~~s.~~

(a) ~~Motion to alter or amend judgment or for new trial. --~~MOTION TO ALTER OR AMEND JUDGMENT OR FOR NEW TRIAL.

(1) *In General*. The court may grant ~~A~~a motion to alter or amend judgment or for a new trial ~~may be granted~~ where the interests of justice require.

(2) *Further Action*. On ~~a~~ motion for a new trial, the ~~C~~court may:

(A) open the judgment if one has been entered;~~,~~

(B) take additional testimony;~~,~~

(C) amend findings of fact and conclusions of law or make new ~~findings and conclusions~~ones;~~,~~ and

(D) direct the entry of a new judgment.

(b) ~~Time for motion. --~~TIME TO FILE A MOTION. A motion to alter or amend judgment or for a new trial ~~shall~~must be filed no later than 28~~10~~ days after entry of the judgment.

(c) ~~Time for serving affidavits. --~~TIME TO SERVE AFFIDAVITS. When a motion for a new trial is based on affidavits, they ~~shall~~ must be served with the motion. The opposing party has 1~~4~~0 days after ~~such~~being served~~ice within which~~ to ~~serve~~file opposing affidavits.~~, which period may be extended for an additional period not exceeding 20 days either by the Court for good cause shown or by the parties by written stipulation.~~ The ~~C~~court may permit reply affidavits.

(d) ~~On Court's initiative; notice; specifying grounds. --~~ON COURT'S INITIATIVE; NOTICE; SPECIFYING GROUNDS. No later than 28~~10~~ days after the entry of judgment, the ~~C~~court, on its own ~~initiative~~, may alter or amend the judgment~~,~~ or may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the ~~C~~court may grant a timely motion for a new trial for a reason not stated in the motion. ~~When granting a new trial on its own initiative or for a reason not stated in the motion~~In either event, the ~~C~~court ~~shall~~must specify the ~~grounds~~reasons in its order.

COMMENT TO 2018 AMENDMENTS

The deadlines were changed to conform with those in Civil Rule 59.

COMMENT

This Rule has been revised and reorganized for clarity. With the exception of the amendment to paragraph (d) explicitly allowing the Court to alter or amend a judgment on its own initiative no later than 10 days after entry of the judgment, the Rule is not intended to modify the substance or effect of SCR-Civil 59 with respect to trials in Domestic Relations actions. Grounds for a new trial under this Rule include manifest error of law or fact, and newly discovered evidence which is material to a significant issue. Similar to the civil rule, a timely motion under this Rule will toll the time for appeal. D.C. App. Rule 4(a)(2).

Rule 60. Relief from a ~~j~~Judgment or ~~o~~Order~~.~~

(a) ~~Clerical mistakes. --~~CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS. The court may correct a ~~C~~clerical mistake~~s and errors~~ or a mistake arising from oversight or omission whenever one is found in a judgment~~s~~, order~~,s~~ or other part~~s~~ of the record. ~~may be corrected by t~~The ~~C~~court ~~at any time~~may do so on motion or on its own, with or without notice. ~~initiative or on the motion of any party and after such notice, if any, as the Court orders. During the pendency of~~ But after an appeal has been docketed in the appellate court and while it is pending, such a mistake~~s or errors~~ may be corrected ~~before the appeal is docketed in the appellate court, and while the appeal is pending may be corrected with leave of~~ only with the appellate court's leave.

(b) ~~Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. --~~ GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and ~~upon such~~just terms~~ as are just~~, the ~~C~~court may relieve a party or ~~a party's~~its legal representative from a final judgment, order, or proceeding for the following reasons:

__(1) mistake, inadvertence, surprise, or excusable neglect;

__(2) newly discovered evidence ~~which~~ that, with ~~by due~~reasonable diligence~~,~~ could not have been discovered in time to move for a new trial under ~~SCR Dom. Rel.~~Rule 59(b);

__(3) fraud (whether previously ~~denominated~~ called intrinsic or extrinsic), misrepresentation, or ~~other~~ misconduct ~~of~~by an ~~adverse~~opposing party;

__(4) the judgment is void;

__(5) the judgment has been satisfied, released, or discharged~~;,~~ ~~or a prior judgment upon which~~ it is based on an earlier judgment that has been reversed or ~~otherwise~~ vacated~~;,~~ or applying it prospectively ~~it~~ is no longer equitable; or ~~that the judgment should have prospective application; or~~

__(6) any other reason that justifiesying relief. ~~from the operation of the judgment.~~

(c) TIMING AND EFFECT OF THE MOTION.

__(1) *Timing.* ~~The~~ A motion under Rule 60(b) ~~shall~~must be made within a reasonable time~~,~~ and for reasons (1), (2), and (3) no~~t~~ more than a~~one~~ year after the entry of the judgment~~,~~ or order~~,~~ or the date of the proceeding ~~was entered or taken~~.

__(2~~c~~) *Effect on Finality* ~~of judgment~~. ~~-- A~~ The motion ~~under this Rule~~ does not affect the judgment's finality ~~of a judgment~~ or suspend its operation.

(d) OTHER POWERS TO GRANT RELIEF. This ~~R~~rule does not limit ~~the power of~~ a court's power to:

__(1) entertain an independent action to relieve a party from a judgment, order, or proceeding~~;,~~ or

__(2) ~~to~~ set aside a judgment for fraud ~~up~~on the court.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform with Civil Rule 60.

Rule 61. Harmless ~~e~~Error~~.~~

Unless justice requires otherwise, ~~N~~no error in ~~either the~~ admitting~~ssion~~ or ~~the~~ excluding~~sion of~~ evidence~~—~~or ~~and no~~any other error ~~or defect in any ruling or order or in anything done or omitted~~ by the ~~C~~court or ~~by~~ a~~ny of the~~ party~~ies~~ ~~—~~is ground for granting a new trial or for vacating, modifying or otherwise disturbing a judgment or order~~., unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court a~~ At every stage of the proceeding, the court must disregard all~~ny~~ error~~s~~ ~~or~~and defect~~s~~ ~~in the proceeding which~~that do~~es~~ not affect ~~the~~any party's substantial rights ~~of the parties~~.

COMMENT TO 2018 AMENDMENTS

This rule conforms to the corresponding civil rule.

COMMENT

Clerical mistakes and errors arising from oversight or omission in judgments, orders or other parts of the record, which may be corrected pursuant to SCR-Dom. Rel. 60(a), constitute harmless error under this Rule.

Rule 62. Stay of ~~p~~Proceedings to ~~e~~Enforce a ~~j~~Judgment~~.~~

(a) ~~Automatic stay; exceptions -- Injunctions, receiverships, child custody, support and visitation orders. --~~AUTOMATIC STAY; EXCEPTIONS FOR INJUNCTIONS, RECEIVERSHIPS, AND CHILD CUSTODY, SUPPORT, AND VISITATION ORDERS. Except as stated in this rule or expressly provided in a child custody, support, or visitation order, ~~N~~no execution ~~shall~~may issue ~~up~~on a judgment, nor ~~shall~~may proceedings be taken ~~for its~~to enforce~~ment~~ it, until ~~the expiration of~~ 1~~4~~0 days have passed after its entry.~~, except (1)~~ But unless the court orders otherwise ~~ordered by the Court~~, an interlocutory or final judgment in an action for an injunction or ~~in~~ a receivership action ~~shall~~is not ~~be~~ stayed ~~during the period~~ after ~~its~~being entered,~~ry and until~~ even if an appeal is taken. ~~or during the pendency of an appeal, and (2) in matters relating to custody or support of or visitation with minor children, express provisions of a Court order inconsistent with this paragraph will supersede the automatic stay provisions of this paragraph. The provisions of paragraph (c) of this Rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.~~

(b) ~~Stay on motion for new trial or for judgment. --~~ STAY PENDING THE DISPOSITION OF A MOTION. ~~In its discretion and on such conditions for the security of the adverse~~On appropriate terms for the opposing party's security ~~as are proper~~, the ~~C~~court may stay the execution of~~, or any proceedings to enforce,~~ a judgment ~~—~~or any proceedings to enforce it~~—~~pending the disposition of any of the following motions:

(1) under Rule 52(b), to amend the findings or for additional findings;

(2) under Rule 59, ~~motion~~ for a new trial or to alter or amend a judgment ~~made pursuant to SCR-Dom. Rel. 59,~~; or

(3) under Rule 60,~~of a motion~~ for relief from a judgment or order. ~~made pursuant to SCR-Dom. Rel. 60, or of a motion for amendment to the findings or for additional findings made pursuant to SCR-Dom. Rel. 52(b).~~

(c) ~~Injunction pending appeal. --~~INJUNCTION PENDING AN APPEAL. Whil~~e~~~~en~~ an appeal is ~~taken~~pending from an interlocutory order or final judgment that grant~~s~~~~ing~~, dissolv~~es~~~~ing~~, or den~~ies~~~~ying~~ an injunction, the ~~C~~court ~~in its discretion~~ may suspend, modify, restore, or grant an injunction ~~during the pendency of the appeal upon such~~ terms ~~as to~~for bond or other~~wise~~ terms that secure the opposing party's ~~as it considers proper for the security of the~~ rights ~~of the adverse party~~.

(d) ~~Stay upon appeal. --~~STAY WITH BOND ON APPEAL. ~~When~~If an appeal is taken, the appellant may obtain a stay by supersedeas bond, ~~subject to the exceptions contained~~except in an action described in ~~paragraph~~Rule 62(a) ~~of this Rule upon the posting of a supersedeas bond and service to the parties of notice that the bond has been posted~~. The bond may be given on or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond. ~~The bond shall provide security sufficient to satisfy the amount of the judgment not otherwise secured together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, unless the Court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be.~~

(e) ~~Stay in favor of the United States, the District of Columbia, or agency of either. --~~ STAY WITHOUT BOND ON AN APPEAL BY THE UNITED STATES, THE DISTRICT

OF COLUMBIA, OR AN OFFICER OR AGENCY OF EITHER. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal ~~When an appeal is taken~~ by the United States or the District of Columbia or an officer or agency of either or on an appeal directed by ~~direction of any governmentala~~ department of either ~~and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant~~.

(f) [Deleted].

(g) ~~Power of appellate court not limited. --~~APPELLATE COURT'S POWER NOT LIMITED. This ~~R~~rule does not limit the power of ~~an~~the appellate court or one of its judges or justices:

(1) to stay proceedings—or suspend, modify, restore, or grant an injunction—~~a judgment or make any other order with respect to the judgment during the pendency of~~ while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) ~~Stay of judgment as to multiple claims or multiple parties. --~~STAY WITH MULTIPLE CLAIMS OR PARTIES. ~~The~~A ~~C~~court may stay the enforcement of a final judgment entered under Rule 54(b) ~~as to fewer than all the claims or the claims of fewer than all the parties~~ until ~~the~~it ent~~ers~~ry ~~of~~ a ~~subsequent~~later judgment or judgments, and may prescribe ~~such conditions as are~~terms necessary to secure the benefit of the stayed judgment ~~to~~for the party in whose favor it was entered.

~~(i) Motion for termination of stay or for entry of judgment. -- If either entry of judgment or execution thereon has been stayed upon condition that a party make certain periodic payments to another party or perform other acts, and the party at any time fails to make such payments or perform such acts, the other party may move for termination of the stay or entry of judgment. Upon failure of the delinquent party timely to oppose such termination, the Clerk may terminate the stay and issue execution or enter judgment in accordance with the notice given by the motion, in the manner provided in SCR-Dom. Rel. 55 with respect to defaults. If opposition is filed, the notice shall be treated as an opposed motion.~~

COMMENT TO 2018 AMENDMENTS

This rule closely conforms to the corresponding civil rule, but maintains an exemption for child custody, support, and visitation orders. Part of section (d) related to supersedeas bonds was moved to new Rule 62-I, which outlines a more detailed procedure for supersedeas bonds. Section (i) was moved to new Rule 62-II.

COMMENT

Paragraph (a) exempts from the automatic 10 day stay provision orders relating to custody, support or visitation which by express terms are to take effect within 10 days after entry. To avoid uncertainty as to the effectiveness and enforceability of such orders, the Court should specify the date upon which its provisions take effect. Where an appellant obtains a stay pursuant to paragraphs (d), the interest of justice may

require that the operation or enforcement of any portion of the judgment against the appellee also be stayed.

Rule 62-I. ~~[Deleted].~~Supersedeas Bond

(a) IN GENERAL.

(1) *Court Approval*. An appellant who is entitled to a stay on appeal may present a supersedeas bond or undertaking to the court for its approval.

(2) *Requirements*. The bond or undertaking must:

(A) have a surety or sureties if the court so requires; and

(B) be conditioned to satisfy the judgment in full, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full any modification of the judgment and the costs, interest, and damages awarded by the appellate court, if any.

(3) *Value of Bond or Undertaking*. When the judgment is for the recovery of money not otherwise secured, the amount of the bond or undertaking will be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court, after notice and hearing and for good cause, fixes a different amount or orders security other than the bond.

(4) *Supplementing a Bond or Undertaking*. When the appellant has already filed in the trial court security, which was intended to include adequate security in the event of an appeal, a separate supersedeas bond need not be given, except for the difference in amount, if any, unless the court orders otherwise.

(b) EVIDENCE OF FINANCIAL ABILITY. Before the court approves any bond or undertaking, the party offering the bond or undertaking must furnish to the court any evidence establishing the financial ability of the surety or sureties to discharge the financial obligations of the bond as might be required by the court.

COMMENT TO 2018 AMENDMENTS

This rule includes some provisions previously found in Rule 62. Consistent with the civil rules, the provisions were moved to Rule 62-I and expanded.

Rule 62-II. Application for Termination of Stay or for Entry of Judgment

(a) APPLICATION.

(1) *In General*. If either entry or execution of the judgment has been stayed on condition that a party make certain periodic payments to another party or perform other acts, and the party at any time fails to make the payments or perform the acts, the other party may apply for termination of the stay or entry of judgment.

(2) *Contents of Application*. The application must state:

(A) the conditions of the stay;

(B) the date(s) when the party made any required payments or performed any required acts;

(C) the date(s) when the party failed to make any required payments or to perform any required acts;

(D) the amount of the judgment and other relief requested;

(E) notice that the clerk may enter judgment against the party if the party fails to oppose the application within 14 days.

