

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 25-01

(Amending Super. Ct. Civ. R. 12 and 28-I)

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the Board of Judges of the Superior Court approved amendments to Superior Court Rules of Civil Procedure 12 and 28-I; and

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

ORDERED, that Superior Court Rules of Civil Procedure 12 and 28-I are hereby amended as set forth below; and it is further

ORDERED, that the amendments to Superior Court Rule of Civil Procedure 12 shall take effect immediately and shall govern all proceedings hereafter commenced and, insofar as just and practicable, all pending proceedings; and it is further

ORDERED, that the amendments to Superior Court Rule of Civil Procedure 28-I shall take effect sixty days from the date of this order and shall govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) TIME TO SERVE A RESPONSIVE PLEADING.

~~(1) In General.~~ Unless another time is specified by ~~this rule or~~ an applicable statute, the time for serving a responsive pleading is as follows:

(1) In General.

(A) A defendant must serve an answer within 21 days after being served with the summons and complaint.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) *The United States or the District of Columbia and the Agencies, Officers, or Employees of Either Sued in an Official Capacity.* The United States or the District of Columbia or an agency, officer, or employee of either sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney (in suits involving the United States) or the Attorney General for the District of Columbia (in suits involving the District of Columbia).

(3) *United States or District of Columbia Officers or Employees Sued in an Individual Capacity.* A United States or District of Columbia officer or employee sued in an individual capacity for an act or omission occurring in connection with the duties performed on the United States' or the District of Columbia's behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney (in suits involving the United States) or the Attorney General for the District of Columbia (in suits involving the District of Columbia), whichever is later.

(4) *Effect of a Motion.* Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(5) *Entry of Default.* Unless the time to respond to the complaint has been extended as provided in Rule 55(a)(3) or the court orders otherwise, failure to comply with the requirements of this rule will result in the entry of a default by the clerk or the court sua sponte.

(b) **HOW TO PRESENT DEFENSES.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- (1) lack of subject-matter jurisdiction;
- (2) lack of personal jurisdiction;
- (3) [Omitted];
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted;

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) **MOTION FOR JUDGMENT ON THE PLEADINGS.** After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) **RESULTS OF PRESENTING MATTERS OUTSIDE THE PLEADINGS.** If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) **MOTION FOR A MORE DEFINITE STATEMENT.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) **MOTION TO STRIKE.** The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) **JOINING MOTIONS.**

(1) *Right to Join.* A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitations on Further Motions.* Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) **WAIVING AND PRESERVING CERTAIN DEFENSES.**

(1) *When Some Are Waived.* A party waives any defense listed in Rule 12(b)(2)–(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others.* Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) *Lack of Subject-Matter Jurisdiction*. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) HEARING BEFORE TRIAL. If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

COMMENT TO 2025 AMENDMENTS

Section (a) of this rule has been amended consistent with the 2024 amendments to Federal Rule of Civil Procedure 12, which was amended to make clear that a statute that specifies another time supersedes the times to serve a responsive pleading set by subsections (a)(2) and (3).

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 12*, as amended in 2007 and 2009, except for: 1) the substitution of “applicable statute” for “federal statute” in subsection (a)(1); 2) the deletion of inapplicable federal limitation periods in subsection (a)(1)(A); 3) the addition of references to “the District of Columbia” in subsections (a)(2) and (a)(3); 4) the retention of subsection (a)(5) regarding the automatic entry of default against a defendant who does not timely respond to the complaint; and 5) the omission of subsection (b)(3), which deals with improper venue and is not applicable in the District of Columbia.

COMMENT

SCR-Civil 12(a) is rearranged to reflect the format established by the federal rule revisions of December 1993. Federal limitation periods are altered to comport with those in the existing Superior Court rule. Additionally, a paragraph (5) has been added to preserve the existing Superior Court rule of automatic entry of default against a defendant who does not timely respond to the complaint.

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Rule 28-I. Interstate Depositions and Discovery Procedures

(a) IN GENERAL. In seeking to conduct interstate depositions and discovery, parties may proceed under any of the following provisions.

(b) INTERSTATE DEPOSITIONS AND DISCOVERY PROCEDURES UNDER THE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT, D.C. CODE §§ 13-441 to -449~~8~~.

(1) *Issuance of Subpoena.*

(A) To request a subpoena under D.C. Code § 13-443 ~~(2012 Repl.)~~, a party must submit a foreign subpoena to the clerk and the written affirmation required by Rule 28-I(b)(2)(A). A request for the issuance of a subpoena under the Uniform Interstate Depositions and Discovery Act does not constitute an appearance in the courts of the District of Columbia.

