SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 17-02

(Amending Super. Ct. Civ. R. 1 to 86-I[1])

WHEREAS, pursuant to D.C. Code § 11-946, the Board of Judges of the Superior Court approved amendments to Superior Court Rules of Civil Procedure 1 through 86-I; and

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

ORDERED, that Superior Court Rules of Civil Procedure 1 through 86-I are hereby amended as set forth below;[2] and it is further

ORDERED, that the amendments to Superior Court Rules of Civil Procedure 1 through 86-I shall take effect June 1, 2017, and shall govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

[1] Super. Ct. Civ. R. 9-I, 36, 54-II, 69-I, 70-I, 72, and 83-I are not included in or affected by this order.
[2] The rules include citations to material anticipated in the June 2017 Supplement to the D.C. Code.

TITLE I. SCOPEcope OFof RULESules—One; FORMorm OFof ACTIONction.

Rule 1. Scope of Rules and Purpose.

These Rrules govern the procedure in all suits of a civil actions and proceedings nature in the Civil Division of the Superior Court of the District of Columbia whether cognizable as cases at law or in equity, with the exception of cases in the Landlord and Tenant Branch and the Small Claims and Conciliation Branch of the Ccourt and other exceptions stated in Rule 81. They shouldshall be construed, and administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

COMMENT TO 2017 AMENDMENTS

This rule was amended consistent with the 2007 and 2015 amendments to *Federal Rule of Civil Procedure 1*. The addition of the phrase "employed by the court and the parties" is intended to emphasize that the court, parties, and attorneys are all responsible for using these rules to achieve the stated goals.

COMMENT

This Rule parallels *Federal Rule of Civil Procedure 1* but has been modified to reflect applicability to appropriate cases in the Superior Court. Note that these Rules do not, by their own terms, extend to cases in the Landlord and Tenant Branch or the Small Claims and Conciliation Branch; however, the separate Rules for those respective branches do designate certain of these Rules for incorporation by reference therein. Further, the scope of these rules will necessarily be expanded in the future as new rules are promulgated to govern procedure in areas (such as probate) over which the court receives jurisdiction in subsequent increments. See D.C. Code (1967 Edition, Supplement IV) § 11-921.

The phrase "these Rules" refers to the entire body of Superior Court Rules of Civil Procedure, those derived from the Federal Rules of Civil Procedure and those purely local Rules bearing numbers above 100. Any reference herein to a particular Rule, as, for example, "Rule 69" comprehends both the original Rule and any addenda thereto, e.g., "69-I" and "69-II".

Rule 2. One Fform of Aaction.

There shall be is one form of action to be known as "the civil action".

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to *Federal Rule of Civil Procedure 2*.

COMMENT

Identical to *Federal Rule of Civil Procedure 2*. For ease of identification, the Clerk of the Court will place before the case number of every case filed in the Civil Division appropriate prefixes as follows: "SC" for Small Claims and Conciliation Branch cases, "LT" for Landlord and Tenant Branch cases, "F" for Fiduciary cases, and "CA" for all other civil actions.

TITLE II. COMMENCINGommencement ANof ACTIONction; SERVICEervice OFof PROCESSrocess, PLEADINGSleadings, MOTIONSotions, ANDand ORDERSrders.

Rule 3. Commencingement an of Aaction.

A civil action is commenced by filing a complaint with the cCourt.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to *Federal Rule of Civil Procedure 3*.

COMMENT

Rule 3 identical to *Federal Rule of Civil Procedure 3*.

Rule 3-I. Actions ~~i~~involving ~~r~~real ~~p~~property~~.~~

Any pleading the adjudication of which may affect title to or interests in real property, including pleadings in change of name cases, ~~shall~~must bear immediately below the title of the pleading the inscription "ACTION INVOLVING REAL PROPERTY.~~.~~ ~~Upo~~On the filing of such a pleading, the ~~C~~clerk ~~shall~~must place after the number assigned to the case the suffix "RP.~~.~~

COMMENT TO 2017 AMENDMENTS

Under Rule 3-I, parties must identify pending actions that may impact the title of real property in the District of Columbia. *See First Md. Fin. Servs. Corp. v. District-Realty Title Ins. Corp.*, 548 A.2d 787, 791 (D.C. 1988) (citing Rule 3-I and quoting *Anderson v. Reid*, 14 App. D.C. 54, 68 (1899) for proposition that "[t]he public records give constructive notice of their contents . . . .").