(b) ACTION BY THE CLERK.

(1) *When the Party Fails to Respond*. If the party fails to oppose the termination, the clerk may terminate the stay and issue execution or enter judgment in accordance with the notice given by the application, in the manner provided in Rule 55(b) with respect to defaults.

(2) *When the Party Files an Opposition*. If the party files an opposition, the notice must be treated as an opposed motion.

COMMENT TO 2018 AMENDMENTS

This rule is new. It closely conforms to Civil Rule 62-II.

Rule 62-III. Enforcing Foreign Judgments

(a) FILING REQUIREMENTS. A copy of a judgment, decree or order of a court of the United States, or of any other court entitled to full faith and credit in the District of Columbia, may be filed with the clerk by the party who obtained it or by that party's attorney only if:

(1) the judgment is authenticated in accordance with District of Columbia law;

(2) the judgment is accompanied by any form prescribed by the clerk; and

(3) the filing fee established by the court has been paid.

(b) JUDGMENTS ENTITLED TO FULL FAITH AND CREDIT IN THE DISTRICT OF COLUMBIA; EFFECT, ENFORCEMENT, AND SATISFACTION. A foreign judgment, decree, or order of a court of the United States or of any other court entitled to full faith and credit in the District of Columbia, which is filed with the clerk, has the same effect and is subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner, subject to the provisions of the Uniform Enforcement of Foreign Judgments Act of 1990, D.C. Code §§ 15-351 to -357 (2012 Repl.).

COMMENT TO 2018 AMENDMENTS

To conform to a restructuring in the civil rules, the substance of former Rule 72 has been moved to this rule. Civil Rule 62-III also includes procedures related to the Uniform Foreign-Country Money Judgments Recognition Act of 2011 (D.C. Code § 15-361 to -371 (2012 Repl.)). However, this uniform act does not apply to judgments for divorce, support or maintenance, or other judgments rendered in connection with domestic relations. D.C. Code § 15-363 (2012 Repl.).

Rule 62.1. Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal

(a) RELIEF PENDING APPEAL. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state that it would grant the motion if the District of Columbia Court of Appeals remands for that purpose.

(b) NOTICE TO THE COURT OF APPEALS. The movant must promptly notify the District of Columbia Court of Appeals under District of Columbia Court of Appeals Rule 4(f) if the trial court states that it would grant the motion.

(c) REMAND. The trial court may decide the motion if the District of Columbia Court of Appeals remands for that purpose.

COMMENT TO 2018 AMENDMENTS

This rule is new. It is identical to Civil Rule 62.1.

Rule 63. Judge's or Magistrate Judge's Inability ~~of a judicial officer~~ to ~~p~~Proceed~~; recusal.~~

~~(a) Inability of a judicial officer to proceed. --~~ If a ~~trial or hearing has been commenced and the~~ judge or magistrate judge~~judicial officer~~ conducting a hearing or trial is unable to proceed, any other judge or magistrate judge~~judicial officer~~ (if authorized by law) may proceed ~~with it~~ upon certifying familiarity with the record and determining that ~~the proceedings in~~ the case may be completed without prejudice to the parties~~., but if such other judicial officer is satisfied that such other judicial officer cannot perform those duties because such other judicial officer did not preside at the trial or for any other reason, such other judicial officer may in such other judicial officer's discretion grant a new trial.~~ The successor judge or magistrate judge~~judicial officer shall~~must, at ~~the~~a party's request~~, of a party~~ recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge or magistrate judge~~judicial officer~~ may also recall any other witness.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 63. Consistent with the civil rules, former section (b) has been moved to Rule 63-I.

Rule 63-I. Bias or Prejudice of a Judge or Magistrate Judge

~~(b) Recusal.~~

(a~~1~~) ~~*Recusal for bias or prejudice*.(A)~~ RECUSAL FOR BIAS OR PREJUDICE. Whenever a party ~~reasonably believes~~to any proceeding makes and files a sufficient affidavit that the judge or magistrate judge~~judicial officer~~ before whom the matter is to be heard has a personal bias or prejudice~~, originating from sources outside of the court proceedings in either the pending case or prior cases, for or~~ either against ~~a~~the party or in favor of any adverse party, ~~that party may file a personal affidavit stating the facts and the reasons for the belief that bias or prejudice exists. The affidavit shall be accompanied by a certificate of counsel of record stating counsel's belief that the affidavit is submitted in good faith.(B) Upon the filing of the affidavit of a party and certificate of counsel, the judicial officer shall determine whether or not the affidavit sufficiently alleges bias or prejudice arising outside of the court proceedings in the pending case or prior cases. If the judicial officer so determines, that~~such judge or magistrate judge~~judicial officer shall not~~must proceed no further, ~~with the matter and the case shall be assigned by~~ and the Chief Judge or the Chief Judge's designee must assign another judge or magistrate judge to hear such proceeding.~~ to a different judicial officer. If the judicial officer determines that the affidavit does not sufficiently allege such bias or prejudice the judicial officer may continue with the proceedings before the Court.~~

(b) CONTENT OF AFFIDAVIT; FILING. The affidavit must state the facts and the reasons for the belief that bias or prejudice exists and must be accompanied by a certificate of counsel of record stating that it is made in good faith. The affidavit must be filed at least 24 hours prior to the time set for hearing of such matter unless good cause is shown for the failure to file by such time.

~~(2) Recusal absent bias or prejudice. -- A party may move for a judicial officer to recuse himself or herself due to a conflict of interest, personal knowledge of the facts of the case, association with a litigant or any other reason which a party reasonably believes might affect the neutrality of the judicial officer. The judicial officer shall rule on such a motion before proceeding any further with the case.~~

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 63-I. It contains the provisions previously found in Rule 63(b).

~~**Rule 63-I. [Deleted].**~~

TITLE VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS.

Rule 64. Seizingure of a pPerson or pProperty; attachment before judgment; replevin actions.

(a) Seizure of person or property. --IN GENERAL. At the commencement of and during the course ofthroughout an action, allevery remedyies is available that, under the law of the District of Columbia, providesing for seizingure of a person or property for the purpose ofto secureing satisfaction of the potential judgment. ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the District of Columbia existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; and (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted pursuant to these Rules.

(b) SPECIFIC KINDS OF REMEDIES. The remedies thus available under this rule include the following—however designated:

(1) arrest;,

(2) attachment;,

(3) garnishment;,

(4) replevin;,

(5) sequestration;, and

(6) other corresponding or equivalent remedies, however designated.

(c) [Deleted.]

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 64. Consistent with the civil rules, the substance of former section (b) was moved to Rule 64-I, and former section (c) was moved to Rule 64-II.

(b)**Rule 64-I. Attachment bBefore jJudgment.**

(a1) Application and notice to defendant. --APPLICATION AND NOTICE TO DEFENDANT.

(1) *Requirements*. An application for a writ of attachment and garnishment before judgment must be accompanied shall set forth, by:

(A) an affidavit, setting forth specific facts meeting the requirements of D.C. Code § 16-501 (c) and (d) (2012 Repl.);.

(B) The application shall be accompanied by a Notice to Defendant on a form provided by the Cclerk;. and

(C) The party applying for the writ shall send such notice to the defendant by first class mail at the address shown on the notice, or in case of a foreign corporation to its registered agent, if any, and shall note on the docket the date of issuance. If the defendant's address is listed on the notice as unknown, the plaintiff shall file with the notice an affidavit setting forth the plaintiff's reasonable efforts to ascertain the defendant's current mailing address.

(2) *Actions by the Clerk*. The clerk must:

(A) send the notice to the defendant by first class mail at the address shown on the notice, or in the case of a foreign corporation, to its registered agent, if any; and

(B) note on the docket the date the notice is mailed.

(b2) Issuance. --ISSUANCE. An application for a writ of attachment before judgment, together with and a bond in accordance withrequired under D.C. Code § 16-501 (e) (2012 Repl.), shallmust be submitted as provided in SCR-General Family Rule R(a)(2) to the judge—judicial officer, who may approve or deny issuance or requiredirect further proceedingshearings before issuance as deemed appropriateruling on the application.

(3) Service. -- The writ of attachment shall be served in accordance with D.C. Code § 16-502, and may be served by a special process server.

(4c) Answer of garnishee. --GARNISHEE'S ANSWER; APPLICANT'S RESPONSE. If the writ is accompanied by interrogatories, the garnishee shall file with the Clerk the answer to the interrogatories wWithin 10 days after accepting service of the writ of attachment, upon thea garnishee, and shall serve a copy of the must file an answer to the interrogatories with the clerk and serve a copy of the answer upon the defendant and upon the party at whose instancefor whom the garnishment was issued. If within 140 days after service of the answer, to the interrogatories or suchat a later time asif the Ccourt may allows, the party at whose instancefor whom the garnishment was issued shall notfails to contest the answer to the interrogatories pursuant toin accordance with D.C. Code § 16-522 (2012 Repl.), the garnishee's obligations under the attachment shawill be limited by the garnishee'shis or her answer.

(d5) Hearing. --HEARING. If a hearing is held as a result of the defendant or the garnishee filing of a traversing affidavit by the defendant or the garnishee pursuant tounder D.C. Code § 16-506 (2012 Repl.), the plaintiff shall be required tomust establish the validity or probable validity of the underlying claim and the existence of the ground for issuing the attachment.

(e6) Priority of liens. --PRIORITY OF LIENS. For purposes of determining priority of successive liens, a writ of attachment issued under subparagraphRule 64-I(b)(2) of this Rule shall becomes effective from the date of itsit is deliveredy to the United States marshal or deputy marshalother process server.

(f7) ~~Expedition of motions to quash. --~~EXPEDITION OF MOTIONS TO QUASH. The court must hear ~~A~~all motions to quash attachments ~~shall be heard by the Court~~ on an expedited basis. ~~Upo~~On at least ~~three~~5 days~~'~~ notice to all parties, the ~~C~~court may, in appropriate cases, order that the action in which the motion was filed be tried on the merits at the same time the motion is heard.
(g8) ~~Discovery. --~~DISCOVERY. For good cause ~~shown~~, the ~~C~~court may in its discretion permit discovery in attachment before judgment proceedings in the manner provided in ~~SCR-Dom. Rel.~~Rule 69-I.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 64-I. It incorporates the substance of former Rule 64(b).

~~(c)~~**Rule 64-II. Replevin ~~a~~Actions~~.~~**

(a~~1~~) ~~Initiating action. --~~INITIATING ACTION; NOTIFYING THE JUDGE. A complaint in replevin ~~shall set forth,~~must be accompanied by an affidavit~~, specific facts~~ meeting the requirements of D.C. Code § 16-3703 (2012 Repl.). ~~Upo~~On filing ~~the~~any action in replevin and before process ~~therefor~~ is placed in the hands of the United~~.~~ States~~.~~ ~~M~~marshal or deputy marshal or other process server, the plaintiff, personally or by ~~the plaintiff's~~his or her attorney, ~~sha~~will bring the action to the attention of the ~~judicial officer~~judge to whom the case is assigned ~~as provided in SCR-~~under General Family Rule R(a)(2).

(b~~2~~) ~~Setting of hearing date. --~~HEARING ON APPLICATION FOR WRIT; ORDER TO PRESERVE PROPERTY.

(1) *Setting a Hearing*. ~~At the time of initiating the action under this Rule~~When notifying the judge of the action, the plaintiff may request that the ~~judicial officer~~judge set a date for a hearing at which the plaintiff ~~sha~~will be required to establish the probable validity of the claim and the defendant ~~sha~~will be given an opportunity to appear and be heard with respect to whether a writ of replevin should issue.

(2) *Order to Preserve Property*. If~~, upon such application,~~ the ~~judicial officer~~judge determines ~~that~~ the plaintiff has filed a verified complaint alleging ~~that~~ the defendant is wrongfully detaining ~~certain~~the specified property ~~which~~that the plaintiff is entitled to possess, the ~~judicial officer~~judge may issue an order:

(A) directing the defendant to preserve the property ~~which~~that is the subject of the action in ~~the defendant's~~his or her possession or under ~~the defendant's~~his or her control so as to keep it amenable to the process of the ~~C~~court pending further order of the ~~C~~court;~~.~~

(B) ~~The order shall also~~ indicating the date on which the plaintiff's application for a writ of replevin will be ~~brought on for~~ hearding; and

(C) ~~shall~~ informing the defendant that ~~the defendant~~he or she may be heard at that time, with or without witnesses, on whether the writ should issue.

(3) ~~Notice to defendant. --~~*Service of Process*. The order ~~shall~~must direct the plaintiff to ~~cause~~serve a copy of the summons, complaint, and order ~~to be served up~~on the defendant at least ~~five~~7 days prior to the hearing date ~~set for the hearing~~. ~~If they are not served by that time, the~~A plaintiff who does not effect service on time ~~shall~~must apply to the ~~judicial officer~~judge to whom the case is assigned to set a later hearing date, which will provide the defendant with sufficient time to ~~make~~ adequately prepareation ~~therefor~~. ~~If any~~The order ~~entered under this paragraph (c), the judicial officer~~ may ~~include such~~ require~~ments as will~~ actions by the plaintiff designed to accomplish prompt and expeditious notice to the defendant.

(c~~4~~) ~~Issuance of writ after hearing. --~~ISSUING THE WRIT AFTER HEARING; REQUIRING A SECURITY FROM THE DEFENDANT. At the conclusion of the hearing, the ~~judicial officer~~judge may authorize the issuance and execution of a writ of replevin or may, if it appears just, permit all or part of the property to remain in the possession of the defendant pending further order of the ~~C~~court. If the defendant remains in possession of the property, ~~n the latter event, the judicial officer~~the court may require the defendant to post an appropriate surety bond or other undertaking or may otherwise provide for the protection of the property pursuant to D.C. Code § 16-3708 (2012 Repl.).

(d~~5~~) ~~Issuance of writ prior to hearing. --~~ISSUING THE WRIT PRIOR TO HEARING.

(1) *In General*. In ~~making~~ the initial application ~~to the judicial officer to whom the case is assigned~~, the plaintiff may apply for issuance ~~to~~of the writ without prior adversary hearing on the ground that there is an immediate danger that the defendant will destroy or conceal the property in dispute~~,~~ or on any other ground set forth in D.C. Code § 16-501 (d)(2)~~-(5) (2012 Repl.), (3), (4), or (5)~~ as a basis for attachment before judgment.

