

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**RULE PROMULGATION ORDER 22-15**

(Amending Super. Ct. Crim. R. 5)

**WHEREAS**, pursuant to D.C. Code § 11-946 (2012 Repl.), the Board of Judges of the Superior Court approved amendments to Superior Court Rule of Criminal Procedure 5; and

**WHEREAS**, pursuant to D.C. Code § 11-946 (2012 Repl.), the amendments to this rule, to the extent that they modify the federal rule, have been approved by the District of Columbia Court of Appeals; it is

**ORDERED**, that Superior Court Rule of Criminal Procedure 5 is hereby amended as set forth below; and it is further

**ORDERED**, that the amendments shall take effect immediately and shall govern all proceedings hereafter commenced and insofar is just and practicable all pending proceedings.

## Rule 5. Initial Appearance

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### (f) REMINDER OF PROSECUTORIAL OBLIGATION.

(1) *In General.* In all criminal proceedings, at the defendant's initial appearance, the judge or magistrate judge must issue a written order to the attorney for the government and defense counsel that confirms the disclosure obligation of the attorney for the government under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, and the possible consequences of violating such order under applicable law. At the first hearing after the defendant's initial appearance, the judge or magistrate judge must orally confirm the terms of the written order.

(2) *General Order.* The Chief Judge must issue a general order for use in accordance with Rule 5(f)(1).

(g) ARRESTS OUTSIDE THE DISTRICT OF COLUMBIA. A person arrested outside the District of Columbia on a warrant issued by the Superior Court of the District of Columbia must be taken before the court or other person enumerated in 18 U.S.C. § 3041 and must be held to answer in the court having jurisdiction to try the defendant pursuant to the Federal Rules of Criminal Procedure as if the warrant had been issued by the United States District Court for the District of Columbia.

(h) VIDEO TELECONFERENCING. Video teleconferencing may be used to conduct an appearance under this rule if the defendant, having been afforded the opportunity to consult with counsel, consents.

### COMMENT TO 2022 AMENDMENTS

Paragraph (f) is a new provision, drafted in response to the 2020 amendment to Federal Rule of Criminal Procedure 5. Paragraph (f), however, is not identical to Federal Rule 5(f). While Federal Rule 5(f)(1) requires that the court issue both an oral and a written order at the first hearing in the case confirming the government's *Brady* obligations, subparagraph (f)(1) requires a written order at the time of the defendant's initial appearance and an oral confirmation of the terms of the written order at the first hearing following the defendant's initial appearance. This procedure is intended to allow arraignments and presentments to proceed without undue delay and to increase the likelihood that the *Brady* admonition is directed to counsel actually assigned to the case, rather than to counsel standing in at the defendant's initial appearance. And while Federal Rule 5(f)(2) requires the promulgation of a model order by each federal judicial council, subparagraph (f)(2) requires the Chief Judge to issue a general order for use in accordance with subparagraph (f)(1). Former paragraphs (f) and (g) have been redesignated as paragraphs (g) and (h), respectively.

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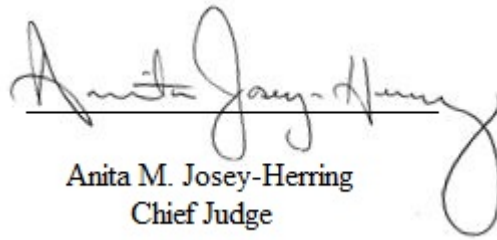
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By the Court:

Date: December 22, 2022



Anita M. Josey-Herring  
Chief Judge

Copies to:

All Judges  
All Magistrate Judges  
All Senior Judges  
William Agosto, Director, Criminal Division  
Library  
Daily Washington Law Reporter  
Pedro E. Briones, Associate General Counsel