Rule 4. Summons.

(a) CONTENTS; AMENDMENTSForm.

(1) *Contents.* TheA summons mustshall:

(A) be signed by the Clerk, bear the seal of the Court, identify name the Ccourt and the parties;,

(B) be directed to the defendant;,

(C) and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff;.

(D) It shall also state the time within which the defendant must appear and defend;,

(E) and notify the defendant that a failure to do soappear and defend will result in a default judgment by default against the defendant for the relief demanded in the complaint;.

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) *Amendments.* The Ccourt may allow permit a summons to be amended.

(3) *Service Outside the District of Columbia; Service in Suit Seeking Seizure of Property in the District of Columbia.* WheneverA summons, or notice, or order in lieu of summons should correspond as nearly as possible to the requirements of a statute or rule whenever service is made pursuant to a statute or rule of Court which that provides for:

(1A) for service of a summons, or notice, or order in lieu of summons upon a party not an inhabitant of or found within the District of Columbia;, or

(2B) for service upon or notice to a party to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of the party's property located within the District of Columbia, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule.

(b) ISSUANCEssuance. A prepared summons, with copies for each defendant named in the complaint, shall must be delivered to the Cclerk at the time the complaint is filed. If additional process is required, a prepared summons for such the additional process shall must also be delivered to the Cclerk. UpoOn receipt and due notation thereof, the Cclerk shall will return all but one copy of the summons to the plaintiff or the plaintiff's agent for service of process in accordance with paragraph Rule 4(c) of this Rule, recording on all copies the date of such return to the plaintiff or the plaintiff's agent.

(c) SERVICEervice with complaint; by whom made.

(1) *In General.* A summons shallmust be served together with a copy of the complaint, and the iInitial oOrder setting the case for an initial scheduling and settlement conference, any addendum to that order, and any other order directed by the court to the parties at the time of filing. The plaintiff is responsible for having the service of a summons, complaint, and iInitial oOrder, any addendum to that order, and any other order directed by the court to the parties at the time of filing served within the time allowed under subdivisionby Rule 4(m) and shall must furnish the person effecting service with the necessary copies to the person who makes service of the summons, complaint and initial order.

(2) *By Whom.* Service may be effected by aAny person who is not a party and who is at least 18 years of age and not a party may serve a summons and complaint.

(3) *By Marshal or Someone Specially Appointed.* At the plaintiff's request ~~of the plaintiff~~, ~~however,~~ the ~~C~~court may direct that service be ~~effected~~made by a United States marshal or~~,~~ deputy ~~United States~~ marshal~~,~~ or by a ~~other~~ person ~~or officer~~ specially appointed by the ~~C~~court ~~for that purpose~~. ~~Such~~ This request will only~~direction shall~~ be ~~made only~~granted when:

(~~a~~A) ~~when~~ service is to be ~~effected~~made on behalf of the United States or an officer or agency ~~thereof~~ of the United States;~~,~~ or

(~~b~~B) ~~when~~ the ~~C~~court issues an order stating that service by a United States marshal or deputy ~~United States~~ marshal or by a person specially appointed ~~for that purpose~~by the court is required ~~in order that~~for service to be properly ~~effected~~made in that particular action.

(~~3~~4) *By Registered or Certified Mail.* ~~As to a~~Any defendant described in ~~subdivisions~~ Rule 4(e), (f), (h), (i), (j)(1), or (j)(3)~~, service also~~ may be served~~effected~~ by mailing a copy of the summons, complaint~~, and i~~Initial ~~o~~Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the person to be served by registered or certified mail, return receipt requested, except as specified in Rule 4(i).

(~~4~~5) *By First-Class Mail with Notice and Acknowledgment.*

(A) *Requesting an Acknowledgment of Service.* ~~As to a~~Any defendant described in ~~subdivisions~~ Rule 4(e), (f), or (h)~~, service~~ may be served ~~effected~~ by mailing~~—~~by first-class mail, postage prepaid, to the person to be served:

(i) a copy of the summons, complaint~~, and i~~Initial ~~o~~Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing;

(ii) ~~by first-class mail, postage prepaid, to the person to be served, together with~~ 2~~two~~ copies of a Notice and Acknowledgment conforming substantially to Civil Action Form 1-A; and

(iii) a return envelope, postage prepaid, addressed to the sender.