(2) *Judicial Action*. ~~Upon such application, supported by affidavit or sworn testimony reciting specific facts which tend to establish the grounds therefor, t~~The ~~judicial officer~~judge may~~, if deemed appropriate,~~ authorize the immediate issuance of the writ prior to the hearing only if the application is supported by affidavit or sworn testimony reciting specific facts that tend to establish the required grounds. If ~~issuance is~~the judge authorize~~sd~~ the issuance of the writ, ~~the judicial officer shall enter in the record~~ findings of fact and conclusions of law, which state the basis of the need for ~~such~~ immediate issuance must be entered on the record.

(3) *Vacating the Writ*. After at least 24 hours notice to the plaintiff, ~~T~~the defendant against whom a writ has been issued ~~in this manner~~without a hearing may~~, on not less than 24 hours notice to the plaintiff,~~ apply to the ~~C~~court to have the writ vacated. Regardless, ~~i~~if such writ issues, a hearing ~~shall~~must take place on the fifth ~~court~~ day after execution of the writ. It ~~shall be~~is the duty of ~~the~~ plaintiff's counsel to notify the ~~C~~court promptly of the execution of the writ.

(~~e~~6) ~~Trial. --~~EXPEDITED TRIAL. Trial~~s~~ of all actions in replevin ~~shall~~must be expedited.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 64-II. It incorporates the substance of former Rule 64(c).

~~Rule 64-I. [Deleted].~~

Rule 65. Injunctions~~.~~ and Restraining Orders

(a) ~~Preliminary injunction~~PRELIMINARY INJUNCTION.

(1) *Notice*. ~~No~~The court may issue a preliminary injunction ~~shall be issued without~~only on notice to the adverse party.

(2) *Consolidati~~ng~~on ~~of~~the ~~h~~Hearing with the ~~t~~Trial on the ~~m~~Merits*. ~~No~~Before or after ~~the commencement of~~beginning the hearing of a~~n application~~motion for a preliminary injunction, the ~~C~~court may ~~order~~advance the trial ~~of the action~~ on the merits ~~to be advanced~~ and consolidate~~d~~ it with the hearing ~~of the application~~. Even when ~~this~~ consolidation is not ordered, ~~any~~ evidence that is received ~~up~~on ~~an~~the ~~application~~motion ~~for a preliminary injunction which~~and that would be admissible ~~upon the~~at trial ~~on the merits~~ becomes part of the trial record ~~on the trial~~ and need not be repeated ~~upon the~~at trial.

(b) ~~Temporary restraining order; notice; hearing; duration.~~ TEMPORARY RESTRAINING ORDER.

(1) *Issuing Without Notice*. The court may issue ~~A~~a temporary restraining order ~~may be granted~~ without written or oral notice to the adverse party or ~~the adverse party's~~its attorney only if:

(A~~1~~) ~~it clearly appears from~~ specific facts ~~shown by~~in an affidavit or ~~by the~~a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the ~~applicant~~movant before the adverse party ~~or the adverse party's attorney~~ can be heard in opposition~~,~~; and

(B~~2~~) the ~~C~~court ~~is satisfied~~finds that: ~~either~~

(i) the ~~applicant~~movant has made ~~all~~ reasonable efforts under the circumstances to furnish to the adverse party's attorney, if known, ~~or~~ otherwise to the adverse party, at the earliest practicable time prior to the hearing on the motion for such order~~,~~ ~~(A)~~ actual notice of the hearing and ~~(B)~~ copies of all pleadings and other papers filed to date in the action or to be presented to the ~~C~~court at the hearing; or

(ii) that bodily harm is likely to occur prior to the hearing on the temporary restraining order if such notice be given.

(2) *Contents; Expiration*. Every temporary restraining order ~~granted~~issued without notice ~~shall be endorsed with~~must state the date and hour it was ~~of~~ issued~~ance~~; ~~shall be filed forthwith in the Clerk's Office and entered of record; shall define~~describe the injury and state why it is irreparable; ~~and~~state why the order was granted without notice; and be promptly filed in the clerk's office and entered in the record. ~~shall~~The order expire~~s by its terms within such~~at the time after entry~~—~~, not to exceed 1~~40~~ days~~—that~~, as the ~~C~~court ~~fixes~~sets, unless ~~within the~~before that time ~~so fixed the order~~the court, for good cause ~~shown~~, ~~is~~ extend~~sed~~ it for a like period or ~~unless~~ the adverse party ~~against whom the order is directed~~ consents ~~that it may be extended for a~~to a longer ~~period~~extension. The reasons for ~~the~~an extension ~~shall~~must be entered ~~on~~in the record.

(3) *Expediting the Preliminary-Injunction Hearing*. If the order is issued~~n case a temporary restraining order is granted~~ without notice, the motion for a preliminary injunction ~~shall~~must be set ~~down~~ for hearing at the earliest possible time~~,~~ ~~and~~ take~~s~~ precedence over all matters except hearings on older matters of the same character~~,~~; At the~~and when the motion comes on for~~ hearing~~,~~ the party who obtained the ~~temporary restraining~~ order ~~shall~~must proceed with the ~~application~~motion; ~~for a preliminary~~

injunction and, if the party does not do so, the Ccourt shallmust dissolve the temporary restraining order.

(4) *Motion to Dissolve*. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party asset by the Ccourt may prescribe, the adverse party may appear and move itsto dissolveution or modify the order.ication and in that event tThe Ccourt shall proceed tomust then hear and determinedecide suchthe motion as expeditiouslypromptly as the ends of justice requires.

(c) Security. --SECURITY. No restraining order ortThe court may issue a preliminary injunction or a temporary restraining order only if shall issue except upon the movant givesing of security by the applicant, in such sumam amount as the Ccourt deemsconsiders proper, for the to payment of such the costs and damages as may be incurred or sufferedsustained by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of tThe United States, or of the District of Columbia, or of and officers or agenciesy of either are not required to give security. Where a temporary restraining order or preliminary injunction is granted for the physical protection of any party to the action or for custody of children, no security shall beis required of the applicantmovant for such order or injunction.

(d) Form and scope of injunction or restraining orderCONTENTS AND SCOPE OF EVERY INJUNCTION AND RESTRAINING ORDER.

(1) *Contents*. Every order granting an injunction and every restraining order must:shall

(A) state set forth the reasons for why its issuedance;

(B) state its shall be specific in terms specifically; and

(C) shall describe in reasonable detail, and not by referringence to the complaint or other document, the act or acts sought to be restrained or required.

(2) *Persons Bound*.; The orderand is bindsing only the following who receive actual notice of it by personal service or otherwise:

(A)upon the parties to the action,;

(B) the parties'ir officers, agents, servants, employees, and attorneys,; and

(C) upon thoseother persons who are in active concert or participation with them who receive actual notice of the order by personal service or otherwiseanyone described in Rule 65(d)(2)(A) or (B).

COMMENT TO 2018 AMENDMENTS

This rule has been modified to conform to the stylistic changes to Civil Rule 65.

Rule 65-I. [Deleted].

Rule 65.1. Proceedings Against a Surety

Whenever these rules require or allow a party to give security, and security is given through a bond or other undertaking with one or more sureties, each surety submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for receiving service of any papers that affect its liability on the bond or undertaking. The surety's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly mail a copy of each to every surety whose address is known.

COMMENT TO 2018 AMENDMENTS

The substance of this rule has been moved from Rule 71 to conform with the numbering in the civil rules.

Rule 66. Receivers ~~appointed by the Superior Court.~~

An action ~~wherein~~in which a receiver has been appointed ~~shall~~may ~~not~~ be dismissed ~~except~~only by court order ~~of the Court~~.

COMMENT TO 2018 AMENDMENTS

This rule has been modified to conform to the stylistic changes to Civil Rule 66.

Rule 67. Deposit into Court; ~~r~~Recording ~~m~~Money ~~p~~Paid to or by ~~c~~Clerk~~.~~

(a) ~~Deposit in court. --~~DEPOSIT INTO COURT.

(1) *Depositing Property.* ~~Upon motion, the Court may allow~~If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party~~—~~on notice to every other party and by leave of court~~—~~may ~~to~~ deposit with the ~~C~~court all or ~~any~~ part of ~~a sum of~~the money or ~~any other~~ thing ~~capable of delivery which is the subject to an action~~, whether or not that party claims ~~all or~~ any ~~part~~ of ~~it~~such sum or thing. The depositing party ~~making the deposit shall serve~~must deliver to the clerk a copy of the order permitting deposit ~~on the Clerk of the Court~~.

(2) *Investing and Withdrawing Funds*. Money paid into ~~C~~court under this ~~paragraph~~rule ~~shall~~must be deposited and withdrawn in accordance with ~~the provisions of~~ D.C. Code § 11-1723 (b~~a~~)~~(2)~~ (2012 Repl.) or any like statute.

(b) ~~Recording money paid to or by Clerk. --~~RECORDING MONEY PAID TO OR BY CLERK. The ~~C~~clerk ~~shall~~must receive and keep proper accounts of all moneys deposited or paid into or out of the ~~C~~clerk's office and make such reports concerning same as may be required by law or court order~~ed by the Court~~.

COMMENT TO 2018 AMENDMENTS

This rule has been modified to conform to the stylistic changes to Civil Rules 67 and 67-I. Section (a) corresponds to Civil Rule 67, and section (b) corresponds to Civil Rule 67-I.

Rule 67-I. [Deleted].

Rule 68. Offer of ~~j~~Judgment~~.~~

(a) ~~Offer of judgment; liability for costs. --~~MAKING AN OFFER; JUDGMENT ON AN ACCEPTED OFFER. At ~~any time more than~~least 1~~4~~0 days before the date set for trial ~~begins~~, a party defending against a claim may serve ~~up~~on ~~the adverse~~an opposing party an offer to allow judgment ~~to be taken against the defending party for the money or property or to the effect specified in the offer~~on specified terms, with the costs then accrued. If, within 1~~4~~0 days after ~~the~~being served,~~ice of the offer~~ the ~~adverse~~opposing party serves written notice ~~that the offer is~~ accept~~inged~~ the offer, either party may then file the offer and notice of acceptance, ~~together with~~plus proof of service. ~~thereof and thereupon t~~The ~~C~~court ~~shall~~must then enter judgment, unless it finds that the custody, visitation, or support provisions ~~with respect to custody, visitation or with support~~ are not in the best interests of the child.

(b) UNACCEPTED OFFER. An unaccepted offer ~~not accepted shall be deemed~~is considered withdrawn, but it does not preclude a later offer. ~~and e~~Evidence ~~there~~of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) OFFER AFTER LIABILITY IS DETERMINED. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time—but at least 14 days—before the date set for a hearing to determine the extent of liability.

(d) PAYING COSTS AFTER AN UNACCEPTED OFFER. If ~~the Court finds that~~ the judgment ~~finally obtained by~~that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after ~~the making of~~ the offer was made. ~~The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time but not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.~~

(~~b~~e) ~~Costs. --~~COSTS. For purposes of this ~~R~~rule, costs may include ~~such~~ attorney's fees ~~as~~that may be awarded by statute or otherwise in connection with the pending action.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 68, except that the substance of section (e) (formerly section (b)) was retained from the former domestic relations rule.

COMMENT

Because attorney's fees are routinely statutorily at issue in domestic relations cases, paragraph (b) provides that the fees incurred after the making of an offer of judgment are properly awardable as costs under this Rule. See *Kelly v. Clyburn,* 490 A.2d 188 (D.C. App. 1985). See D.C. Code § 16-911, 16-918.

Rule 68-I. [Deleted].

COMMENT

SCR-Civil 68-I has been deleted as not appropriate to Family Division practice.

Rule 69. ~~Post-judgment collection.~~Execution

(a) IN GENERAL.

(1) *Money Judgment; Applicant Procedure.* A money judgment is enforceable by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the District of Columbia, but a federal statute governs to the extent it applies.

(2) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in Rule 69-I.

(b) [Omitted].

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 69. Provisions related to attachment after judgment have been moved to Rule 69-I, and particular provisions related to attachment of wages have been moved to Rule 69-II.

~~Method of collection. -- The methods for collecting a money judgment are (1) execution, by which money or assets in the possession of the judgment debtor are seized; (2) attachment, by which money or other assets belonging to the judgment creditor, but in the possession of a third party are frozen and eventually subjected to a condemnation order; and (3) garnishment, which is a form of attachment relating to wages.~~

~~(1) Execution. -- The judgment creditor shall file and have issued by the Clerk a Writ of Execution. The judgment creditor shall serve the writ pursuant to SCR-Dom. Rel.5 on the judgment debtor. A Writ of Execution may be issued within three years after (i) the expiration of any stay of execution, or (ii) it could have been issued pursuant to the law and the Rules of this Court. A Writ of Execution is returnable on or before the sixtieth day after its issuance. If a writ is issued and returned unsatisfied in whole or in part within the three year period, or any period of extension of the judgment, an alias writ may be issued during the life of the judgment.~~

~~(2) Attachment after judgment. -- The judgment creditor must file and have issued by the Clerk a Writ of Attachment. The judgment creditor shall serve the Writ of Attachment pursuant to SCR-Dom. Rel. 5. The Writ of Attachment includes interrogatories to be answered by the person to be served with the writ. Within ten days after service of the writ, the recipient shall file the answer to interrogatories with the Clerk and serve a copy of the answers to the interrogatories upon the parties. Within (i) four weeks after the answers to the interrogatories were due but not filed or (ii) within four weeks after the recipient has filed the answers to the interrogatories or (iii) within such later time as may be authorized by the Court upon a motion made within the applicable period, the judgment creditor shall file an application for judgment of condemnation or recovery against the third party. If the judgment creditor fails to make a timely application, the attachment shall be dismissed.~~

~~(3) Garnishment of wages after judgment.~~

~~(A) Writ of attachment for wages. -- The judgment creditor must file and have issued by the Clerk a Writ of Attachment (Garnishment of wages, etc.). The judgment creditor shall serve the writ pursuant to SCR-Dom. Rel. 5 upon the employer-garnishee. The writ includes interrogatories to be served with the writ. Within (i) four weeks after the answers to the interrogatories were due but not filed or (ii) within 15 weeks of the date on which a garnishee fails to make payment due under the writ or (iii) within such later time as may be authorized by the Court upon a motion made within the applicable period, the judgment creditor shall file an application for judgment against the third party. If no timely judgment of condemnation or of recovery has been applied for or entered, the garnishment shall be dismissed.~~

