

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

### Notice of Proposed Amendments to Superior Court General Rule of the Family Court D

The District of Columbia Superior Court Rules Committee has recently completed review of proposed amendments to Superior Court General Rule of the Family Court D. 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Court Board of Judges unless, after consideration of comments received from the Bar and the general public, they are withdrawn or modified.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 by February 24, 2011 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-FAMILY D

### Rule D. Magistrate Judges~~Hearing commissioners~~.

(a) *Assignment of duties.* Magistrate judges~~Hearing commissioners~~ appointed pursuant to the Rules of this Court, when designated by the Chief Judge, may perform the duties specified in this Rule and such other functions incidental to these duties as are consistent with the Rules of the Superior Court and the Constitution and the laws of the United States and of the District of Columbia.

(b) *Proceedings for establishment, enforcement or modification of child support.*

(1) In any case brought under D.C. Code § 11-1101(1), (3), (10), or (11) involving the establishment or enforcement of child support, or in any case seeking to modify an existing child support order, where a magistrate judge~~hearing commissioner~~ in the Family Court~~Division~~ of the Superior Court finds that there is an existing duty of support, the magistrate judge~~hearing commissioner~~ shall conduct a hearing on support and, within 30 days from the conclusion of the hearing, the magistrate judge~~hearing commissioner~~ shall issue written findings of fact and conclusions of law, and enter judgment as provided by law and in accordance with D.C. Code § 16-916.1 [§ 16-916.01, 2001 Ed.], which judgment shall constitute a final judgment of the Superior Court. A copy of the order of support shall be given to all parties in the case. The written findings of fact and conclusions of law issued pursuant to this subparagraph shall include:

- (A) The name and relationship of the parties;
- (B) The name, age, and any exceptional information about the child;
- (C) The duty of support owed;
- (D) The amount of monthly support payments ordered in the case;
- (E) The amount of any other support payments previously ordered to be paid by the obligor;
- (F) The annual earnings of the parents;
- (G) The social security numbers of the parents;
- (H) The name, address and telephone number of each parent's employer;
- (I) The name, address, and telephone number of any person, organization, corporation, or government entity that holds real or personal assets of the obligor;
- (J) A statement that each parent is bound by this order to notify the Court within 10 days of any change in address or employment;
- (K) Notice that support payments shall be withheld from earnings or other income as defined in D.C. Code § 30-501 [§ 46-201, 2001 Ed.] when there are arrearages equal to 30 days of support payments;
- (L) Notice that if withholding commences, all payments shall be made through the Court registry and any other payments shall be considered a gift and shall not offset the duty of support ordered by the Court;
- (M) Notice that a withholding order may be changed if either party moves to request a reapportionment of periodic arrears payments to reflect a change in the obligor's ability to pay; and
- (N) Notice that a party may within 10 days after entry of a magistrate judge's~~hearing commissioner's~~ order or judgment file a motion for review of that order or judgment pursuant to subparagraph (e)(1) of this Rule.

(2) All cases brought pursuant to D.C. Code § 11-1101(11) shall be referred to a ~~magistrate judge~~~~hearing commissioner~~ sitting in the Family ~~Court~~~~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 subparagraph (b)(1) of this Rule; 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.

(3) If in a case under subparagraph (b)(1) or (b)(2), the ~~magistrate judge~~~~hearing commissioner~~ finds that a duty of support exists and makes a finding that the case involves complex issues requiring judicial resolution, the ~~magistrate judge~~~~hearing commissioner~~ shall establish a temporary support obligation and refer unresolved issues to a judge, except that the ~~magistrate judge~~~~hearing commissioner~~ shall not establish a temporary support obligation if parentage is at issue.

(4) In a case under subparagraph (b)(1), (2) or (3), if an individual fails to appear or otherwise respond, and the ~~magistrate judge~~~~hearing commissioner~~ finds that the individual owes a duty of support and has been served or given notice of the proceeding under any applicable statute or rule, the ~~magistrate judge~~~~hearing commissioner~~ shall enter a default order, which shall constitute a final order of the Superior Court.

(c) ~~Other Family Court~~~~Division proceedings~~. With the consent of the parties, and sSubject to the other provisions of this Rule, a ~~magistrate judge~~~~hearing commissioner~~ may conduct proceedings in any other contested or uncontested matter in the Family ~~Court~~~~Division~~, excluding jury trials and felony juvenile trials. In these proceedings, the ~~magistrate judge~~~~hearing commissioner~~ may make findings and enter final orders or judgments which shall constitute final orders or judgments of the Superior Court.

(d) ~~Other duties~~. The authority of a ~~magistrate judge~~~~hearing commissioner~~ in the Family ~~Court~~~~Division~~ shall include the power to appoint counsel for parties, assign trial dates, issue notices of hearing and orders directing appearance, and certify actions for disposition before a judge. In addition, a ~~magistrate judge~~~~hearing commissioner~~ may issue a bench warrant or custody order for a respondent who fails to appear in Court, and may quash such a bench warrant or custody order.

