

## **SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

### **Notice of Proposed Amendments to Superior Court Rules of Procedure for the Landlord and Tenant Branch 12-I, 13, and 13-I**

The District of Columbia Superior Court Rules Committee has recently completed review of the proposed amendments to Superior Court Rules of Procedure for the Landlord and Tenant Branch 12-I, 13, and 13-I. The Rules Committee will recommend approval of the amendments to the Superior Court Board of Judges unless after consideration of comments received from the Bar and the general public they are withdrawn or modified.

Written comments in respect to these amendments may be submitted within 60 days of the publication of this notice in the Daily Washington Law Reporter to:

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All comments submitted in respect to this notice will be available to the general public. The proposed amendments are set forth below. New language is underlined and deleted language is stricken through.

## PROPOSED AMENDMENTS TO SCR-LT 12-I

### **Rule 12-I. Protective order.**

(a) *Entry of protective order.* (1) In general. Any party may move for the entry of a protective order on the initial return date or at any time thereafter. If entered, the protective order shall require the defendant to deposit money into the court registry instead of paying rent directly to the plaintiff. A protective order may be entered only after a hearing at which the Court finds that the equities merit the entry of such an order or by consent of the parties in accordance with section (c) of this rule. A protective order shall be prospective only and, except in accordance with section (d) of this rule, shall not require the defendant to deposit money for periods prior to the entry of the order. In a case that does not include an allegation of nonpayment of rent, the Court may enter a protective order over the defendant's objection only if, after inquiry by the Court, the defendant declines to stipulate that the plaintiff's acceptance of rent from that date forward shall be without prejudice to the plaintiff's ability to prosecute the action.

(2) Motions and hearings. If the parties are present in court, a request for the entry of a protective order may be made by oral motion. Any other motion for the entry of a protective order shall be made in writing in accordance with SCR-LT 13. If the amount or other terms of the proposed protective order are in dispute, the Court shall permit both parties to make arguments regarding the amount or other terms of the protective order and, if the Court deems it appropriate, to present evidence in support of their arguments. The Court may continue the hearing on a motion for a protective order for a reasonable period of time to permit the parties to prepare arguments and evidence for presentation to the Court. The Court shall state on the record the reasons for its ruling on the request for a protective order.

(3) Instructions to defendant. Upon the entry of a protective order, the Clerk shall immediately provide the defendant with a completed Landlord and Tenant Form 8, which shall include written instructions regarding the amount, due dates, and form of payments, as well as the location and business hours of the Clerk's Office.

(b) *Modification of protective order.* Upon motion and a showing of good cause, any party may seek modification of a protective order at any time after its entry. Unless the Court determines otherwise, such a motion shall be made in writing, in accordance with SCR-LT 13. If the requested modification to the protective order is in dispute, the Court shall permit both parties to make arguments regarding the modification and, if the Court deems it appropriate, to present evidence in support of their arguments. The Court may continue the hearing on a motion for modification of a protective order for a reasonable period of time to permit the parties to prepare arguments and evidence for presentation to the Court. The Court shall state on the record the reasons for its ruling on the request for a modification of the protective order.

(c) *Protective orders by consent.* Parties, whether pro se or represented by counsel, may enter into, vacate, or otherwise modify protective orders by consent, with the approval of either the Court or the Interview and Judgment Officer in accordance with SCR-LT 11-I.

(d) *Continued cases.* In any case that is continued from the initial return date for ascertainment of counsel, for a hearing on the amount of the protective order, or for any other reason, the Court may, for such time as is reasonable, defer ruling on a motion for a protective order until counsel, if any, has been retained, until a hearing has been held on the amount of the protective order, or until the other reason for the continuance has been addressed by the Court. At the time the continuance is ordered, the Court shall inform the parties that, unless otherwise

ordered by the Court, a protective order, whenever entered, shall be retroactive to the date on which it was first requested in open court.

(e) *Form of payment.* Payment into the court registry shall be made by any combination of cash, money order, certified check, attorney's escrow account check, or other form of payment approved by the Budget and Finance Division. Any money order, certified check, or attorney's escrow account check shall be made payable to "Clerk, D.C. Superior Court."

(f) *Late and partial protective order payments.* Payments due under a protective order shall be made on or before the dates specified in the order. The Clerk's Office shall accept for deposit any protective order payment, even if it is a partial payment and even if it is not timely made, without prejudice to the plaintiff's right to file a motion for sanctions in accordance with section (g).