~~(B) Reporting credits against judgment. -- It shall be the duty of a judgment creditor who is receiving payments on account of the judgment from an employer-garnishee and who shall receive credits upon said judgment from a source other than said employer-garnishee to notify said employer-garnishee and the Clerk in writing of such receipt within 10 days thereafter, including the date, amount, and source thereof.~~

~~(C) Schedule and receipt for payments. -- Every judgment creditor receiving payments from an employer-garnishee pursuant to the issuance of a wage attachment shall be obligated to credit the payments first against the accrued interest on the unpaid balance of the judgment, if any, second upon the principal amount of the judgment, and third upon those attorney's fees and costs actually assessed in the cause, and shall send a receipt to the garnishee within five days after such payment, which receipt shall set forth the application of such payment pursuant to the aforesaid schedule.~~

~~(D) Noncompliance. -- If a judgment creditor fails to comply with this Rule or with the applicable statutory provisions, the Court may in its discretion, on motion of any interested party, enter an order vacating and setting aside the attachment and continuing levy of said judgment creditor then in force and effect, but without prejudice to the refiling and serving of another attachment, which shall follow prior attachments of wages of the judgment debtor in the hands of the employer-garnishee, and may enter a judgment of a reasonable attorney's fee and tax costs in favor of the party filing the motion to vacate and set aside the attachment.~~

~~(E) Garnishment docket card. -- Each Writ of Attachment for wages shall be accompanied by a garnishment docket card prepared by the judgment creditor or the judgment creditor's attorney. The judgment creditor or the judgment creditor's attorney shall supply the Social Security number of the judgment-debtor, if known. The Clerk shall furnish the garnishment docket card on a form approved by the Court.~~

Rule 69-I. Attachment After Judgment

(ab) Discovery in aid of collection. --DISCOVERY IN GENERAL. All discovery procedures authorized by SCR-Dom. Rel.Rules 26-37 are available to the judgment creditor in the manner prescribed by these Rrules, except that a subpoena ad testificandum addressed to a person other than the judgment debtor and a subpoena duces tecum shallmay issue only upon order of the Ccourt. The first subpoena ad testificandum or notice of deposition addressed to the judgment debtor may issue without Ccourt order, but any subsequent subpoena or notice so addressed shallmay issue only upon order of the Ccourt. Nothing contained herein shall be construed to requireThis rule does not require that a party to the action be paid a witness fee for attendance.

(cb) Oral examination in Court. --ORAL EXAMINATION IN COURT. The judgment creditorplaintiff may summon the judgment debtordefendant and, upon leave of court, any other person to appear in court on a date certain and submit to oral examination respecting execution of any judgment rendered. Any person so summoned may, upon leave of court, be required to produce papers, records, or other documents at the examination. If the person summoned was personally served but fails to appear, the Ccourt may, upon plaintiff's request, issue a bench warrant for the person's arrest.

(dc) Other claims to property. --OTHER CLAIMS TO PROPERTY. Before the final disposition of the property attached or its proceeds— (except where it is real property—), any person may file a motion and affidavit setting forth a claim thereto, or an interest in, or lien upon the sameit. Without other pleadings, the Ccourt shallmust try the issues raised by suchthe claim and may make all orders necessary to protect any right of the claimant. Any party to suchthe proceeding may demand a jury trial by jury by filing sucha demand within five7 days of the filing of suchthe motion and affidavit.

(d) GARNISHEE'S ANSWER. Within 10 days after accepting service of the writ of attachment, a garnishee must file an answer to the interrogatories with the clerk and serve a copy of the answer on the defendant and the party for whom the garnishment was issued. If within 14 days after service of the answer or at a later time if the court allows, the party for whom the garnishment was issued fails to contest the answer to the interrogatories under D.C. Code § 16-522 (2012 Repl.), the garnishee's obligations under the attachment will be limited by the garnishee's answer.

(e) JUDGMENT AGAINST GARNISHEE. No judgment against a garnishee under D.C. Code § 16-556 or -575 (2012 Repl.) will be entered except by court order. Applications for a judgment must be filed:

(1) within 4 weeks after answers to the interrogatories are due and not filed;

(2) as to property other than "wages" as defined in D.C. Code § 16-571 (2012 Repl.), within 4 weeks after the garnishee has filed answers to the interrogatories;

(3) as to such "wages," within 15 weeks of the date on which a garnishee fails to make a payment due under the writ; or

(4) within a later time authorized by the court on a motion made within the applicable period.

(f) DISMISSAL OF GARNISHMENT AND ATTACHMENT. If no judgment of condemnation or of recovery has been applied for or entered within the time provided by this rule, the garnishment and attachment must stand dismissed. On oral or written request, the clerk must enter a dismissal of the garnishment and attachment and must

furnish a certificate of the dismissal to the garnishee, the defendant, or any other person.

(g) CONTENT OF WRIT OF ATTACHMENT ON NON-WAGES. The writ must:

(1) contain:

(A) the caption of the action;

(B) the name and last known address of the judgment debtor;

(C) the name and address of the judgment creditor; and

(D) the date of issuance;

(2) list the amount of the total balance due under the judgment;

(3) direct the garnishee to hold, subject to further proceedings, the non-exempt property of the judgment debtor up to the amount of the total balance due at the time of the issuance of the writ and which is in the possession or charge of the garnishee at the time of service of the writ;

(4) direct the garnishee not to hold, and to make available to the account holder, all funds from an account that consists solely of direct deposited benefits that are exempt:

(A) under federal law, including:

(i) Social Security benefits;

(ii) Supplemental Security Income;

(iii) Social Security disability benefits;

(iv) veterans' benefits;

(v) Civil Service Retirement System benefits;

(vi) Federal Employee Retirement System benefits;

(vii) Black Lung or Railroad Retirement benefits; or

(B) under District of Columbia law, including:

(i) disability or unemployment benefits;

(ii) public assistance/Temporary Assistance for Needy Families benefits; or

(iii) workers' compensation benefits;

(5) direct the garnishee, in any account that consists in part of benefits that are exempt under federal law, not to hold, and to make available to the account holder, an amount equal to the total amount of exempt funds deposited into the account in the two months prior to the service of a writ of attachment; and

(6) contain interrogatories to be answered by the garnishee regarding the nature of the property in possession of the garnishee and indebtedness of the garnishee to the judgment debtor.

(h) NOTICE TO THE JUDGMENT DEBTOR. The judgment creditor must mail to the judgment debtor at his or her last known address, by certified and first-class mail, a copy of the writ and the Notice to Debtor of Non-Wage Garnishment and Exemptions on the form available in the clerk's office, no more than 3 days after service of the writ on the garnishee.

(i) FUNDS EXEMPT FROM ATTACHMENT.

(1) *Motion Claiming Exemption*. A party may raise a claim that funds are exempt from a writ of attachment by filing a motion with the Presiding Judge, or his or her designee, claiming an exemption and requesting a hearing.

(2) *Hearing on Motion*. On the filing of a motion, the clerk must set a hearing before the Presiding Judge, or his or her designee, as soon as practicable, but no later than 7 days after the motion is filed unless:

(A) the moving party requests a later date; or
(B) the parties otherwise agree.
(3) *Effect of Filing Motion*. On the filing of a motion, any further action on the writ of attachment, including any condemnation of funds, must be stayed until a decision is made by the Presiding Judge, or his or her designee, on the merits of the motion.

COMMENT TO 2018 AMENDMENTS

This rule is new. It contains provisions previously found in Rule 69. The rule has been modified to conform with Civil Rule 69-I.

~~**Rule 69-I. [Deleted].**~~

Rule 69-II. Particular Provisions for Attachments of Wages After Judgment

(a) APPLICABILITY. The provisions of this rule do not supersede or repeal any other rule of this court unless in express conflict and must apply only to attachments issued pursuant to D.C. Code § 16-571 to -584 (2012 Repl.) and *15 U.S.C. § 1601* et seq.

(b) REPORTING CREDITS AGAINST JUDGMENT. It is the duty of a judgment creditor who is receiving payments on account of the judgment from an employer-garnishee and who will receive credits upon said judgment from a source other than said employer-garnishee to notify said employer-garnishee and the clerk in writing of such receipt within 14 days, including the date, amount, and source.

(c) SCHEDULE AND RECEIPT FOR PAYMENTS. Every judgment creditor receiving payments from an employer-garnishee pursuant to the issuance of a wage attachment is obligated to credit the payments first against the accrued interest on the unpaid balance of the judgment, if any, second on the principal amount of the judgment, and third on those attorney's fees and costs actually assessed in the cause, and must send a receipt to the garnishee within 7 days after such payment, which receipt must set forth the application of such payment pursuant to the schedule above.

(d) NONCOMPLIANCE. If any judgment creditor fails to comply with this rule or with the statutory provisions cited in Rule 69-II(a), the court may in its discretion, on motion of any interested party:

(1) enter an order vacating and setting aside the attachment and continuing levy of said judgment creditor then in force and effect, but without prejudice to the refiling and serving of another attachment, which must follow prior attachment of wages of the judgment debtor in the hands of the same employer-garnishee; and

(2) enter a judgment of a reasonable attorney's fee and tax costs in favor of the party filing the motion to vacate and set aside the attachment.

(e) GARNISHMENT DOCKET CARD. Each writ of attachment for wages must be accompanied by a garnishment docket card prepared by the judgment creditor or the judgment creditor's attorney. The judgment creditor or the judgment creditor's attorney must provide the social security number of the judgment-debtor, if known. The garnishment docket card must be recorded on a form provided by the clerk’s office or on a form that is substantially similar.

COMMENT TO 2018 AMENDMENTS

This rule is new; the substance of the rule previously appeared in Rule 69. This rule now conforms to Civil Rule 69-II, except that section (e) was retained from the former domestic relations rule.

~~**Rule 69-II. [Deleted].**~~

Rule 70. Enforcing a Judgment for a sSpecific aActs; vesting title.

(a) PARTY'S FAILURE TO ACT; ORDERING ANOTHER TO ACT. If a judgment directsrequires a party to execute a conveyance of land, or to deliver a deeds or other document, s or to perform any other specific act and the party fails to comply within the time specified, the Ccourt may directorder the act to be done — at the cost of the disobedient party's expense — by some another person appointed by the Ccourt. andWhen done, the act when so done has likethe same effect as if done by the party.

(b) VESTING TITLE. If the real or personal property is within the District of Columbia, the court—instead of ordering a conveyance—may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) OBTAINING A WRIT OF ATTACHMENT OR SEQUESTRATION. On application of theby a party entitled to performance of an act and approval by the Ccourt, the Cclerk shallmust issue a writ of attachment or sequestration against the disobedient party's property of the disobedient party to compel obedience to the judgment.

(d) OBTAINING A WRIT OF EXECUTION OR ASSISTANCE. On application by a party who obtains a judgment or order for possession and approval by the court, the clerk must issue a writ of execution or assistance.

(e) HOLDING IN CONTEMPT. The Ccourt may also hold the disobedient in proper cases adjudge the party in contempt. If real or personal property is within the District of Columbia, the Court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. On application of a party entitled to possession, and approval of the Court, the Clerk shall issue a writ of execution or assistance.

COMMENT TO 2018 AMENDMENTS

This rule was amended to conform to Civil Rule 70, except that court approval is required before the clerk can issue a writ.

Rule 71. ~~Proceedings on behalf of and~~Enforcing Relief for or ~~a~~A~~gainst person not~~a Nonpart~~yies; proceedings against sureties.~~

~~(a) Proceedings on behalf of and against person not parties. --~~ When an order grants relief for a nonparty or ~~is made in favor of a person who is not a party to the action, that person may enforce compliance with the order by the same process as if a party; and, when compliance with an order~~ may be ~~lawfully~~ enforced against ~~a person who is not~~ a nonparty, the procedure for enforcing the order is the same as for a party.~~that person is liable to the same process for enforcing compliance with the order as if a party.~~

~~(b) Proceedings against sureties. -- Whenever these Rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court, who shall forthwith mail copies to the sureties if their addresses are known.~~

COMMENT TO 2018 AMENDMENTS

This rule was amended to conform to Civil Rule 71. The substance of section (b) was moved to new Rule 65.1 to conform to the numbering in the civil rules.

Rule 71A. [Deleted].

COMMENT

SCR-Civil 71A has been deleted as not appropriate to Family Division practice.

Rule 71A-I. [Deleted].

COMMENT

SCR-Civil 71A-I has been deleted as not appropriate to Family Division practice.

IX. APPEALS.

Rule 72. [Deleted].

~~**Rule 72. Enforcement of foreign judgments.**~~

~~A copy of a judgment, decree or order of a court of the United States, or of any other court entitled to full faith and credit in the District of Columbia, may be filed with the Clerk by the party who obtained it or by that party's attorney. The judgment sought to be filed shall be authenticated in accordance with District of Columbia law. The party or counsel shall accompany the filing with the information called for in any form prescribed by the Clerk, and shall pay the filing fee established by the Court. A foreign judgment filed with the Clerk shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner, subject to the provisions of the Uniform Enforcement of Foreign Judgments Act of 1990, D.C. Code §§ 15-351 through 15-357.~~

COMMENT TO 2018 AMENDMENTS

To conform to a restructuring in the civil rules, the substance of Rule 72 has been moved to Rule 62-III.

COMMENT

Rule 72 is intended to implement the Uniform Enforcement of Foreign Judgments Act of 1990 (D.C. Code §§ 15-351 - 15-357), which has been adopted by the District of Columbia. As a "Uniform Act," it should be construed to effectuate its general purpose to make consistent the law of all jurisdictions that enact it. Accordingly, where there are no interpretations of the Act's provisions in this jurisdiction, guidance may be found in the decisions of other jurisdictions that have adopted the Act. While the Act was intended to provide a simple and expeditious procedure to enforce a foreign judgment in the District of Columbia, it does not impair the right of a party to resort to the cumbersome prior practice of bringing suit to enforce a foreign judgment.

The Rule is not intended to preempt the provisions of other locally-adopted uniform acts dealing with Family Division matters. See the Uniform Child Custody Jurisdiction Act (D.C. Code §§ 16-4501 - 4524); the Uniform Reciprocal Enforcement of Support Act (D.C. Code §§ 46-701 - 726).