(B) When a party submits a foreign subpoena to the clerk, the clerk, in accordance with these rules, must promptly issue a subpoena for service on the person to whom the foreign subpoena is directed.

(C) A subpoena under Rule 28-I(b)(1)(B) must:

- (i) incorporate the terms used in the foreign subpoena; and
- (ii) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(2) *Affirmation of Noninterference with Bodily Autonomy.*

(A) A party or the party's counsel requesting issuance of a subpoena under Rule 28-I(b)(1) must submit a written statement, signed by the party seeking enforcement or the party's counsel, swearing or affirming under penalty of perjury that no portion of the foreign subpoena is intended or anticipated to further any investigation or proceeding of a type described in D.C. Code § 2-1461.01(a).

(B) A foreign subpoena not conforming to the requirements of Rule 28-I(b)(2)(A) will not be accepted for filing.

(C) If a party or the party's counsel refuses to provide the Affirmation of Noninterference with Bodily Autonomy, the clerk must send to the person to whom the foreign subpoena is directed, by first class mail at the address shown in the subpoena, a copy of the foreign subpoena and a notice that it is not recognized as a valid foreign subpoena because it does not include the affirmation required by Rule 28-I(b)(2)(A).

(3) *Service of Subpoena.* A subpoena issued by a clerk under Rule 28-I(b)(1) must be served in compliance with D.C. Code § 11-942 ~~(2012 Repl.)~~ and Rule 45.

~~(34)~~ *Deposition, Production, and Inspection.* The rules applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under Rule 28-I(b)(1).

~~(45)~~ *Motions Regarding Subpoena.* A motion for a protective order or to enforce, quash, or modify a subpoena issued by a clerk under Rule 28-I(b)(1) must comply with these rules and the laws of the District of Columbia and must be submitted to the Superior Court.

(c) ASSISTANCE TO TRIBUNALS AND LITIGANTS OUTSIDE THE DISTRICT OF COLUMBIA UNDER D.C. CODE § 13-434.

(1) *By Court Order*. Upon application by any interested person or in response to letters rogatory issued by a tribunal outside the District of Columbia, the Superior Court may order service on any person who is domiciled or can be found within the District of Columbia of any document issued in connection with a proceeding in a tribunal outside the District of Columbia. The order must direct the manner of service.

(2) *Without Court Order*. Service in connection with a proceeding in a tribunal outside the District of Columbia may be made inside the District of Columbia without an order of the court.

(3) *Effect*. Service under Rule 28-I(c) does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside the District of Columbia.

(d) COMMISSIONS OR NOTICES FOR TESTIMONY UNDER D.C. CODE § 14-103.

When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in a court of a state, territory, commonwealth, possession, or a place under the jurisdiction of the United States, the party seeking that testimony may file with this court a certified copy of the commission or notice. Upon approval by the judge in chambers of the commission or notice and the proposed subpoena, the clerk must issue a subpoena compelling the designated witness to appear for deposition at a specified time and place. Testimony taken under Rule 28-I(d) must be taken in the manner prescribed by these rules, and the court may entertain any motion, including motions for quashing service of a subpoena and for issuance of protective orders, in the same manner as if the action were pending in this court.

COMMENT TO 2025 AMENDMENTS

Section (b) of the rule has been amended to implement the Human Rights Sanctuary Amendment Act of 2022, D.C. Law L24-0257, § 201, 70 D.C. Reg. 2929 (2023), D.C. Code §§ 13-443, -449, which amended the Uniform Interstate Depositions and Discovery Act to restrict enforcement of foreign subpoenas in interstate investigations and proceedings that interfere with the right of bodily autonomy under section 101(a) of the Act, D.C. Code § 2-1461.01(a). New subsection (b)(2) implements the Act's affirmation requirement, D.C. Code §13-449. Former subsections (b)(2), b(3), and b(4) have been redesignated (b)(3), (b)(4), and (b)(5), respectively. Section (b) has also been amended to conform with the general restyling of the Superior Court rules.

To the extent the Human Rights Sanctuary Amendment Act of 2022 includes procedural rules, the Court has adopted them pursuant to its exclusive rulemaking authority under D.C. Code § 11-946. See *Woodroof v. Cunningham*, 147 A.3d 777 (D.C. 2016).