(g) *Sanctions for untimely, partial, or missed payments.* (1) In general. If a defendant fails to make one or more payments required by a protective order or makes one or more untimely or incomplete payments, the plaintiff may file a written motion, in accordance with SCR-LT 13, seeking sanctions against the defendant. In determining whether to impose any sanction for untimely, incomplete, or missed payments, the Court shall hold a hearing on the motion and shall consider, among any other facts or arguments raised by the parties, the extent of and reasons for the defendant's noncompliance and any prejudice the plaintiff would suffer were the requested sanction not imposed. If the Court determines that a sanction should be imposed, the sanction may include those sanctions generally available to the Court for noncompliance with court orders, including but not limited to striking the defendant's jury demand or counterclaim, precluding certain defenses, and entering a judgment for possession in favor of the plaintiff. No money judgment may be entered on the underlying claims as a sanction for noncompliance with a protective order.

(2) Judgments for possession. (A) Nonpayment of rent cases. In a case based upon the defendant's alleged nonpayment of rent, the Court shall not enter a judgment for possession as a sanction for the defendant's failure to comply with a protective order without first requiring the plaintiff to present proof of liability and damages. The plaintiff may present proof of liability and damages on the same day that the motion for sanctions is scheduled for hearing or may ask the Court to schedule a hearing for a later date. If the hearing is scheduled for a later date, the Clerk shall send written notice to all parties. In its discretion, the Court may permit the plaintiff to present proof of liability and damages by sworn affidavits, provided that the plaintiff has attached to its motion seeking sanctions against the defendant the affidavits on which it seeks leave to rely. 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 shall not enter a judgment for possession unless the Court is satisfied with the proof presented. Any such judgment shall be subject to the defendant's right to redeem the tenancy and avoid eviction.

(B) Cases without allegations of nonpayment of rent. The Court shall not enter a judgment for possession as a sanction for the defendant's failure to comply with a protective order in a case in which the plaintiff seeks the entry of a judgment for possession that is not subject to the defendant's right to redeem the tenancy and avoid eviction. On motion of the plaintiff, however, the Court, upon a finding that the defendant has failed to comply with the terms of a protective order, shall consider any appropriate sanction other than the entry of a judgment for possession, including advancing the trial date and, in a case that has been certified

to the Civil Actions Branch under SCR-LT 6 pursuant to the defendant's demand for a jury trial, striking the defendant's jury demand.

(C) Cases involving allegations of nonpayment of rent and other allegations. Where the defendant has failed to comply with a protective order in a case that involves allegations of nonpayment of rent and allegations upon which the plaintiff seeks the entry of a judgment for possession that is not subject to the defendant's right to redeem the tenancy and avoid eviction, the Court may, on the plaintiff's motion, and in accordance with section (g)(1), (i) dismiss the allegations that do not relate to nonpayment of rent and enter a judgment for possession under section (g)(2)(A), subject to the defendant's right to redeem the tenancy; (ii) allow the plaintiff to proceed under section (g)(2)(B) with respect to all of the allegations in the complaint; or (iii) enter a judgment for possession under section (g)(2)(A) on the claim of nonpayment of rent, subject to the defendant's right to redeem the tenancy, and, as to the plaintiff's allegations other than nonpayment of rent, consider any appropriate sanction other than the entry of a non-redeemable judgment for possession, including advancing the trial date and, in a case that has been certified to the Civil Actions Branch under SCR-LT 6 pursuant to the defendant's demand for a jury trial, striking the defendant's jury demand.

(3) Cases that have been certified to Civil Actions Branch. If the Court strikes the defendant's jury demand in accordance with section (g)(2)(B) or section (g)(2)(C), then the case shall be certified back from the Civil Actions Branch to the Landlord and Tenant Branch, and the Court shall vacate all discovery, mediation, pretrial conference, and trial dates pending in the Civil Actions Branch and, with notice to the defendant, shall set the case for a non-jury trial in the Landlord and Tenant Branch on the earliest available date deemed fair to all parties in light of the totality of the circumstances. If the Court decides not to strike the defendant's jury demand in accordance with section (g)(2)(B) or section (g)(2)(C), then the Court shall immediately attempt to contact the judge in the Civil Actions Branch to whom the case has been assigned and shall inform the assigned judge of the circumstances; the assigned judge shall in turn consider whether to advance the date for a jury trial or otherwise modify the scheduling order. If, having decided not to strike the defendant's jury demand, the Court is unable to reach the assigned judge, then the Court, with notice to the defendant, shall set the case for a status conference before the assigned judge on the earliest available date; at the status conference, the assigned judge shall consider whether to advance the date for a jury trial or otherwise modify the scheduling order.