Rules 73 to 76. [Deleted].

X. SUPERIOR COURT AND CLERK.

Rule 77. Superior Court and Clerk.Conducting Business; Clerk's Authority; Notice of an Order or Judgment

(a) WHEN THE SUPERIOR COURT IS OPEN. The Superior Court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(ab) Clerk's Office and orders by Clerk. --CLERK'S OFFICE HOURS; CLERK'S ORDERS.

(1) *Hours*. The Cclerk's Ooffice with thea Cclerk or a deputy in attendanceon duty to assist the public must shall be open during posted hours Monday through Fridaynormal business hours as set by the Chief Judge. When practicable, those hours will comport with the hours of operation posted on the Superior Court's website.

(2) *Orders*. Subject to the court's power to suspend, alter, or rescind the clerk's action for good cause, When authorized by law, the Cclerk may:

(A) issue process;,

(B) enter a default;s and

(C) or judgments by default, and act on any other matter that does not require the court's action. conduct other proceedings which do not require allowance or order of the Court; but the Clerk's action may be suspended or altered or rescinded by the Court upon cause shown.

(bc) Notice of orders or judgments. --SERVING NOTICE OF AN ORDER OR JUDGMENT.

(1) *Service*. Immediately upon the entry ofafter entering an order or judgment signed or decided out of the presence of the parties or their counsel, the Cclerk shallmust serve notice of the entry,a copy of the order or judgment by mail in the manner as provided for in SCR-Dom. Rel.Rule 5, upon each party who is not in default for failingure to appear.,and shall indicate the date of mailing in The clerk must record the service on the docket. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these Rules; but anyA party also may in addition serve a notice of suchthe entry in the manneras provided in SCR-Dom. Rel.Rule 5 for the service of papers.

(2) *Time to Appeal Not Affected by Lack of Notice*. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Ccourt to relieve a party for failingure to appeal within the time allowed, except as permitted inallowed by the Rules for the District of Columbia Court of Appeals.

(3) *Who Can Perform the Clerk's Function*. Nothing in this rule precludes a judge or magistrate judge or his or her authorized staff member from performing the function of the clerk prescribed in Rule 77(c).

COMMENT TO 2018 AMENDMENTS

This rule has amended to conform to Civil Rule 77, except for the provision requiring all proceedings to take place in "open court."

Rule 77-I. [Deleted].

Rule 77-II. [Deleted].

Rule 78. [Deleted].

COMMENT

SCR-Civil 78 has been deleted as not appropriate to Family Division practice.

Rule 78-I. [Deleted].

Rule 79. ~~Books and r~~Records ~~k~~Kept by the Clerk ~~and entries therein; custody and copies of papers filed.~~

(a) ~~Docket. --~~DOCKET.

(1) *In General*. The ~~C~~clerk ~~shall~~must keep a record known as the "docket" in the form and manner prescribed by the Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge. ~~and shall~~The clerk must enter ~~therein~~ each domestic relations action in the docket~~to which these Rules are made applicable~~. ~~The docket may be kept solely by computer or electronic means.~~ Actions ~~shall~~must be assigned consecutive file numbers, which~~. The file number of each action shall~~ must be noted ~~o~~in the docket where the first entry of the action is made.

(2) *Items to Be Entered*. The following items must be marked with the file number and entered chronologically in the docket:

(A) ~~All~~ papers filed with the ~~C~~clerk;~~,~~

(B) ~~all~~ process issued, and proofs of service or other ~~and~~ returns ~~made thereon~~showing execution;~~,~~ and

(C) ~~all~~ appearances, orders, and judgments ~~shall be entered chronologically on the docket assigned to the action and shall be marked with its file number~~.

(3) *Contents of Entries*. ~~These entries shall~~Each entry must ~~be~~ brief~~ly~~ ~~but shall~~ show the nature of ~~each~~the paper filed or writ issued, ~~and~~ the substance of each proof of service or other return, and the substance and date of entry of each order ~~or~~and judgment ~~of the Court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made.~~

(b) ~~Judgments and orders. --~~JUDGMENTS AND ORDERS. The ~~C~~clerk ~~shall~~must keep a copy of every final judgment and ~~or~~ appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The Executive Officers of the District of Columbia Courts will, subject to the supervision of the Chief Judge, prescribe the form and manner in which such copies must be kept. ~~issued by a judicial officer.~~

(c) ~~Indices: Calendars. --~~INDEXES; CALENDARS. Under the court's direction, the clerk must:

(1) keep~~Suitable~~ ind~~exes~~ices~~ of the docket~~s~~ and ~~and [sic]~~ of ~~every~~the judgment~~s~~ and order~~s~~ ~~referred to~~described in ~~paragraph~~ Rule 79(b); and ~~of this Rule shall be kept by the Clerk under the direction of the Court.~~

(2) prepare calendars of all actions ready for trial.

(d) ~~Other books and records of the Clerk. --~~OTHER RECORDS. The ~~C~~clerk ~~shall also~~must keep ~~such~~any other ~~books and~~ records ~~as may be~~ required ~~from time to time~~ by the Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge.

(e) ENTRY ON DOCKET. Nothing in these rules precludes a judge or magistrate judge or his or her authorized judicial staff member from making entries on the docket.

COMMENT TO 2018 AMENDMENTS

This rule was amended to conform to Civil Rule 79. Accordingly, provisions related to copies and custody of filed papers were moved to new Rule 79-I.

Rule 79-I. Copies and Custody of Filed Papers

(a~~e~~) ~~Inspection and copying of files and records. --~~ACCESS TO FILED PAPERS. Unless prohibited by statute, rule, or order of the court, ~~i~~inspection and copying of the files and records of th~~is~~e ~~Division~~ Family Court ~~shall~~will be permitted. ~~unless prohibited by statute, rule or order of the Court. No Court file or duly filed pleading in any case shall be removed or carried from the courthouse without the written order of a judge assigned to the Division.~~

(~~f~~b) ~~Verification of filing. --~~CERTIFIED COPIES.

(1) *In Person Filings*. ~~Upon~~When a paper is receive~~ding~~d and file~~ing any paper~~d, the ~~C~~clerk ~~shall~~must stamp the date of filing on the face of the paper in any manner ~~so as to be~~that is legible and must also stamp the date of filing separately on any exhibit. If any person filing any paper requests a ~~verification~~certification of such filing, a copy of the paper provided by such person ~~shall~~must be ~~stamped~~marked to show the time and date of the filing and initialed by the person with whom the paper was filed. Such ~~file-stamped~~certified copy ~~shall be~~is prima facie evidence in any proceeding that the original of the paper was filed as shown by the ~~file stamp~~certification.

(2) *Electronic Filings.* Any filings made electronically as permitted by these rules or by administrative order is considered date stamped as specified by administrative order.

(c) CUSTODY OF DOCUMENTS. The clerk or his or her designee is the custodian of all papers filed in all civil cases. No original paper, document, or record in any case may be removed from its place of filing or custody, except under the following conditions:

(1) Except with approval of the court, no paper, document, or record may be taken from the courthouse by any person other than the custodian of the paper, document, or record, who must retain possession of it and must return it to its place of filing immediately upon completion of the purpose for which it was removed.

(2) When required for use before a division of the court or a person to whom the case has been referred for consideration, or when ordered by a judge of the court, the custodian, the custodian's designee, any attorney or party to the case, or any person designated by a judge may be permitted to remove such paper, document, or record for the use required or ordered.

(3) In any case where the paper, document or record is removed by any person other than the custodian, or the custodian's designee, a receipt must be given to the custodian and the paper, document or record, must be returned to its place of filing or custody immediately upon completion of the purposes for which it was removed.

COMMENT TO 2018 AMENDMENTS

This rule is new. It closely conforms to the Civil Rule 79-I, except that section (a) limits access to filed papers and records where prohibited by statute.

~~Rule 79-I. [Deleted].~~

Rule 80. [Deleted].

XI. GENERAL PROVISIONS

Rule 81. [Deleted].

COMMENT

SCR-Civil 81 has been deleted as not appropriate to Family Division practice.

Rule 82. [Deleted].

Rule 83. [Deleted].

COMMENT

[Deleted]. (Mar. 15, 1973.)

Rule 83.I. [Deleted].

Rule 84. Forms~~.~~

Forms supplied by the ~~C~~clerk ~~are sufficient~~suffice under the~~se~~ ~~R~~rules and ~~are intended to indicate~~illustrate the simplicity and brevity ~~of statement which the~~that these ~~R~~rules contemplate.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to Civil Rule 84.

Rule 85. [Deleted].

Rule 86. Effective ~~dD~~ate~~s of rule amendments or additions.~~

(a) IN GENERAL. ~~Unless otherwise ordered by the Court, any amendments of or additions to t~~These ~~R~~rules and any amendments take effect ~~on their date~~at the time specified by the Chief Judge ~~of~~in promulgation orders. They~~and~~ govern:

(1) ~~all~~ proceedings in an action~~s brought thereafter~~commenced after their effective date; and ~~and also all further~~

(2) proceedings after that date in an ~~and~~ action~~s~~ then pending unless:~~, except to the extent that in the opinion of the Court their~~

(A) the Chief Judge in the promulgation order specifies otherwise; or

(B) the court determines that applying~~ication~~ them in a particular action ~~pending on such effective date~~ would ~~not~~ be infeasible or ~~would~~ work an injustice.

(b) [Omitted].

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 86.

Rule 86-I. [Deleted].

XII. PRACTICE BEFORE THIS COURT.

Rule 101. Attorneys: Appearance; wWithdrawal; aAppointment; tTermination.

(a) Who may practice.WHO MAY PRACTICE.

(1) *Bar mMembership*. An attorney who is a member in good standing of the District of Columbia Bar may enter an appearance, file pleadings, and practice in this Ccourt.

(2) *Representation by cCounsel*. No person other than one authorized by this Rrule shallwill be permitted to appear in this Ccourt in a representative capacity for any purpose other than securing a continuance. No corporation shallmay appear in the DivisionFamily Court except through an attorney authorized by this Rrule. However, nNothing in this Rrule shall be construed to prevents any natural person who is without counsel from prosecuting or defending any action in which that person is a party. in the person's own behalf if the person is without counsel.

(3) *Attorneys not members of the District of Columbia BarAdmitted Pro Hac Vice*.

(A) *Appearances pPro hHac vVice*. -- An attorney who is a member in good standing of the bar of any United States Ccourt or of theany state's highest court of any state but who is not a member in good standing of the District of Columbia Bar, if granted permission by the Ccourt, may enter an appearance, file pleadings, and participate in proceedings in this Ccourt, *pro hac vice*, provided thatif a member in good standing of the District of Columbia Bar also enters an appearance in the case. The District of Columbia attorney shallmust be jointly responsible for the case, and shallmust sign all papers filed, including the motion to appear *pro hac vice* and certificate of service, and shallmust attend all subsequent proceedings in the action unless this latter requirement is waived by the judge or magistrate judgejudicial officer presiding at the proceeding in question.

(B) *Request to aAppear pPro hHac vVice*. -- An attorney seeking permission to appear under subparagraph Rule 101(a)(3)(A) mustshall (i) file a motion stating the attorney's name, address, telephone number, fax number, if any, the jurisdiction(s) where the attorney is admitted to practice, and the number of times in the current calendar year the attorney has received permission to appear under this Rule, certifying that the attorney has read, is familiar with, and will act in full compliance with the Domestic Relations Rules of the Court, and (ii) comply with District of Columbia Court of Appeals Rule 49(c)(7). The attorney shall serve a copy of the motion on the District of Columbia Court of Appeals' Committee on Unauthorized Practice. Service shall be made by hand-delivery or mail and shall be proved by the filing of a certificate of the attorney showing the date and manner of service.

(4) *State Attorneys General*. -- A Sstate Aattorney Ggeneral or the attorney general's designee, who is a member in good standing of the bar of the highest court in any state or any United States court, may appear and represent the state or anyits agency thereof, irrespective of (1)-(3) above.

(b) Entry of appearance. --ENTRY OF APPEARANCE. An attorney eligible to appear may enter an appearance in a domestic relations case by signing any pleading or other paper described in SCR-Dom. Rel.Rule 5(a), filed by or on behalf of the party the attorney represents, or by filing a written praecipe noting the entry of the attorney's appearance and listing the attorney's office address, telephone number, fax number, if any, and Bar number.

(c) ~~Withdrawal of appearance~~WITHDRAWAL OF APPEARANCE.

__(1) *Withdrawal by ~~p~~Praecipe*. ~~--~~An attorney may withdraw an appearance by filing a praecipe signed by the attorney and the attorney's client, noting such withdrawal if~~,~~ ~~provided that~~

___(~~1~~A) a trial date has not been set in the case~~;~~, and

___(~~2~~B) another attorney enters or has entered an appearance on behalf of the client, or the client states in writing that the client intends to represent himself or herself.

___The withdrawal ~~shall~~will not be grounds for a request for an extension of time or a continuance.

__(2) *Withdrawal by ~~m~~Motion*.

___(A) ~~Generally. --~~*In General.* Except where withdrawal ~~is made~~ by praecipe ~~pursuant to~~is permitted ~~subparagraph~~under Rule 101(c)(1) ~~of this Rule~~, an attorney~~'s appearance in an action~~ may ~~be~~ withdraw~~n~~ only by order of the ~~C~~court ~~up~~on motion by the attorney served ~~up~~on all parties or their attorneys. The ~~C~~court may deny the attorney's motion for leave to withdraw if the attorney's withdrawal would unduly delay trial of the case, be unduly prejudicial to any party, or otherwise not be in the interests of justice.

___(B) *Notice to ~~c~~Client*. ~~--~~Unless the client is represented by another attorney or the motion is made in open court in the client's presence, a motion to withdraw an appearance ~~shall~~must be accompanied by a certificate of the moving attorney listing the client's last known address and stating that the attorney has served upon the client a copy of the motion and a notice advising the client to obtain other counsel, or, if the client intends to represent himself or herself or to object to the withdrawal, to so notify the Clerk in writing within 1~~4~~0 days of service of the motion ~~up~~on the client.

___(C) *Copy of ~~o~~Order to ~~c~~Client*. ~~--~~Except where leave to withdraw has been granted in open court in the presence of the affected client, the ~~C~~clerk ~~shall~~ must send to the affected client by first class mail, postage prepaid, a copy of any order granting leave to withdraw.