(B) *Failure to Acknowledge Service.* Unless good cause is shown for not doing so, the ~~C~~court ~~shall~~ must order the party served to~~the~~ pay:

(i)~~ment by the party served of~~ the costs incurred in securing an alternative method of service authorized by this ~~R~~rule if the person served does not complete and return~~, within 20 days after mailing,~~ the Notice and Acknowledgment of receipt of the summons within 21 days after mailing; and

(ii) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(~~5~~6) *Manner of Conducting Service.* Service of process pursuant to ~~paragraphs~~ Rule 4(c)(2) ~~or~~ (~~3~~4) ~~of this subdivision~~, or acknowledgment of service pursuant to ~~paragraph~~ Rule 4(c)(~~4~~5), may, at the plaintiff's or the court's election, be attempted either concurrently or successively.

(d) [~~Vacant~~Omitted].

(e) S~~ervice upon individuals within the United States~~ERVING AN INDIVIDUAL WITHIN THE UNITED STATES. Unless applicable law provides otherwise~~, provided by law, service upon~~ an individual~~—other than a minor, an incompetent person, or a person from whom an~~whose acknowledgment has ~~not~~ been ~~obtained and~~ filed~~—, other than an infant or an incompetent person,~~ may be served anywhere ~~effected~~ in ~~any part of~~ the United States by:

(1) pursuant tofollowing District of Columbia law, or the state law of the state or territory in which service is effected, for the servingce of a summons upon the defendant in an action brought in the courts of general jurisdiction of thatin the state where service is made or territory; or

(2) doing any of the following:

(A)by delivering a copy of the summons, complaint, and iInitial oOrder, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the individual personally;

(B) or by leaving a copyies thereof each at the individual's dwelling house or usual place of abode with someone person of suitable age and discretion whothen residesing therein; or

(C) by delivering a copy of the summons, complaint and initial ordereach to an agent authorized by appointment or by law to receive service of process.

(f) SERVING AN INDIVIDUAL IN A FOREIGN COUNTRYervice upon individuals in a foreign country. Unless applicable law provides otherwise, an individual— provided by applicable law, service upon an individual from whom an acknowledgment has not been obtained and filed, other than an infant minor, or an incompetent person, or a person whose acknowledgment has been filed—may be effected served in at a place not within the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extra-judicial Documents; or

(2) if there is no internationally agreed means, of service or if an the applicable international agreement allows but does not specify other means of service, by a method that provided that service is reasonably calculated to give notice:

(A) in the manneras prescribed by the law of the foreign country's law for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country's law, by:

(i) deliveringy to the individual personally of a copy of the summons, complaint, and iInitial oOrder, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requiresing a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement, as may be directed by the Ccourt orders.

(g) SERVING A MINOR OR AN INCOMPETENT PERSONervice upon infants and incompetent persons. Service upon aA n infant minor or an incompetent person in the United States shall must be effected served by followingin the manner prescribed by the law of the District of Columbia law (D.C. Code §§ 13-332 and -333 (2012 Repl.)) or the state law of the state in which the service is made for the servingce of a summons or other like process upon any such a defendant in an action brought in the courts of general jurisdiction of thatthe state where service is made. A minor Service upon an infant or an incompetent person who is in a place not within the United States shall must

be ~~effected~~ served in the manner prescribed by ~~paragraph~~ Rule 4(f)(2)(A)~~,~~ ~~or~~ (f)(2)(B) ~~of subdivision (f),~~ or (f)(3)~~by such means as the Court may direct~~.

(h) SERVING A CORPORATION, PARTNERSHIP, OR ASSOCIATION~~ervice upon corporations and associations~~. Unless ~~otherwise provided by~~ applicable law provides otherwise or the defendant's acknowledgment has been filed, ~~service upon~~ a domestic or foreign corporation~~,~~ or ~~upon~~ a partnership or other unincorporated association that is subject to suit under a common name, ~~and from which an acknowledgment of service has not been obtained and filed, shall~~must be served~~effected~~:

(1) ~~with~~in the United States:

(A) in the manner prescribed ~~for individuals~~ by ~~subdivision~~ Rule 4(e)(1) for serving an individual;~~,~~ or

(B) by delivering a copy of the summons, complaint~~,~~ ~~and~~ ~~i~~Initial ~~o~~Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and~~,~~ if the agent is one authorized by statute ~~to receive service~~ and the statute so requires~~,~~ by also mailing a copy of each to the defendant, or

(2) ~~in~~ at a place not within the United States~~,~~ in any manner prescribed ~~for individuals~~ by ~~subdivision~~ Rule 4(f) for serving an individual, except personal delivery ~~as provided in paragraph~~under (f)(2)(C)(i) ~~thereof~~.