#### COMMENT

Rule 12-I does not foreclose the court in an appropriate circumstance, e.g., in a case in which the defendant is alleged to be a squatter, terminated employee, permissive occupant, or foreclosed homeowner, from fashioning an equitable remedy to protect the legitimate interests of both parties and maintain a proper balance during the litigation. See *Bell v. Tsintolas Realty*, 139 U.S. App. D.C. 101, 430 F.2d 474, 482 (1970); *Davis v. Rental Assocs. Inc.*, 456 A.2d 820, 823 (D.C. 1983). Such a remedy may include payment for the fair use and occupancy of the property, while the litigation is pending, in the form of a bond and/or periodic payment. See *Lindsey v. Prillman*, 921 A.2d 782, 785 (D.C. 2007) (“we decline to say that a periodic payment-protective order can never be contemplated for use outside the typical landlord and tenant context”).

## PROPOSED AMENDMENTS TO SCR-LT 13

### Rule 13. Motions.

(a) *In general.* ~~When any motion cognizable in this Branch is dependent upon~~ depends on facts not apparent ~~upon~~ in the record, ~~said~~ the motion ~~shall~~ must be in writing and ~~shall be accompanied by an affidavit or sworn testimony of the movant, his agent, or some other competent person,~~ must contain a memorandum of points and authorities setting forth ~~out~~ fully the facts ~~upon~~ which ~~said~~ the motion is based. ~~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 movant may support the motion with affidavits or other forms of sworn testimony, and the court may require the submission of such evidence.

(b) *Motions to be decided in the Landlord and Tenant Branch.* A motion to be decided in the Landlord and Tenant Branch must be served and filed as follows:

(1) *Obtaining a hearing date.* Before serving or filing the motion, the movant must contact the Landlord and Tenant Clerk in person or by telephone or electronic mail and obtain a hearing date that is not earlier than the earliest date permitted by section (b)(2). The movant then must include the following notice of the date, time, and location of the hearing on the original and each copy of the motion, immediately following the certificate of service: "THIS MOTION HAS BEEN SET FOR HEARING IN THE LANDLORD AND TENANT COURTROOM ON ..... AT ..... I have confirmed this date and time with the Clerk of the Landlord and Tenant Branch."

(2) *Time of hearing.* A motion for summary judgment filed in accordance with section (d) will be set for hearing not earlier than the 10th calendar day after the day of filing of the motion if served by hand or the 13th calendar day after the day of filing of the motion if served by mail. All other motions will be set for hearing not earlier than the 7th calendar day after the day of filing of the motion if served by hand or the 10th calendar day after the day of filing of the motion if served by mail.

(3) *Service and filing.* After receiving the assigned hearing date and completing the notice of hearing required by section (b)(1):

(A) *Movants represented by counsel.* A movant represented by counsel must serve the motion in accordance with SCR Civ. 5. Once service of the motion has been completed, the original motion with a completed certificate of service must be filed.

(B) *Movants not represented by counsel.* A movant not represented by counsel must choose one of the following methods to serve and file a motion:

(i) *Service by the Clerk.* The movant must file the original motion and a copy for each of the other parties. The Clerk will serve a copy of the motion on each of the other parties and will note the date and method of service on the docket.

(ii) *Service by the party by hand.* Before filing the motion, the movant must serve a copy of the motion, with a completed notice of hearing, on each of the other parties by hand-delivery. If another party is represented by counsel, then service must be on the other party's counsel; if another party is not represented by counsel, then service must be on the other party directly. Once service by hand-delivery on all other parties has been completed, the movant must file the original motion, including a completed certificate of service as to all other parties.

(4) *Parties opposing motions.* A party intending to oppose a motion must attend the hearing on the motion, either personally or through counsel. Such a party also may file a

memorandum of opposing points and authorities before the time set for hearing, although the filing of a memorandum of opposing points and authorities does not excuse the party's attendance at the hearing on the motion.

(c) *Motions not to be automatically scheduled for hearings in the Landlord and Tenant Branch.*

(1) *Service and filing.* A motion to be heard by a judge in the Civil Actions Branch pursuant to SCR-LT 13-I must be served and filed in accordance with section (b)(3) but should not include a notice of hearing.