(d) ~~Appearances by inactive attorneys. --~~APPEARANCES BY INACTIVE ATTORNEYS IN PRO BONO CASES. An inactive member of the District of Columbia Bar may enter an appearance, file pleadings, and practice in a particular case if:

__(1) the attorney is affiliated with a legal services or referral program;

__(2) the case is handled without a fee; and

__(3) the attorney files with this court, and the District of Columbia Court of Appeals' Committee on Unauthorized Practice a certificate that the attorney is providing representation in that particular case without compensation.

(e) ~~Appointment of attorneys; compensation; termination~~APPOINTMENT OF ATTORNEY; COMPENSATION.

__(1) *Appointment of ~~a~~Attorney~~s~~*. In any case where the ~~C~~court deems it necessary or proper, it may appoint an attorney for a defendant who has appeared or answered. In a case involving custody of a minor child, the ~~C~~court may appoint an attorney to appear on behalf of the child and represent the child's best interest as provided in D.C. Code § 16-831.06 (c), -914 (g), or ~~1~~6-918 (b) (2012 Repl. & 2018 Supp.).

__(2) *How ~~a~~Appointed*.

___(A) *For ~~d~~Defendant*. ~~--~~A party seeking the appointment of an attorney to represent the defendant ~~shall~~must make the request by filing a praecipe. ~~Upon~~If the ~~C~~court~~'s~~ determin~~es~~ation that the request for appointed counsel should be granted, it ~~shall~~must

issue an order appointing counsel for the defendant and apportioning payment of such fees as determined by the court. If fees are due, the ~~notify the party that an~~ order appointing counsel for the defendant ~~shall~~will take effect ~~up~~on the payment of the fee~~, as determined by the Court~~. In cases ~~within this paragraph in which~~where the ~~C~~court ~~has~~ allow~~s~~ed the party to proceed without prepayment of attorney's fees, the order ~~sha~~will take effect upon docketing.

(B) *For ~~m~~Minor ~~c~~Child*. ~~--~~On motion or on its own, the court may appoint an attorney to represent a minor child. A party seeking the appointment of an attorney or guardian ad litem to represent a minor child ~~shall~~must make the request by motion served on all other parties. ~~Upon~~If the ~~C~~court~~'s~~ determin~~es~~ation that the request for appointed counsel should be granted, it ~~shall~~must issue an order appointing counsel for the minor child and apportioning payment of such fees as determined by the ~~C~~court.

(3) *Time for ~~f~~Filing ~~a~~Answer*. ~~--~~Within 30 days of the date of appointment, unless the court extends the time for good cause ~~shown the time is extended by order of the Court~~, the appointed attorney ~~shall~~must, if the defendant has already filed a written answer under oath, either adopt the defendant's answer by filing a praecipe so stating, or file a new answer signed by the defendant under oath, or, if the defendant refuses to sign the new answer under oath, take such other action as the attorney deems appropriate.

(f4) ~~*Termination of appearance*~~TERMINATION OF APPEARANCE. ~~--~~Notwithstanding any rule of ~~C~~court, the appearance of any appointed or other attorney in any action under D.C. Code ~~Title 16, Chapter 9~~§§ 16-831.01 to -.13 and 16-901 to -925 (2012 Repl. & 2018 Supp.) ~~shall~~will be deemed to have terminated for all purposes upon completion of the case ending in a judgment, adjudication, decree, or final order f~~or~~rom which no appeal has been taken when the time allowed for an appeal expires, and, if notice of appeal has been entered, upon the date of final disposition of the appeal. ~~There shall be n~~No action is required of any person or attorney under ~~this subparagraph~~Rule 101(f), but the ~~C~~court may suspend the termination of the appearance on its own ~~motion~~, or on the motion of any party to the case prior to the expiration of the time for appeal.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules.

COMMENT

Paragraph (e). Pursuant to D.C. Code § 16-918(a), paragraph (e) of this Rule provides that the Court may appoint an attorney for a defendant who has appeared or answered. While the statute is broad enough to encompass the appointment of an attorney for a defendant who has neither appeared nor answered, such an appointment would be necessary only in extraordinary circumstances. Where such circumstances exist, the Court should consider outlining the scope of representation expected.

Subparagraph (e)(2). Consistent with current practice, it is contemplated that in most cases, the amount ordered to be prepaid for appointment of counsel pursuant to subparagraph (e)(3) will be the minimum fee set by the Board of Judges of the Superior Court for such appointments.

Subparagraph (e)(3). Where an appointed attorney is unable to obtain the sworn signature of the defendant on an answer, subparagraph (e)(3) contemplates actions such as a request for appointment of a guardian ad litem or permission to withdraw the attorney's appearance in the case.

Rule 102. [Deleted].

Rule 103. [Deleted].

XIII. MISCELLANEOUS PROVISIONS.

Rule 201. Release of Transcripts.

(a) Obtaining transcripts. --ORDERING TRANSCRIPTS. Any person who has made suitable arrangements to pay the appropriate fee, shall be is entitled to obtain a transcript of all or any part of any recorded judicial proceedings other than those under seal.

(b) Endorsement on transcript. --ENDORSEMENT ON TRANSCRIPT. Each transcript obtained in accordance with this Rrule shallmust bear the following endorsement upon its cover page:

"'This transcript represents the productе of an official reporter or transcriber, engaged by the Ccourt, who has personally certified that it represents the testimony and proceedings of the case as recorded. '"

(c) Transcript on appeal. --TRANSCRIPT ON APPEAL. Upon the completion of any transcript in a matter to be brought before the appellate court, the reporter or transcriber shallmust notify the trial court and counsel that the transcript has been completed and will be forwarded to the Court of Appeals within five7 days. The notice shallmust inform counsel that any objections to the accuracy of the transcript must be presented to the trial court and served on opposing counsel within the five7- day periods be presented to the trial court and served on opposing counsel in the manner prescribed in SCR Dom. Rel. Rule 5. The court will make known to the parties any Ooobjections which it raisesd by the Court sua sponte shall be made known to the parties who shall beand will givеn the parties an opportunity to make appropriate representations to the Ccourt before the objections are resolved. All objections shallmust be resolved by the trial court on the basis of the best available evidence as to what actually occurred in the proceedings.

(d) Security of original transcript. --SECURITY OF ORIGINAL TRANSCRIPT. In any case in which a transcript is ordered by any person, the reporter or transcriber shallmust deliver to the person a copy or copies of any transcript prepared. The original of the transcript, bearing the required certificate, shallmust be filed by the reporter or transcriber with the Cclerk of the court and shallmay not be changed in any respect except pursuant to rule of court. No change in any transcript may be made by the presiding judicial officer except on notice to the parties to the proceeding. Where any changes are made in the transcription of proceedings the corrections and deletions shall be shown.

(e) Stenographic report or transcript as evidence. -- Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified in accordance with paragraph (b) of this Rule.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 201, except that the recording of court proceedings is addressed in General Family Rule N.

COMMENT

For provisions with respect to recording of court proceedings, see SCR-General Family N.

Rule 202. ~~Fees.~~ [Omitted~~Excluded~~].

COMMENT

SCR-Civil 202 is excluded since Family Division fees are covered in SCR-General Family Rule C.

Rule 203. [Deleted].

XIV. FIDUCIARY RULES~~.~~

Rules 301 to 308. [Deleted].

COMMENT

SCR-Civil 301-308 deleted as not appropriate to Family Division practice.

Rule 309. [Deleted].

XV. DOMESTIC RELATIONS SPECIAL RULES.

Rule 401. Reciprocal eEnforcement of sSupport pProceedings.

(a) Proceedings in which the District of Columbia is the initiating jurisdiction ("I" cases). Commencement of action. --COMMENCEMENT OF PROCEEDINGS IN WHICH THE DISTRICT OF COLUMBIA IS THE INITIATING JURISDICTION ("I" CASES). A reciprocal enforcement of support action is commenced by filing with the Ccourt an original and 3 copies of the testimony expected to be adduced by plaintiff, and the deposit of Ccourt costs, if any, required by the jurisdiction to which the case is to be forwarded. If the plaintiff does not file ano statement of testimony is filed by plaintiff, the Ccourt may order a transcript of testimony adduced at trial to be prepared in quadruplicate by the Ccourt reporter at the expense of the plaintiff.

(b) Proceedings in which the District of Columbia is the responding jurisdiction ("R" cases)PROCEEDINGS IN WHICH THE DISTRICT OF COLUMBIA IS THE RESPONDING JURISDICTION ("R" CASES).

(1) *Jurisdiction of dDefendant*. -- Jurisdiction of the defendant is obtained by service upon the defendant of a Notice of Hearing and Order Directing Appearance, together with a copy of a petition or complaint and supporting documents forwarded by the initiating jurisdiction and filed in the Family this Division of the Court. Service shall be hadmust be made as provided in SCR-Dom. Rel.Rule 4(da)(2).

(2) *Answer*. -- A defendant shallmust file an answer in accordance with SCR-Dom. Rel.Rule 12(a). The defenses raised therein shallmust be as specified by Rule SCR-Dom. Rel. 8(b).

(3) *Reply*. -- UpoOn application, the court may permit the plaintiff may, in the discretion of the Court, be permitted to file a reply to defendant's answer and such responsive pleading shall be filed within such time as the Ccourt may determine reasonable, depending upon the circumstances of the case.

(4) *Orders -- Subsequent aAction*. --If, in any other action within the Family Courtis Division, the question of support has been an issue or becomes an issue involving the same parties to a reciprocal support action the Ccourt may either specify that any award made shallmust be paid through the reciprocal support order or dismiss the same in lieu of a new judgment. Any arrearages existing at the time of such dismissal shallwill be incorporated in the new order.

(5) *Dismissal*. --If the Ccourt is notified by an initiating state that a case is no longer active in that state, the Cclerk shallmust enter a dismissal of the action, notify the initiating state and provide it with a certification of the financial record. Notice shallmust also be given to counsel of record.

(6) *Referral of cCases*. --Upon receipt by the Cclerk of a petition which names a respondent who is not within the territorial jurisdiction of this Ccourt, the Cclerk shallmust, if able to ascertain the appropriate jurisdiction, refer the case to that jurisdiction without recourse to the initiating state. Notice of this referral shallmust be made to the initiating jurisdiction.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules.

COMMENT

This Rule embodies the former Domestic Relations Rule on reciprocal support with some modifications to cover areas where experience has proven a need. Title 30A, Chapter 3 of the D.C. Code embodies the Uniform Interstate Family Support Act of 1995 and is quite comprehensive in its coverage, so that there is no necessity for more rules.

Rule 402. [Deleted].

Rule 403. Payment of Support~~moneys through Court.~~

(a) CHILD SUPPORT PAYMENTS.

(1) *In General*. A child support order is immediately enforceable by withholding unless, under D.C. Code § 46-207 (2012 Repl.), the court finds good cause not to require immediate withholding or the court approves the parties' agreement to an alternative method of payment.

(2) *Collection and Disbursement Unit*. Money due under a child support order enforced by the District of Columbia Government IV-D Agency or a child support order for which withholding is ordered must be paid through the Collection and Disbursement Unit. For all other orders, the court may order payment through the Collection and Disbursement Unit or the Family Court Finance Office.

(b) SPOUSAL SUPPORT PAYMENTS. The court may order that spousal support be paid through~~Unless good cause to the contrary be shown, all moneys due and payable under any order of this Court for spousal support and child support shall be paid to~~ the Family Court Finance Office ~~of the Court~~.

(c) DISBURSEMENT BY FINANCE OFFICE. All money ~~so~~ received by the Family Court Finance Office ~~shall~~must be promptly disbursed to the persons or agencies entitled ~~there~~to it.

COMMENT TO 2018 AMENDMENTS

The "IV-D Agency" is the Child Support Services Division of the Office of Attorney General for the District of Columbia or the successor organizational unit. The "Collection and Disbursement Unit," also known as the District of Columbia Child Support Clearinghouse, is operated by the IV-D Agency and is responsible for collection and disbursement of support payments.

Rule 403 allows parties in cases involving either or both child support and spousal support to agree, or the court to direct, that one spouse must make the payments through the Family Court Finance Office. Payments for only spousal support may not be made through the Collection and Disbursement Unit. Whether the payment involves child support, spousal support, or both, the Finance Office does not get involved in arranging for wage-withholding. However, a party that obtains wage-withholding of spousal support under Rule 69-II may arrange for the employer to make the payments to the Finance Office.

COMMENT

For the statutory provision on the payment of moneys through the Court, see D.C. Code § 16-911(c).

Rule 404. Social ~~s~~Service ~~r~~Referrals~~.~~

In any proceeding involving custody or visitation the ~~C~~court may order a party or a child at issue to submit to an evaluation by the ~~office of the Director of~~Court Social Services Division as detailed in an order of reference. Any written report~~s~~ made as a result of the~~refrom~~ evaluation ~~shall~~may only be provided~~made available only~~ to the assigned judge, counsel of record, and unrepresented parties. On the court's order, ~~T~~the report~~s~~ ~~shall~~may be filed ~~i~~on the ~~Court jacket~~docket under seal ~~only when ordered by the Court and may be filed under seal~~.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. This rule does not limit the court's ability to refer the party or child for evaluation by the Custody Assessment Unit.

COMMENT

Under D.C. Code § 11-1722(a) and (d) the Division will have the assistance of the Director of Social Services for purposes of home studies, psychological examinations, or other evaluations. See Superior Court Intrafamily Rule 11(e) for provisions permitting the Court to order treatment and counseling in intrafamily proceedings.

Rule 405. [Deleted] ~~Paternity~~.