COMMENT TO 2017 AMENDMENTS

This rule was amended to include the procedures for filing under the Uniform Interstate Depositions and Discovery Act (D.C. Code §§ 13-441 to -448 (2012 Repl.)) and D.C. Code § 13-434 (2012 Repl.). The process for obtaining a commission or notice under D.C. Code § 14-103 (2012 Repl.) has been retained from the prior version of the rule, but the provisions related to appointment of an examiner to take testimony of

a witness outside the District of Columbia have been moved to new Rule 28-II. Stylistic changes were also made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

Paragraphs (c) and (b) of Rule 28-I implement the authority conferred on the Superior Court by § 14-103 and § 14-104, respectively.

Rule 28-I. Interstate Depositions and Discovery Procedures

(a) IN GENERAL. In seeking to conduct interstate depositions and discovery, parties may proceed under any of the following provisions.

(b) INTERSTATE DEPOSITIONS AND DISCOVERY PROCEDURES UNDER THE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT, D.C. CODE §§ 13-441 to -449.

(1) Issuance of Subpoena.

(A) To request a subpoena under D.C. Code § 13-443, a party must submit a foreign subpoena to the clerk and the written affirmation required by Rule 28-I(b)(2)(A). A request for the issuance of a subpoena under the Uniform Interstate Depositions and Discovery Act does not constitute an appearance in the courts of the District of Columbia.

(B) When a party submits a foreign subpoena to the clerk, the clerk, in accordance with these rules, must promptly issue a subpoena for service on the person to whom the foreign subpoena is directed.

(C) A subpoena under Rule 28-I(b)(1)(B) must:

- (i) incorporate the terms used in the foreign subpoena; and
- (ii) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(2) Affirmation of Noninterference with Bodily Autonomy.

(A) A party or the party's counsel requesting issuance of a subpoena under Rule 28-I(b)(1) must submit a written statement, signed by the party seeking enforcement or the party's counsel, swearing or affirming under penalty of perjury that no portion of the foreign subpoena is intended or anticipated to further any investigation or proceeding of a type described in D.C. Code § 2-1461.01(a).

(B) A foreign subpoena not conforming to the requirements of Rule 28-I(b)(2)(A) will not be accepted for filing.

(C) If a party or the party's counsel refuses to provide the Affirmation of Noninterference with Bodily Autonomy, the clerk must send to the person to whom the foreign subpoena is directed, by first class mail at the address shown in the subpoena, a copy of the foreign subpoena and a notice that it is not recognized as a valid foreign subpoena because it does not include the affirmation required by Rule 28-I(b)(2)(A).

(3) *Service of Subpoena.* A subpoena issued by a clerk under Rule 28-I(b)(1) must be served in compliance with D.C. Code § 11-942 and Rule 45.

(4) *Deposition, Production, and Inspection.* The rules applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under Rule 28-I(b)(1).

(5) *Motions Regarding Subpoena.* A motion for a protective order or to enforce, quash, or modify a subpoena issued by a clerk under Rule 28-I(b)(1) must comply with these rules and the laws of the District of Columbia and must be submitted to the Superior Court.

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(2) *Without Court Order*. Service in connection with a proceeding in a tribunal outside the District of Columbia may be made inside the District of Columbia without an order of the court.

(3) *Effect*. Service under Rule 28-I(c) does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside the District of Columbia.

(d) COMMISSIONS OR NOTICES FOR TESTIMONY UNDER D.C. CODE § 14-103.

When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in a court of a state, territory, commonwealth, possession, or a place under the jurisdiction of the United States, the party seeking that testimony may file with this court a certified copy of the commission or notice. Upon approval by the judge in chambers of the commission or notice and the proposed subpoena, the clerk must issue a subpoena compelling the designated witness to appear for deposition at a specified time and place. Testimony taken under Rule 28-I(d) must be taken in the manner prescribed by these rules, and the court may entertain any motion, including motions for quashing service of a subpoena and for issuance of protective orders, in the same manner as if the action were pending in this court.

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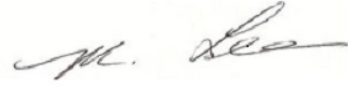
COMMENT

Paragraphs (c) and (b) of Rule 28-I implement the authority conferred on the Superior Court by § 14-103 and § 14-104, respectively.

* * *

By the Court:

Date: April 23, 2025



Milton C. Lee, Jr.
Chief Judge

Copies to:

Judicial Officers
Executive Officer
Clerk of Court
General Counsel
Division Directors
District of Columbia Bar
Daily Washington Law Reporter
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