(e) ~~Review of magistrate judge's~~~~hearing commissioner's order or judgment~~.

(1) Upon motion. With respect to proceedings and hearings under paragraphs (b) and (c) of this Rule, a review of the ~~magistrate judge's~~~~hearing commissioner's order or judgment~~, in whole or in part, shall be made by a judge designated by the Chief Judge to act on all motions for review under this Rule upon motion of a party. Such motion shall be filed and served on all parties not later than 30 days after entry of the order or judgment with respect to a motion made pursuant to paragraph (b) of this rule and 10 days after the entry of the order of judgment with respect to a motion made pursuant to paragraph (c) of this rule. The motion for review shall designate the order, judgment, or part thereof, for which review is being sought, shall specify the grounds for the objection to the ~~magistrate judge's~~~~hearing commissioner's order, judgment, or part thereof~~, and shall include a written summary of any evidence presented before the ~~magistrate judge~~~~hearing commissioner~~ relating to the grounds for the objection. Within 10 days after being served with said motion, a party may file and serve a response, which shall

describe any proceedings before the ~~magistrate judge~~ ~~hearing commissioner~~ which conflict with or expand upon the summary filed by the moving party. The judge designated by the Chief Judge shall review those portions of the ~~magistrate judge's~~ ~~hearing commissioner's~~ order or judgment to which objection is made, and may affirm, reverse, modify, or remand, in whole or in part, the ~~magistrate judge's~~ ~~hearing commissioner's~~ order or judgment and enter an appropriate order of judgment.

(2) On initiative of Court. Not later than 30 days after entry of a ~~magistrate judge's~~ ~~hearing commissioner's~~ order or judgment pursuant to paragraphs (b) or (c) of this Rule, the judge designated by the Chief Judge may sua sponte review said order or judgment in whole or in part. After giving the parties due notice and opportunity to make written submissions on the matter, the judge may affirm, reverse, modify, or remand, in whole or in part, the ~~magistrate judge's~~ ~~hearing commissioner's~~ order or judgment.

(3) Stay of proceedings. Upon a showing that the ~~magistrate judge~~ ~~hearing commissioner~~ has refused or otherwise failed to stay an order or judgment pending review under this Rule, the movant may, with reasonable notice to all parties, apply to the judge for a stay. The stay may be conditioned upon the filing of a bond or other appropriate security.

(4) Extension of time to file motion for review. Upon a showing of excusable neglect and notice to the parties the judge designated by the Chief Judge pursuant to subparagraph (e)(1) of this Rule may, before or after the time prescribed by subparagraph (e)(1) has expired, with or without motion, extend the time for filing and serving a motion for review of a ~~magistrate judge's~~ ~~hearing commissioner's~~ order or judgment for a period not to exceed 20 days from the expiration of the time otherwise prescribed by subparagraph (e)(1).

(f) *Appeal*. An appeal of the ~~magistrate judge's~~ ~~hearing commissioner's~~ order or judgment may be made to the District of Columbia Court of Appeals only after a judge of the Superior Court has reviewed the ~~magistrate judge's~~ ~~hearing commissioner's~~ order or judgment pursuant to paragraph (e) of this Rule.

(g) *Contempt*. A ~~magistrate judge~~ ~~hearing commissioner~~ may order an individual to show cause before the Presiding Judge of the Family ~~Court~~ ~~Division~~, or his or her designee, why the individual should not be held in civil or criminal contempt for disobedience or resistance to any lawful order, process, or writ issued by the ~~magistrate judge~~ ~~hearing commissioner~~ or for any other act or conduct committed before a ~~magistrate judge~~ ~~hearing commissioner~~ which if committed before a judge would constitute contempt. An order to show cause why the individual should not be held in criminal contempt shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such.

#### COMMENT

See D.C. Code §§ 11-1732, 16-924, and 46-201 et seq. (2010-1987 Supp.). The ~~District of Columbia Superior Court Child Support Guideline~~ is set forth in D.C. Code § 16-916.01 (2010 Supp.), and the Schedule of Basic Child Support Obligations is Appendix I to the statute ~~Appendix I of the General Family Rules~~.

The standard of review of a ~~magistrate judge's~~ ~~hearing commissioner's~~ decision pursuant to subparagraphs (e)(1) and (2) is the same as applied by the Court of

Appeals on appeal of a judgment or order of the Superior Court. In accordance with that standard, a magistrate judge's~~hearing commissioner's~~ judgment or order may not be set aside except for errors of law unless it appears that the judgment or order is plainly wrong, without evidence to support it, or an abuse of discretion. ~~[The District of Columbia Child Support Guideline is attached at Appendix I.]~~

Subsequent to *In re A.O.T.*, Nos. 09-FS-994, 09-FS-995, 09-FS-996 (D.C. Dec. 23, 2010), section (c) of the rule was amended, pursuant to D.C. Code § 11-1732A(d)(2) (2010 Supp.), to permit a magistrate judge to conduct proceedings authorized by the rule without consent of the parties.