~~(a) Commencement. -- A paternity proceeding pursuant to is commenced by filing a verified petition with the Court which shall set forth the jurisdiction of the Court and all relevant information concerning the allegation of paternity, including, but not limited to, the relationship of the petitioner to the child or children, the approximate date of conception (and date and place of birth if appropriate), the alleged natural father of the child or children, a prayer for relief and for reasonable attorney's fees which may in appropriate cases be assessed against the natural father upon a finding of paternity.~~

~~(b) Jurisdiction and process. -- Jurisdiction over the respondent shall be obtained by personal service upon him of a notice of hearing and order directing appearance on a date certain, together with a copy of the petition, pursuant to Rule 4 of these rules governing service of a notice of hearing and direction to appear.~~

~~(c) Answer.~~

~~(1) The respondent shall file an answer within 20 days after service upon him of the petition and notice of hearing and order directing appearance. If an answer is not timely filed and the respondent obtains leave of Court to file an answer or is directed by the Court to file an answer, such answer must be filed within 10 days from the date of the extension, unless additional time is specified by the Court or allowed by the Court pursuant to written motion filed before the last day of the first extension.~~

~~(2) Upon the filing of a timely answer, or the filing of an answer as allowed by the Court under subparagraph (c)(1) of this Rule, the case shall be set for hearing on the contested calendar. If the date set for the contested hearing is different from the return date specified in the order directing appearance, then the respondent shall be relieved of his obligation to appear in Court on the return date.~~

~~(d) Proceedings before hearing commissioners.~~

~~(1) All cases brought pursuant to shall be referred to a hearing commissioner sitting in the Family Division who shall:~~

~~(A) Determine whether paternity will be acknowledged and, if so, enter an adjudication of paternity and thereafter conduct a hearing on support as provided in SCR Family D(b)(1); or~~

~~(B) Determine whether to order medical, genetic blood or tissue grouping tests and, if so, thereafter hear and determine the issues of paternity and amount of support or, if the case involves complex issues requiring judicial resolution, refer it to a judge for determination of those issues.~~

~~(2) At any time following the adjudication or acknowledgment of paternity in a case before the Court, the Court may refer the case to a hearing commissioner of the Family Division pursuant to the provisions of General Family Rule D, for entry of an order as to the amount of support.~~

~~(e) Procedure upon failure of respondent to respond. -- Where the respondent fails to file an answer as allowed by the Court under subparagraph (c)(1) of this Rule, or otherwise fails to respond appropriately, the issues of paternity and amount of support may be heard and determined ex parte on the return date specified in the order directing appearance. If the Court is satisfied that (1) there is uncontroverted proof that respondent is the natural father of the child as alleged by the petitioner, and (2) justice to the child requires an immediate judicial determination of the petition, which shall not be defeated by respondent's non-appearance, it may enter an order adjudging~~

respondent to be the natural father of the child and fixing an appropriate amount of support, or alternatively, may refer the issue of support to a hearing commissioner for determination of the appropriate support amount and entry of a final order.

(f) Blood tests.

(1) The Court, on its own motion or on the motion of a party, may, pursuant to require the child, the mother, an alleged parent, or the other parent to submit to medical, genetic blood or tissue grouping tests, which may include the human leukocyte antigen test and the red cell blood grouping tests.

(2) The Court may appoint the examiners of genetic markers to perform the tests or the examiners may be chosen by the consent of the parties.

(3) *Costs*.

(A) The costs for the tests and expert witnesses appointed by the Court shall be paid by the parties.

(B) The Court, upon written motion accompanied by a sworn financial statement of the alleged parent, may order that the District of Columbia, if it is a party to the action, pay the costs upon a finding that the alleged parent does not have sufficient resources to pay the costs.

(C) The parties may consent to an agreement for the payment of such costs.

(4) *Admissibility*.

(A) Pursuant to D.C. Code Section 16-2343.1 [, 2001 Ed.], a certified document of the chain of custody of the test specimens is competent evidence to establish the chain of custody for any test ordered or agreed to by the parties under this Rule.

(B) A party wishing to object to the test results shall file a written motion, including specific objections, within 45 days of the date the test results were mailed by the Court to the party. The Court shall not accept such a motion less than 5 days prior to the first trial date following the taking of the tests, unless good cause is shown. A party wishing to object to the admission of test results at trial without expert testimony shall file that objection in writing at least 20 days prior to trial or the test results shall be admitted without expert testimony. A party intending to call an expert witness to testify about the test must notify the other party and the Court in writing at least 20 days prior to trial. Such notice must contain the substance of the testimony which the expert will provide.

(C) The Court shall prior to the trial date decide all motions to exclude the test results and written objections to the test results, and shall rule on the admissibility of the test results and whether or not an expert witness is required.

(5) Unless a party files timely objections pursuant to this subsection:

(A) The party waives the party's objections to the testing procedures, the admission into evidence of the results of the test and the report on the statistical probability of paternity. However, the Court may upon a showing of extraordinary circumstances extend the time for filing objections.

(B) The verified results of the tests and the report are admissible into evidence at a hearing or other proceeding regardless of the presence or non-presence of parties having notice of the action.

(C) Whenever the results of the tests and report exclude the alleged parent as the parent of the child, that evidence shall be conclusive evidence of non-paternity, unless contrary test results are received by the Court.

(6) The Court may order that additional tests be made.

~~(7) *Sanctions*. -- If any party refuses to submit to a test the Court may impose sanctions or hold the refusing party in contempt.~~
~~(g) Certificates of judgment of paternity. -- The Clerk of the Court shall issue a Certificate of Judgment of Paternity pursuant to upon entry of a final judgment.~~

COMMENT TO 2018 AMENDMENTS

Rule 405 was deleted because parentage proceedings are now addressed in the Rules Governing Parentage and Support Proceedings.

COMMENT

The purpose of this Rule is to implement the Parentage and Support Proceedings Reform Act of 1984. The intent of that act is to assist in making scientific blood test results available to the trier of fact in actions involving the issue of disputed paternity. To ensure that valid blood and tissue typing test results, including the results of the human leukocyte antigen test, are readily available as evidence to the trier of fact, the Rule provides that such test results shall be decided before trial. The intent of the act is also to prevent the situation where such tests, although performed, are not admitted at trial due to some correctable objection to the test results or procedures. It is also contemplated that expert witnesses should only be necessary in rare cases and that the test results and the reports should generally be admitted into evidence without the necessity of an expert witness testifying.

Section (c) replaces SCR-Dom. Rel. 12(a) for paternity proceedings. Section (d) represents one use of hearing commissioners as authorized in SCR-General Family D. Section (e) allows an adjudication of paternity without the presence of the respondent but does not allow a default judgment on the pleadings alone. *Cf.*
Note: SCR-Dom. Rel. 26 through 37 make pretrial discovery available in paternity proceedings.

Rule 406. Writ of *~~n~~N~~e~~ ~~e~~E~~xeat~~.*

(a) ~~Application. --~~APPLICATION. Every application for writ of *ne exeat* ~~shall~~must be by way of petition (which may be part of the original pleading), under oath, which must set forth with particularity the intention of either party to wrongly defeat the other party's right to the custody of a minor child or children, or the intention of the adverse party to leave the jurisdiction, or threats or declarations to that effect, in order to defeat the applicant's right to maintenance or alimony or the right of the child or children to maintenance, support and education. An application for writ of *ne exeat* ~~shall~~must also set forth sufficient facts to support a finding that a less drastic remedy would be ineffective.

(b) ~~Notice. --~~NOTICE. Actual notice of the hearing and copies of all pleadings and other papers filed to date in the action or to be presented to the ~~C~~court at the hearing on the application for writ of *ne exeat* ~~shall~~must be served ~~up~~on the adverse party or the adverse party's attorney of record, unless it can be satisfactorily shown by affidavit or otherwise under oath that such notice cannot be given in time or would defeat the purposes for which the writ is being sought.

(c) ~~Execution. --~~EXECUTION. Upon execution of a writ of *ne exeat* the law enforcement officer ~~shall~~ must forthwith bring the person before a ~~J~~judge sitting in the Family ~~Division~~Court.

~~(d) Judge in chambers. -- An application for writ of *ne exeat* shall be presented to the judge in chambers.~~

COMMENT TO 2018 AMENDMENTS

Section (d) was deleted because applications for writs of *ne exeat*, like other custody-related motions, should be presented to a judge in the Domestic Relations Branch and not to the judge in chambers.

SUPERIOR COURT RULES GOVERNING PARENTAGE AND SUPPORT PROCEEDINGS

Rule 1. Title and Scope of Rules

(a) TITLE. These rules may be known and cited as the Superior Court Rules Governing Parentage and Support Proceedings or as "Super. Ct. P&S R. ___."

(b) SCOPE. These rules govern the procedure in all actions and proceedings in the Parentage and Support Branch of the Family Court of the Superior Court of the District of Columbia.

(c) PURPOSE. These rules should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

(d) APPLICABILITY OF DOMESTIC RELATIONS RULES. Except when inconsistent with these rules, the following Superior Court Rules Governing Domestic Relations Proceedings are deemed applicable to proceedings in the Parentage and Support Branch:

5, 5-III, 5.1, 5.2, 6, 7, 8, 9, 11, 12, 13,15, 17 18, 19, 24, 25, 26-37, 41, 42, 43, 44, 45, 46, 50, 52, 53, 54, 54-II, 55, 56, 57, 58, 59, 60, 61, 62, 62-I, 62-II, 62-III, 62.1, 63, 63-I, 64, 65, 66, 67, 68, 69, 69-I, 69-II, 70, 71, 77, 79, 84, 86, 101, 201, 401, 404, and 406.

COMMENT

The parentage and support rules closely align with the domestic relations rules. In fact, some provisions in the parentage and support rules are similar or identical to the corresponding domestic relations provisions. If an entire domestic relations rule was deemed applicable to parentage and support proceedings, the domestic relations rule was listed in section (d). The intent is that the parentage and support rules are consistent with the domestic relations rules that are deemed applicable to proceedings in the Parentage and Support Branch, but if any inconsistency emerges, the parentage and support rule controls.

Rule 2. Definitions; Unsworn Declarations

(a) DEFINITIONS. The following definitions apply to these rules:

(1) Affidavit. A written declaration or statement of facts confirmed by the oath of the party making it.

(2) Clerk. Clerk of the Parentage and Support Branch of the Family Court.

(3) Minor. Any person under the age of 18 except:

(A) in cases involving the right to child support, any person under the age of 21; or

(B) in cases where a child support order has been in issued in another jurisdiction, any person designated as a minor under the laws of that jurisdiction.

(4) "Reciprocal" or "Interstate" Support. Support based on an order issued or initiated in another state or jurisdiction other than the District of Columbia.

(5) IV-D Agency. The Child Support Services Division of the Office of Attorney General for the District of Columbia or successor organizational unit.

(b) UNSWORN DECLARATIONS.

(1) *When Allowed*. Unless otherwise provided by law, whenever any matter is required or permitted by these rules to be supported by the sworn written declaration, verification, certificate, statement, oath, or affidavit of a person, the matter may, with the same force and effect, be supported by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed as true under penalty of perjury, and dated, in substantially the following form, which must appear directly above the person's signature:

(A) If executed inside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States:

I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(B) If executed outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States:

I declare under penalty of perjury under the law of the District of Columbia that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. Executed on

_____ day of _____, _____, at
(date) (month) (year)

_____,
(city or other locations, and state)

_____.
(country)

(2) *Exclusions*. Rule 2 (b)(1) does not apply to:

(A) a deposition;

(B) an oath of office; or

(C) an oath required to be given before a specified official other than a notary public.

COMMENT

In accordance with D.C. Code §§ 46-353.03 and -356.04 (2018 Supp.), the definition of “minor” may be governed by the law in the state where a child support order was issued.

Rule 3. Commencing an Action and Enforcement of Child Support Orders

(a) IN GENERAL. The following parentage and support actions under D.C. Code § 11-1101 (2012 Repl.) are commenced by filing a petition or counterclaim with the court:

(1) proceedings to determine parentage of any child;

(2) actions for support of minor children;

(3) actions to enforce child support orders; and

(4) proceedings for reciprocal or interstate support under D.C. Code §§ 46-351.01 to -359.03 (2018 Supp.).

(b) CONTENTS OF PARENTAGE PETITION. A petition to commence a parentage proceeding under D.C. Code § 11-1101 (a)(11) (2012 Repl.) must set forth the jurisdiction of the court and all relevant information concerning the allegation of parentage, including, but not limited to, the following:

(1) the relationship of the petitioner to the child(ren);

(2) the date and place of birth of the children;

(3) the alleged natural father of the child(ren); and

(4) other requests for relief.

(c) CONTENTS OF SUPPORT PETITION. A petition to commence a support proceeding under D.C. Code § 11-1101 (a)(3) (2012 Repl.) must set forth the jurisdiction of the court and relevant information concerning the petition for support, including, but not limited to, the following:

(1) the relationship of the petitioner to the child(ren);

(2) the date and place of birth of the children;

(3) facts concerning parentage; and

(4) other requests for relief.

(d) ACTIONS TO REGISTER AN ORDER FOR ENFORCEMENT AND/OR MODIFICATION FROM ANOTHER JURISDICTION. Proceedings to register an order from another jurisdiction for enforcement and/or modification under D.C. Code §§ 46-356.01 to -.16 (2018 Supp.) are commenced by filing a certified copy of the order to be registered and any other supporting documentation required by statute.

COMMENT

Parentage and support cases may be initiated by petition in the Parentage and Support Branch or by complaint in the Domestic Relations Branch. If parentage or child support is the only issue to be resolved, the case must be filed by petition in the Parentage and Support Branch. *See* Comment (f) to General Family Rule A. This rule applies only to actions in the Parentage and Support Branch. If a separate case is filed in the Domestic Relations Branch, a related P&S matter may be consolidated in the Domestic Relations Branch with that case. *See* D.C. Code § 11-1104 (a), (b)(2)(B) (2012 Repl.); Domestic Relations Rule 42(a).

Rule 4. Process

(a) CONTENTS; AMENDMENTS.

(1) *Contents*. A Notice of Hearing and Order Directing Appearance or a Notice of Motion Hearing must:

(A) name the court and the parties;

(B) specify the date and time of the hearing;

(C) be directed to the respondent;

(D) state the name and address of the petitioner's attorney or, if unrepresented, of the petitioner;

(E) state the time period within which the respondent must file a response to the petition or motion;

(F) notify the respondent that failure to appear after being served, may result in a default judgment against the respondent for the relief demanded in the petition or motion;

(G) notify the respondent that failure to appear may result in issuance of a bench warrant and entry of a parentage and/or support order;

(H) be signed by the clerk; and

(I) bear the court's seal.

(2) *Amendments*. The court may permit a Notice of Hearing and Order Directing Appearance or a Notice of Motion Hearing to be amended.