(i) SERVING THE UNITED STATES AND ITS AGENCIES, CORPORATIONS, OFFICERS, OR EMPLOYEES~~erving the United States, its agencies, corporations, officers or employees~~.

(1) *United States*. To ~~S~~serv~~ic~~e ~~upon~~ the United States, a party must ~~shall be effected~~:

(A)(i) ~~by~~ deliver~~ing~~ a copy of the summons, complaint~~,~~ ~~and~~ ~~i~~Initial ~~o~~Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the United States Attorney for the District of Columbia~~,~~ or to an assistant United States ~~A~~attorney or clerical employee ~~designated by~~ whom the United States Attorney designates in a writing filed with the court ~~C~~clerk~~,~~ ~~of the Court,~~ or

(ii) ~~by~~ send~~ing~~ a copy of each~~the summons, complaint and initial order~~ by registered or certified mail ~~addressed~~ to the civil ~~-~~process clerk at the ~~office of the~~ United States Attorney's Office; ~~and~~

(B) ~~by also~~ send~~ing~~ a copy of ~~the summons, complaint and initial order~~each by registered or certified mail to the Attorney General of the United States at Washington, D~~istrict of~~.~~-~~C.~~olumbia~~;~~ and

(C) ~~in any~~if the action challenges ~~attacking the validity of~~ an order of ~~an~~ a nonparty agency or officer ~~or agency~~ of the United States ~~not made a party~~, ~~by also~~ send~~ing~~ a copy of ~~the summons, complaint and initial order~~each by registered or certified mail to the agency or officer ~~or agency~~.

(2) *Agency; Corporation; Officer or Employee Sued in an Official Capacity*. To ~~(A) S~~serv~~ic~~e a United States~~on an~~ agency or corporation ~~of the United States~~, or a~~n~~ United States officer or employee ~~of the United States~~ sued only in an official capacity, a party must ~~is effected by~~ serve~~ing~~ the United States and ~~in the manner prescribed by Rule 4(i)(1) and by~~ also send~~ing~~ a copy of the summons~~,~~ ~~and~~ complaint~~,~~ ~~and~~ ~~i~~Initial ~~o~~Order, any addendum to that order, and any other order directed by the court to the

parties at the time of filing by registered or certified mail to the agency, corporation, officer, or employee~~, agency, or corporation~~.

(~~B~~3) *Officer or Employee Sued Individually*. To ~~S~~service ~~on~~a United States ~~an~~ officer or employee ~~of the United States~~ sued in an individual capacity for an act~~s~~ or omission~~s~~ occurring in connection with duties~~the~~ performed~~ance of duties~~ on the United States' behalf ~~of the United States --~~ (whether or not the officer or employee~~s~~ is also sued ~~also~~ in an official capacity) ~~--~~, a party must ~~is effected by~~ serve~~ing~~ the United States ~~in the manner prescribed by Rule 4(i)(1)~~ and also~~by~~ serve~~ing~~ the officer or employee ~~in the manner prescribed by~~ under Rule 4(e), (f), or (g).

(~~3~~4) *Extending Time*. The ~~C~~court ~~shall~~ must allow a party a reasonable time to cure its failure to:

(A) serve ~~process under Rule 4(i) for the purpose of curing the failure to serve: (A) all~~a person~~s~~ required to be served ~~in an action governed by~~under Rule 4(i)(2)~~(A)~~, if the party~~plaintiff~~ has served either the United States ~~a~~Attorney or the Attorney General of the United States~~,~~; or

(B) serve the United States ~~in an action governed by~~under Rule 4(i)(3~~2~~)~~(B)~~, if the ~~plaintiff~~ party has served ~~an officer or employee of~~ the United States officer or employee~~sued in an individual capacity~~.

(j) SERVING THE DISTRICT OF COLUMBIA, AN AGENCY OR OFFICER OF THE DISTRICT OF COLUMBIA, OR OTHER GOVERNMENT ENTITIES SUBJECT TO SUIT~~ervice upon the District of Columbia, an officer or agency thereof, or upon other government entities subject to suit~~.