(2) *Motions to alter, amend, or for relief from a ruling or sanction.* A motion to alter, amend, or for relief from a ruling or sanction must be served and filed in accordance with section (b)(3) but should not include a notice of hearing. A motion to alter, amend, or for relief from a ruling or sanction entered by a judge in the Landlord and Tenant Branch must, whenever practicable, be decided by the same judge who issued the ruling or sanction, and the motion must include that judge's name in the caption immediately below the case number.

(3) *Parties opposing motions.* A party opposing a motion not scheduled for a hearing before the judge sitting in the Landlord and Tenant Branch may file a statement of opposing points and authorities within 14 days after service of the motion as calculated by SCR Civ. 6 or such further time as the court may grant.

(4) *Oral hearings.* Any party may request an oral hearing on a motion filed pursuant to this section by stating at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested". If the judge decides to hold a hearing on the motion, the judge must give all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing. Regardless of whether the judge holds a hearing on the motion, the judge must decide the motion on the merits and may not grant a motion to which the opposing party has not consented until a statement of opposing points and authorities has been filed or the time period set forth in section (c)(3) has expired.

(b) *Summary judgment.* Any party seeking to recover upon or defend against a claim or counterclaim may, at any time after the appearance date indicated in the summons, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof the claim or counterclaim in accordance with Superior Court Rules of Civil Procedure 12-I(k) and 56. Oppositions to motions for summary judgment must be presented as follows:

(1) *Motions to be decided in the Landlord and Tenant Branch.* A party intending to oppose a motion for summary judgment to be decided in the Landlord and Tenant Branch must attend the hearing scheduled pursuant to section (b)(2) and must set forth specific facts showing the existence of a genuine issue for trial by either (A) filing a written opposition in accordance with SCR Civ. 12-I(k) and 56; or (B) presenting live testimony or producing affidavits or other admissible evidence at the hearing. Except where it would prejudice a party's ability to oppose the motion on the merits, the court may require the filing of a written opposition in accordance with SCR Civ. 12-I(k) and 56 instead of the presentation of live testimony or other admissible evidence.

(2) *Motions to be decided in the Civil Actions Branch.* A party intending to oppose a motion for summary judgment to be decided by a judge in the Civil Actions Branch pursuant to SCR-LT 13-I must file a written opposition in accordance with SCR Civ. 12-I(k) and 56. Any party may request a hearing on such a motion by stating at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested". If the judge decides to hold a hearing on the motion, the judge must give all parties appropriate notice of the hearing and may

specify the matters to be addressed at the hearing. Regardless of whether the judge holds a hearing on the motion, the judge must decide the motion on the merits and may not grant a motion to which the opposing party has not consented until a statement of opposing points and authorities has been filed or the time period set forth in section (c)(3) has expired.

(e) Assignment of motions by the Presiding Judge. Any judge sitting in the Landlord and Tenant Branch may retain a particular motion for decision by notifying the parties and causing a notation to be made in the docket. In addition, the Presiding Judge of the Civil Division may assign any motion arising in the Landlord and Tenant Branch to a particular judge for decision by that judge.

~~(e) Time of hearing. Motions filed in this Branch shall be heard not earlier than the 5th day after service of the motion, whether served by hand or by mail.~~

#### COMMENT

“In matters involving pleadings, service of process, and timeliness of filings, *pro se* litigants are not always held to the same standards as are applied to lawyers. Indeed, the trial court has a responsibility to inform *pro se* litigants of procedural rules and consequences of noncompliance [including] at least minimal notice . . . of pleading requirements. *Pro se* litigants are allowed more latitude than litigants represented by counsel to correct defects in service of process and pleadings.” *Padou v. District of Columbia*, 998 A.2d 286, 292 (D.C. 2010) (citations omitted).

A motion captioned as a “Motion for Reconsideration” is considered under subsection (c)(2) as a motion to alter, amend, or for relief from a ruling or sanction and will be treated as such under this Rule. See *Fleming v. District of Columbia*, 633 A.2d 846, 848 (D.C. 1993); *Wallace v. Warehouse Employees Union #730*, 482 A.2d 801, 804-05 (D.C. 1984).