(3) *Service Outside the District of Columbia*. A notice or order in lieu of notice should correspond as nearly as possible to the requirements of a statute or rule whenever service is made pursuant to a statute or rule that provides for service of a notice or order in lieu of notice on a party not an inhabitant of or found within the District of Columbia.

(b) ISSUANCE OF NOTICE.

(1) *Support or Parentage Case*. In a case in which a party seeks permanent or temporary support of a child, to modify a child support order, or to establish parentage, the clerk must issue a Notice of Hearing and Order Directing Appearance or a Notice of Motion Hearing, specifying the date and time of the hearing, to each named respondent or individual whose attendance is required.

(2) *Motion for Contempt or Post-Judgment Motion*. When a judge or magistrate judge orders a hearing on a motion for contempt or a post-judgment motion, the clerk must issue a Notice of Motion Hearing for each party to be served.

(c) SERVING A NOTICE. A Notice of Hearing and Order Directing Appearance or a Notice of Motion Hearing must be served on the respondent or other named person, along with the petition or motion, in one of the following ways:

(1) by any person who is at least 18 years of age and not a party:

(A) delivering a copy of each to that individual personally; or

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) leaving a copy of each at the individual's place of employment with someone of suitable age and discretion;

(2) by mailing a copy of each to the person to be served at the person's dwelling or usual place of abode or at the person's place of employment by certified mail, return receipt requested, and also by separate first-class mail—except that service by certified

mail that is unclaimed or refused and first-class mail alone is not a sufficient basis to permit the entry of a default order of parentage in a case where the respondent fails to file an answer or otherwise fails to respond appropriately;

(3) by the Metropolitan Police Department as authorized by D.C. Code § 13-302.01 (2012 Repl.);

(4) by a United States marshal or deputy marshal as authorized by D.C. Code § 13-302 (2012 Repl.); or

(5) in any manner authorized by applicable statute.

(d) TERRITORIAL LIMITS OF EFFECTIVE SERVICE. Serving a Notice of Hearing and Order Directing Appearance and the petition establishes personal jurisdiction over a respondent:

(1) who is subject to the jurisdiction of this court;

(2) who is a party joined under Domestic Relations Rule 19 and is served at a place not more than 100 miles from the place of the hearing or trial; or

(3) when authorized by a federal or District of Columbia statute.

(e) SERVING AN INDIVIDUAL IN A FOREIGN COUNTRY. Unless applicable law provides otherwise, an individual − other than a minor, an incompetent person, or a person whose acknowledgment has been filed − may be served at a place not within the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering to the individual personally a copy of the Notice of Hearing and Order Directing Appearance and petition or the Notice of Motion Hearing and motion; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement as the court orders.

(f) PROVING SERVICE.

(1) *Affidavit Required*. Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(A) *Service by Delivery*. If service is made by personal delivery pursuant to Rule 4(c)(1), (3), or (4), the return of service must be made under oath (unless service was made by the United States marshal or deputy marshal) and must specifically state:

(i) the caption and number of the case;

(ii) the process server's name, residential or business address, and the fact that he or she is eighteen (18) years of age or older;

(iii) the time and place when service was made;

(iv) the fact that a Notice of Hearing and Order Directing Appearance and petition or a Notice of Motion Hearing and motion were delivered to the person served; and

(v) if service was effected by delivery to a person other than the party named in the notice, then specific facts from which the court can determine that the person to whom was delivered meets the appropriate qualifications for receipt of process set out in Rule 4(c)(1)(B) or (C).

(B) *Service Under Rule 4(c)(2)*. If service is made by certified mail and first-class mail in accordance with Rule 4(c)(2), the return of service must be accompanied by the signed receipt, when available, and an affidavit, which must state:

(i) the caption and number of the case;

(ii) the name and address of the person who posted the certified and first-class mail;

(iii) the fact that the mailing contained a Notice of Hearing and Order Directing Appearance and petition or a Notice of Motion Hearing and motion;

(iv) if the return receipt does not purport to be signed by the party named in the notice, then specific facts from which the court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in Rule 4(c)(1)(B) or (C);

(v) if the return receipt is not available, whether the certified mail was unclaimed or refused; and

(vi) whether the first-class mail was returned.

(2) *Validity of Service.* Failure to prove service does not affect the validity of service.

(3) *Amending Proof*. The court may permit proof of service to be amended.

(g) TIME LIMIT FOR SERVICE.

(1) *In General*. Except where service is waived or made in open court, service must be accomplished before the time for commencement of the hearing specified on the Notice of Hearing and Order Directing Appearance or Notice of Motion Hearing. A separate proof must be filed as to each respondent who has not responded to the petition.

(2) *Extensions of Time*.

(A) *Application to Clerk*. Prior to the commencement of the hearing specified in the Notice of Hearing and Order Directing Appearance or Notice of Motion Hearing, the petitioner may file an application requesting the clerk to extend the time for service. The application must include a certificate of good faith efforts to complete service by the petitioner or by the petitioner's attorney.

(B) *Reissuance*. On receipt of an application that meets the requirements of Rule 4(g)(2)(A), the clerk must reissue a Notice of Hearing and Order Directing Appearance or Notice of Motion Hearing that specifies a new date and time for the initial hearing.

(3) *Dismissal*. The petitioner's failure to comply with the requirements of this rule will result in the dismissal without prejudice of the petition. The clerk will enter the dismissal and serve notice on all the parties.

(h) BENCH WARRANT.

(1) *When Personally Served.* Service of Notice of Hearing and Order Directing Appearance or Notice of Motion Hearing in accordance with D.C. Code § 46-206 (b)(1)(A)-(C) (2012 Repl.) provides a sufficient basis for issuance of a bench warrant for failure of the respondent to appear.

(2) *When Served by Mail*. Service executed in accordance with D.C. Code § 46-206 (b)(2) (2012 Repl.) does not provide a sufficient basis for issuance of a bench warrant for failure of the respondent to appear.

(i) NOTICE GIVEN IN OPEN COURT. Oral or written notice given by a judge, magistrate judge, or any authorized court representative, to any person during a hearing may constitute notice in lieu of service. If notice is provided in this matter, the clerk must promptly place proof of this notice in the appropriate court record.

COMMENT

The summons in Parentage & Support cases is called a Notice of Hearing and Order Directing Appearance ("NOHODA"). Specifically, the NOHODA serves the summons and notice function prescribed by D.C. Code § 46-206 (2012 Repl.). The content and service of a NOHODA must comply with the provisions of the statute which requires in Parentage & Support cases, that the petition be attached to the notice of an already scheduled hearing. While the statute refers only to "notice" and not specifically to a NOHODA, P&S Rule 4 tracks the statute in all other respects.

Rule 4(i) authorizes judges, magistrate judges, clerks, and other court employees to provide oral or written notice in lieu of service. *In re B.J.*, 917 A.2d 86, 90 (D.C. 2007), states that Superior Court rules of procedure are "broad enough to permit service of process by a courtroom clerk within a courtroom . . . ." *In re B.J.* also recognizes that, while non-resident litigants attending court are immune from service of process in other cases, there is an exception when the subject matter of the court proceeding is closely related by subject matter to the action in which service of process is being made. *Id*. However, under D.C. Code § 46-353.14 (2018 Supp.), a petitioner "is not amenable to service of civil process while physically present in the District to participate in a proceeding" under the Uniform Interstate Family Support Act.

Rule 5. Form of Pleadings, Motions, and Other Papers

(a) STATIONERY. Pleadings, motions, and other papers must be on opaque white paper, approximately 11 inches long and 8 1/2 inches wide, without a back or cover.

(b) CAPTION; NAMES OF PARTIES; LOCATIONAL INFORMATION.

(1) *In General*. Except as provided in Rule 5(b)(2), every pleading, motion, or other paper shall contain a caption setting forth:

(A) the name of the Superior Court, Family Court, Parentage and Support Branch;

(B) the title of the action, which must include:

(i) in the petition and answer, the names and residence addresses of all parties; or

(ii) in pleadings other than the petition and answer, it is sufficient to state the name of the first party on each side with an appropriate indication of other parties;

(C) the case number;

(D) the name of the pleading;

(E) where necessary to avoid confusion, the name or names of the party or parties on whose behalf the pleading or other paper is filed; and

(F) if the case has been assigned to a specific calendar or a specific magistrate judge, the calendar number or the magistrate judge's name must appear below the file number.

(2) *Substituted Address*. A party who has a reasonable basis to fear harassment or harm to the party or the party's family from disclosure of the party's residence address is not be required to state the address provided that the party substitutes the name and residence or other address of the party's attorney or a third person willing to accept service copies for the party and in care of whom such service copies may be sent. A paper which has a substituted address must be clearly marked to indicate that such a substitution has been made. In using a substitute address, a party certifies that the party may be notified of court proceedings and receive service copies of papers at that address.

(3) *Parties' Information Deemed Correct and Current*. Except as modified by a notice filed with the court and served on the parties under Domestic Relations Rule 5, the names, addresses, and telephone numbers represented in the pleading, motion, or other paper are deemed conclusively correct and current.

(c) SIGNING OF PLEADING, MOTION OR OTHER PAPER. Every pleading, motion, or other paper must be signed in accordance with Domestic Relations Rule 11. Below the signature, the paper must contain:

(1) if the party is represented by counsel, the attorney's name, office address, telephone number, e-mail address, if any, and District of Columbia Bar number; or

(2) if the party is not represented by counsel, the name, full residence address, telephone number, and e-mail address, if any, of the party by whom the paper was filed, or a substitute name, address, telephone number, and email address, if any, if a substitution has been made under Rule 5(b)(2).

(d) PARAGRAPHS.

(1) *In General*. Each claim or defense must be made in a separate paragraph. The contents of each paragraph must be limited as far as practicable to a statement of a single set of circumstances.

(2) *Prior or Pending Action*. The last paragraph of a party's initial pleading must:

(A) identify the court and docket number of any prior or pending action based on or including the same child; or

(B) state that there are no such cases.

(e) ADOPTION BY REFERENCE; EXHIBITS. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading, motion, or paper. A copy of a written instrument that is an exhibit to a pleading, motion, or other paper is a part of the pleading, motion, or paper for all purposes.

(f) NONCONFORMANCE WITH ABOVE. A pleading, motion, or other paper not conforming to the requirements of this rule will not be accepted for filing.

COMMENT

This rule is substantially similar to Domestic Relations Rule 10.

Rule 6. Disclosures; Additional Discovery; Initial Hearings

(a) MANDATORY DISCLOSURES. Except as provided in Rule 6(d), at the initial hearing and any hearing thereafter, the parties must exchange the following documents:

(1) two most recent pay statements;

(2) most recent W-2, 1099, K-1, or other end-of-year income statement;

(3) proof of other income and means tested public benefits, such as unemployment compensation, workers' compensation, Social Security disability, veteran's benefits, Temporary Assistance for Needy Families, Supplemental Security Income, and any other source of income as defined in the Child Support Guideline;

(4) proof of Social Security derivative benefits received on behalf of the child(ren) subject to the case;

(5) most recent tax return, if self-employed;

(6) proof of alimony paid to the other party in the case or received from any person;

(7) proof of court-ordered child support for another child(ren) and proof of payment of the same;

(8) proof that other child(ren) reside in the home whom the party has a legal duty to support;

(9) proof of the increase in a parent or custodian's health insurance premium for including or adding child(ren) to the parent or custodian's health insurance plan;

(10) health insurance card, if the child(ren) is/are already covered by a health insurance plan;

(11) proof of any extraordinary medical expenses incurred on behalf of the child(ren) subject to the case that a party seeks to have included in the child support calculation;

(12) proof of child care expenses incurred for the child(ren) due to employment or education; and

(13) any other document required by the court.

(b) RESPONSIBILITY TO PRODUCE. Where the District of Columbia is the named party and the custodial parent has assigned his or her rights to support to the District of Columbia, the District of Columbia through the IV-D agency is responsible for producing the documents on behalf of the District of Columbia. In all other cases where the District of Columbia is the named party, the District of Columbia through the IV-D agency is responsible for producing the documents on behalf of the custodial parent.

(c) FAILURE TO PRODUCE NECESSARY DOCUMENTS. If the documents in Rule 6(a) are not produced but are necessary for the computation of the child support guidelines, a continuance may be granted.

(d) THIRD PARTY CUSTODIANS. A third party custodian is not required to provide the documents listed in Rule 6(a)(1)-(8).

(e) ADDITIONAL DISCOVERY. Any party may obtain additional discovery in accordance with Domestic Relations Rules 26 through 37.

(f) INITIAL HEARING.

(1) *In General*. At the initial hearing, the judge or magistrate judge may:

(A) explore the possibilities for early resolution through settlement or alternative dispute resolution or for expediting the case by use of stipulations;

(B) explore issues of service, notice, and identity of necessary parties and enter any appropriate orders regarding the same;

(C) determine whether parentage has been legally established and, if parentage has not been legally established, enter any appropriate orders, including adjudications of parentage based on in-court acknowledgment or genetic testing;

(D) determine any outstanding motions, if time allows and the parties are prepared, or set a date for hearing the motions;

(E) determine whether mandatory disclosures were made and whether there should be modifications to the mandatory disclosures specific to the case and enter any appropriate orders regarding the same;

(F) after consulting with the parties, set dates for future events in the case with the goal of establishing a permanent child support order at the earliest possible date—which may include a deadline by which mandatory disclosures or other discovery must be completed, a deadline by which motions must be filed, and a deadline for the filing of any legal memoranda—and require that the parties exchange additional information or documents, including that set forth in Domestic Relations Rule 26(a)(1);

(G) enter a temporary or permanent child support order; or

(H) order the parent(s) to search for a job and to provide proof of job search efforts.

(2) *Modifying Schedule*. The schedule set at the initial hearing may be modified by agreement of the parties, except that dates for court proceedings may not be modified without the court's leave.

COMMENT

Rule 6(d) exempts third party custodians from the requirement to provide the documents listed in Rule 6(a)(1)-(8) because, under D.C. Code § 16-916.01 (d)(8) (2018 Supp.), the income of a third party custodian is not considered when calculating child support.

* * *

By the Court:

Date: 8/28/18

Robert E. Morin
Chief Judge

Copies to:

All Judges
All Magistrate Judges
All Senior Judges
Avrom Sickel, Director, Family Court
Library
Daily Washington Law Reporter
Laura Wait, Associate General Counsel