

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ORDER

By action of the Board of Judges of this Court and pursuant to D.C. Code § 11-946, it is this 13th day of June, 2006:

ORDERED that Superior Court Rules of Civil Procedure 5, 6, 27, 45, 51, 53 and 54 are amended as set forth below; and it is

FURTHER ORDERED that the above-enumerated rules shall take effect August 1, 2006 and govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

AMENDMENT TO SCR CIVIL 5

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(f) Privacy Requirements

(1) All parties shall exclude the following personal identifiers from all filed documents, except as provided below.

(A) Social Security numbers: Except as otherwise provided below, social security numbers are to be excluded from public filings. If a party intends to file any document that includes an individual's social security number, the party shall file the document with the acronym "SSN" placed where the individual's social security number would have been included. On Writs of Garnishment social security numbers should be deleted only from the original writ and not from the service copies.

(B) Names of minor children: The names of minor children are to be excluded from public filings. If a party intends to file any document in which a minor child will be identified, only the initials of that child should be used in any public filing.

(C) Dates of birth: Dates of birth are to be excluded from public filings. If a party intends to file any document that includes an individual's date of birth, the party shall file the document with the acronym "DOB" placed where the individual's date of birth would have been included.

(D) Financial account numbers: Financial account numbers are to be excluded from public filings. If a party intends to file a document that

includes a financial account number, only the last four digits should be used.

(2) A party wishing to file a document containing the unredacted personal identifiers listed in subparagraph (A) through (D) of this rule may submit a motion to file an unredacted document under seal.

(3) The responsibility for redacting these personal identifiers rests solely with counsel and the interested persons.

Comments: This Rule expresses the Court's concern about access to, and dissemination of, private information in the Court's public records to the detriment of individuals whose privacy is compromised simply because their otherwise private information is contained in court filings. The risk of invasion of privacy is heightened where the court's public records are made available through the internet. Although the Rule does not expressly prohibit all use of personal identifiers and other private information, such as home addresses, it is the policy of the Court that parties not include home addresses and other private information in any court filings unless it is necessary to the matter being litigated or is otherwise expressly required by statute or other Rules of the Court, such as, for example, Rules 16(a)(2), 10-I(b), and 4(l)(2).

AMENDMENT TO SCR CIVIL 6

TIME

(e) Additional Time After ~~Certain Kinds of Service Under Rule 5(b)(2)(B), (C), or (D).~~ Whenever a party has the right or is required to do some act or take some proceedings must or may act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party ~~service and service is made~~ under Rule 5(b)(2)(B), (C), or (D), 3 days ~~shall be~~ are added ~~to~~ after the prescribed period would otherwise expire under subdivision (a).

AMENDMENT TO SCR CIVIL 27

DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

(a) Before Action.

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~~(2) **Notice and Service.** The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the Court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the district or state in the manner provided in Rule 4(d) for service of summons, but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the Court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4(d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(e) apply.~~

(2) **Notice and Service.** At least 20 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the district or state in the manner provided in Rule 4. If that service cannot be made with due diligence on an expected adverse party, the Court may order service by publication or otherwise. The Court must appoint an attorney to represent persons not served in the manner provided by Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. Rule 17(c) applies if any expected adverse party is a minor or is incompetent.

AMENDMENT TO CIVIL RULE 45

SUBPOENA

- (a) Form; issuance. (1) Every subpoena shall
 - (A) state the name of the Court; and
 - (B) state the title of the action, and its civil action number and individual calendar number; and

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (c) and (d) of this rule.

(E) and where the subpoena is to attend a deposition, state the method for recording deposition testimony.

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.

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AMENDMENTS TO SCR CIVIL 51

INSTRUCTIONS TO JURY; OBJECTIONS; PRESERVING A CLAIM OF ERROR

(a) Requests.

(1) A party may, at the close of the evidence or at an earlier reasonable time that the court directs, file and furnish to every other party written requests that the court instruct the jury on the law as set forth in the requests.

(2) After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated at an earlier time for requests set under Rule 51(a)(1), and
(B) with the court's permission file untimely requests for instructions on any issue.

(b) Instructions. The court:

(1) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(2) must give the parties an opportunity to object on the record and out of the jury's hearing to the proposed instructions and actions on requests before the instructions and arguments are delivered; and

(3) may instruct the jury at any time after trial begins and before the jury is discharged.

(c) Objections.

(1) A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds of the objection.

(2) An objection is timely if:

(A) a party that has been informed of an instruction or action on a request before the jury is instructed and before final jury arguments, as provided by Rule (51)(b)(1), objects at the opportunity for objection required by Rule 51(b)(2); or

(B) a party that has not been informed of an instruction or action on a request before the time for objection provided under Rule 51(b)(2) objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Assigning Error; Plain Error.

