

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Notice of Proposed Addition to Superior Court Rules of Criminal Procedure

The District of Columbia Superior Court Rules Committee recently completed review of proposed new Superior Court Rule of Criminal Procedure 62. The Rules Committee will recommend to the Superior Court Board of Judges that the new rule be approved unless, after consideration of comments from the Bar and the general public, the proposed new rule is withdrawn or modified.

Written comments must be submitted by March 15, 2021. Comments may be emailed as a PDF file to Laura.Wait@dccsystem.gov or may be mailed to:

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All comments submitted in response to this notice will be available to the general public. New language is underlined.

Rule 62. Rules Emergency

(a) CONDITIONS FOR A RULES EMERGENCY.

(1) In General. The Chief Judge may declare a rules emergency for a period of 14 days or less when the Chief Judge finds that:

(A) extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to the court, substantially impair the court's ability to perform its functions in compliance with the other criminal rules; and

(B) no feasible alternative measures would eliminate the impairment within a reasonable time.

(2) Extended Time Period. The Chief Judge may declare a rules emergency for a period of more than 14 days or extend the initial period declared under Rule 62(a)(1) if:

(A) the Chief Judge makes the finding required by Rule 62(a)(1)(A) and (B); and

(B) the Joint Committee consents.

(b) DECLARING A RULES EMERGENCY.

(1) Content. The declaration must state:

(A) which provisions in Rule 62(c) and (d) are effective during the particular rules emergency; and

(B) a date, no later than 90 days from the date of the declaration, on which the declaration will terminate.

(2) Additional Declarations; Early Termination. The Chief Judge:

(A) may issue additional declarations if emergency conditions change or persist; and

(B) must terminate a declaration before its stated termination date when the Chief Judge finds that a rules emergency no longer exists.

(c) AUTHORITY TO DEPART FROM THESE RULES AFTER A DECLARATION.

(1) Public Access to Proceedings. If emergency conditions preclude in-person attendance by the public at a public proceeding, the court must provide reasonable alternative access to that proceeding.

(2) Signing or Consenting for a Defendant. If these rules require a defendant's signature, written consent, or written waiver, and emergency conditions limit a defendant's ability to sign, the court may sign for the defendant if the defendant, after consultation with counsel, consents on the record. If the defendant is pro se, the court may sign for the defendant if the defendant consents on the record.

(3) Issuing a summons. When these rules require the court to issue an arrest warrant on misdemeanor charges only, the court may issue a summons instead if it finds that:

(A) because of the emergency conditions, the use of a warrant would create a significant risk to health or safety that outweighs the risk of dangerousness to any other person or the community; and

(B) the government has not demonstrated good cause for issuing a warrant instead of the summons.

(4) Alternate Jurors. The court may impanel more than 6 alternate jurors and, consistent with Rule 24(c)(4), may allow additional preemptory challenges proportionate to the number of additional alternates.

(d) AUTHORITY TO USE VIDEOCONFERENCING AND TELECONFERENCING AFTER A DECLARATION.

(1) Videoconferencing for Plea, Trial, and Sentencing Proceedings Under Rule 43(b)(2). This rule does not modify the court's authority to use videoconferencing for a proceeding under Rule

43(b)(2). But if emergency conditions significantly impair the defendant's opportunity to consult with counsel, the court must ensure that the defendant will have an adequate opportunity to do so confidentially immediately before and during those proceedings.

(2) *Videoconferencing for Certain Proceedings at Which the Defendant Has a Right to Be Present.* Except for felony trials and as otherwise provided under Rule 62(d)(1) and (3), for a proceeding at which a defendant has a right to be present, the court may use videoconferencing if:

(A) the Chief Judge finds that emergency conditions substantially impair the court's ability to hold an in-person proceeding within a reasonable time;

(B) the court finds that the defendant will have an adequate opportunity to consult confidentially with counsel immediately before and during the proceeding; and

(C) the defendant consents on the record after consulting with counsel.

(3) *Videoconferencing for Felony Pleas and Sentencings.* For a felony proceeding under Rule 11 or 32, the court may use videoconferencing only if, in addition to the requirements in Rule 62(d)(2)(A) and (B):

(A) the Chief Judge finds that emergency conditions substantially impair the court's ability to hold felony pleas and sentencings in person; and

(B) the defendant consents on the record after consulting with counsel.

(4) *Teleconferencing.* When videoconferencing is authorized under Rule 5 or 10, or when the requirements for videoconferencing in this rule have been met, the court may conduct the proceeding by teleconferencing if:

(A) the court finds that videoconferencing cannot be provided for the proceeding within a reasonable time; and

(B) the defendant consents on the record after consulting with counsel.

(e) EFFECT OF A TERMINATION. Terminating a declaration ends the court's authority under Rule 62(c) and (d) to depart from the criminal rules. But if a particular proceeding is already underway and complying with these rules for the rest of the proceeding would be infeasible or work an injustice, it may be completed as if the declaration had not terminated.

COMMENT TO 2021 AMENDMENTS

This new rule gives the Chief Judge the ability to declare a rules emergency and authorize the court to depart from certain provisions in other criminal rules. The Joint Committee must consent to any rules emergency declaration of more than 14 days. The Chief Judge's declaration must specify which provisions in sections (c) and (d) are effective during the rules emergency. The provisions in section (d), if included in the declaration, are not intended to modify the court's authority to use videoconferencing for a proceeding under Rules 5 and 10.