“The trial court is not free to treat as conceded an unopposed motion for summary judgment” filed under section (d). *Milton Props., Inc. v. Newby*, 456 A.2d 349, 354 (D.C. 1983). “Even if an unopposed motion for summary judgment is deemed to establish that no genuine issue of material fact exists, the court must still review the pleadings and other papers to determine whether the moving party is legally entitled to judgment.” *Id.*

## PROPOSED AMENDMENTS TO SCR-LT 13-I

### **Rule 13-I. Motions and discovery in cases certified to Civil Division Actions Branch.**

(a) Motions to be decided by the assigned judge. A~~The judge of the Civil Division~~ to whom a case is ~~certified~~has been assigned for a jury trial pursuant to SCR-LT 6 ~~shall~~will hear and determine the following motions in accordance with the Superior Court Rules of Civil Procedure, the general order, and any applicable calendar orders:

(1) motions to dismiss for failure to state a claim filed under SCR Civ 12(b)(6) or for judgment on the pleadings;

(2) motions concerning discovery;

(23) motions for summary judgment under SCR Civ. 56;

(34) motions concerning the conduct of the trial (e.g., motions *in limine* to exclude or receive evidence);

(45) motions to amend the pleadings~~continue trial;~~

(56) motions filed pursuant to SCR Civ. 17-25~~after the commencement of trial; and~~

(67) motions to continue trial or any other hearing scheduled before the assigned judge; concerning discovery presented to the Court for decision on or after the date of the scheduling conference held in accordance with SCR Civ 16(b).

(8) motions relating to the entry and withdrawal of counsel;

(9) motions for recusal of the assigned judge;

(10) motions to consolidate or sever;

(11) motions relating to any subject that are filed during trial or so close to trial that a hearing cannot be scheduled in the Landlord and Tenant Branch before the trial date;

(12) post-trial motions concerning the conduct or outcome of the trial or an appeal of the judgment;

(13) motions to vacate dismissals, defaults, or default judgments entered by the assigned judge;

(14) motions to alter, amend, or for relief from, an order issued by the assigned judge;  
and

(15) motions for enlargement of time to file any motion, opposition, or other paper that will be determined by the assigned judge in accordance with paragraphs (1)-(14) of this section.

(b) Parties opposing motions. Any party opposing a motion filed pursuant to section (a) may serve and file a statement of opposing points and authorities within 14 days after service of the motion upon the party as calculated by SCR Civ. 6 or such further time as the assigned judge may grant.

(c) Oral Hearings. Any party may request an oral hearing on a motion filed pursuant to section (a) by stating at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested". If the assigned judge decides to hold a hearing on the motion, that judge will give to all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing. Regardless of whether the judge holds a hearing on the motion, the judge must decide the motion on the merits and may not grant a motion to which the opposing party has not consented until a statement of opposing points and authorities has been filed or the time period set forth in section (b) has expired.

(d) Motions to be decided in the Landlord and Tenant Branch. Except as provided in subsection (a)(11), the following motions will be heard and decided by the judge sitting in the Landlord and Tenant Branch pursuant to the rules of that Branch:



(1) motions relating to a protective order;  
(2) motions for an administrative stay of the proceedings;  
(3) motions for a temporary restraining order or preliminary injunction;  
(4) motions to enforce a settlement agreement or consent judgment, unless otherwise specified by the Court in the agreement; and

(5) post-trial motions not concerning the conduct or outcome of the trial or an appeal of the judgment.

(e) *Motions to alter, amend, or for relief from rulings or sanctions entered in the Landlord and Tenant Branch.* A motion to alter, amend, or for relief from a ruling or sanction entered by a judge sitting in the Landlord and Tenant Branch will be decided by that judge whenever practicable. Such a motion must include the judge's name in the caption below the case number. A party opposing the motion may file a statement of opposing points and authorities within 14 days after service of the motion as calculated by SCR Civ. 6 or such further time as the court may grant. A hearing on the motion will not automatically be set, but a hearing may be requested or held in accordance with SCR-LT 13(c)(4).

(f) *All other motions.* Except as provided in subsection (a)(11), All other motions will be heard and decided by the judge sitting in the Landlord and Tenant Court Branch pursuant to the rules of that Court Branch, except that the Presiding Judge of the Civil Division has the discretion to certify any other motion not listed in section (a) to the assigned judge.

#### COMMENT

This rule does not modify the provision of LT Rule 10 that discovery in cases certified for jury trial may be undertaken only with leave of the Court. A motion captioned as a "Motion for Reconsideration" is considered under sections (a)(14) and (e) as a motion to alter, amend, or for relief from a ruling or sanction and will be treated as such under this Rule. See *Fleming v. District of Columbia*, 633 A.2d 846, 848 (D.C. 1993); *Wallace v. Warehouse Employees Union #730*, 482 A.2d 801, 804-05 (D.C. 1984).