(1) A party may assign as error:

(A) an error in an instruction actually given if that party made a proper objection under Rule 51(c), or

(B) a failure to give an instruction if that party made a proper request under Rule 51(a), and ? unless the court made a definitive ruling on the record rejecting the request ? also made a proper objection under Rule 51(c).

(2) A court may consider a plain error in the instructions affecting substantial rights that has not been preserved as required by Rule 51(d)(1)(A) or (B).

COMMENT: Identical to Federal Rule of Civil Procedure 51.

AMENDMENTS TO SCR CIVIL 53

MASTERS

(a) Appointment.

(1) ~~(1)~~ The term “master” also refers to the Auditor-Master as established by DC Code §11-1724, et seq. unless otherwise noted.

(2) Unless a statute provides otherwise, the court may appoint a master only to:

(A) perform duties consented to by the parties; or

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided by the court without a jury if appointment is warranted by

- (i) some exceptional condition, or
- (ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and post-trial matters that cannot be addressed effectively and timely by an available district judge or magistrate judge of the district.

(32) A master must not have a relationship to the parties, counsel, action, or court that would require disqualification of a judge under Civil Rule 63-I 28 U.S.C. § 455 unless the parties consent with the court's approval to appointment of a particular person after disclosure of any potential grounds for disqualification.

(43) In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) Order Appointing Master.

(1) Notice. The court must give the parties notice and an opportunity to be heard before appointing a master. A party may suggest candidates for appointment.

(2) Contents. The order appointing a master must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);

(B) the circumstances--if any--in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(h).

(3) Entry of Order. The court may enter the order appointing a master only after the master has filed an affidavit disclosing whether there is any ground for disqualification under Civil Rule 63-I 28 U.S.C. § 455 and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification.

(4) Amendment. The order appointing a master may be amended at any time after notice to the parties, and an opportunity to be heard.

(c) Master's Authority. Unless the appointing order expressly directs otherwise, a master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently the assigned duties. The master may by order impose upon 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.

(d) Evidentiary Hearings. Unless the appointing order expressly directs otherwise, a master conducting an evidentiary hearing may exercise the power of the appointing court to compel, take, and record evidence.

(e) Master's Orders. A master who makes an order must file the order and promptly serve a copy on each party. The clerk must enter the order on the docket.

(f) Master's Reports. A master must report to the court as required by the order of appointment. The master must file the report and promptly serve a copy of the report on each party unless the court directs otherwise.

(g) Action on Master's Order, Report, or Recommendations.

(1) Action. In acting on a master's order, report, or recommendations, the court must afford an opportunity to be heard and may receive evidence, and may: adopt or affirm; modify; wholly or partly reject or reverse; or resubmit to the master with instructions.

(2) Time To Object or Move. A party may file objections to--or a motion to adopt or modify--the master's order, report, or recommendations no later than 20 days from the time the master's order, report, or recommendations are served, unless the court sets a different time.

(3) Fact Findings. The court must decide de novo all objections to findings of fact made or recommended by a master unless the parties stipulate with the court's consent that:

(A) the master's findings will be reviewed for clear error, or

(B) the findings of a master appointed under Rule 53(a)(~~1~~2)(A) or (C) will be final.

(4) Legal Conclusions. The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) Procedural Matters. Unless the order of appointment 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.

(h) Compensation.

(1) (~~1~~) Fixing Compensation. The court must fix the master's compensation, including recovery of costs, before or after judgment on the basis and terms stated in the order of appointment, but the court may set a new basis and terms after notice and an opportunity to be heard.

(2) The Auditor-Master shall not be compensated, but shall be entitled to recover costs.

(~~3~~2) Payment. The compensation fixed under Rule 53(h)(1) must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(~~4~~3) Allocation. The court must allocate payment of the master's compensation among the parties after considering the nature and amount of the controversy, the means of the parties, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

(i) Appointment of Magistrate Judge. A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge expressly provides that the reference is made under this rule.

Comment: A master may also recommend the institution of contempt proceedings by the Court against a nonparty under SCR Civ. 53(c). The service requirement in SCR Civ. 53(e) refers to orders issued out of the presence of the parties.

AMENDMENT TO SCR CIVIL 54

JUDGMENTS; COSTS

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(d) Costs; Attorneys' Fees.

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(2) Attorneys' Fees

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(D) The Court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings. In addition, the Court may refer issues relating to the value of services to a special master under Rule 53 without regard to the provisions of ~~subdivision (b)~~ Rule 53(a)(2) thereof and may refer a motion for attorney's fees to a ~~hearing commissioner~~ magistrate judge as if it were a dispositive pretrial matter.

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By the Court:

Date: 6/13/2006

/S/ Rufus G. King, III
Rufus G. King, III
Chief Judge

Copies to:

- All Judges
- All Magistrate Judges
- Director of the Civil Division
- David Luria, Attorney Advisor