(1) *Foreign State*. A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with *28 U.S.C. § 1608*.

(2) *State or Local Government*. A state, municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to its chief executive officer; or

(B) serving the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(~~1~~3) *District of Columbia*.

(A) In General. ~~Service shall be made upon t~~The District of Columbia must be served by delivering (pursuant to ~~paragraph~~ Rule 4(c)(2)~~-(3)~~) or mailing (pursuant to ~~paragraph~~ Rule 4(c)(~~3~~4)) a copy of the summons, complaint~~, and i~~Initial ~~o~~Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the Mayor of the District of Columbia (or designee) and the ~~Corporation Counsel~~Attorney General of the District of Columbia (or designee).

(B) *Designees*. The Mayor and the ~~Corporation Counsel~~Attorney General may each designate an employee for receipt of service of process by filing a written notice with the court ~~C~~clerk ~~of the Court~~.

(C) *Service on a Nonparty*. In any action attacking the validity of an order of an agency or officer ~~or agency~~ of the District of Columbia not made a party, a copy of the summons, complaint~~, and i~~Initial ~~o~~Order, any addendum to that order, and any other

order directed by the court to the parties at the time of filing must also ~~shall~~ be delivered or mailed to ~~such~~ the officer or agency.

(D) *Agency; Officer or Employee Sued in an Official Capacity*. ~~Service upon~~To serve a District of Columbia agency or a~~n~~ District of Columbia officer or ~~agency of the District of Columbia~~employee sued only in an official capacity, a party must serve ~~shall be made~~ by delivering (pursuant to ~~paragraph~~Rule 4(c)(2)~~-(3)~~) or mailing (pursuant to ~~paragraph~~Rule 4(c)(~~43~~)) a copy of the summons, complaint, ~~and i~~Initial ~~o~~Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the Mayor (or designee), the ~~Corporation Counsel~~Attorney General (or designee), ~~and~~as well as ~~such~~the agency, officer, or ~~agency~~employee.

(E) *Officer or Employee Sued Individually*. To serve a District of Columbia officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the District of Columbia's behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the District of Columbia under Rule 4(j)(3)(A) and also serve the officer or employee under Rule 4(e), (f), or (g).

~~(2) Service upon a state, municipal corporation, or other governmental organization subject to suit shall be effected by delivering a copy of the summons, complaint and initial order to its chief executive officer or by serving the summons, complaint and initial order in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.~~

(k) T~~erritorial limits of effective service~~ERRITORIAL LIMITS OF EFFECTIVE SERVICE.

(1) *In General*. Servin~~ce of~~g a~~the~~ summons, complaint, ~~and i~~Initial ~~o~~Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing or filing an acknowledgment of service ~~is effective to~~ establish~~es~~ personal jurisdiction over ~~the person of~~ a defendant:

(A) who ~~could be~~is subject~~ed~~ to the jurisdiction of this ~~C~~court~~,~~; ~~or~~

(B) who is a party joined under Rule 14 or ~~Rule~~ 19 and is served at a place not more than 100 miles from the place of the hearing or trial~~;~~; or

(C) ~~[Vacant].~~

~~(D)~~ when authorized by a federal~~statute of the United States~~ or ~~the~~ District of Columbia statute.

(2) [Deleted].~~If the exercise of jurisdiction is consistent with the Constitution and applicable law, serving a summons or filing an acknowledgment of service is also effective, with respect to claims arising under such law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state~~

(l) P~~roof of service~~ROVING SERVICE.

(1) *Affidavit Required*. ~~If~~ Unless service is ~~not~~ acknowledged, ~~the person effecting service shall make~~ proof of service must be made to the ~~C~~court. Except for service by~~If service is made by a person other than~~ a United States marshal or deputy ~~United States~~ marshal, proof must be by the server's~~person shall make~~ affidavit ~~thereof~~. ~~The affidavit shall specifically state each of the following:~~

(~~1~~A) *Service by Delivery*. If service is made by delivery pursuant to ~~paragraph~~ Rule 4(c)(2)~~-(3) of this Rule~~, the return of service ~~shall~~ must be made under oath (unless

service was made by the United States marshal or deputy United States marshal) and ~~shall~~ must specifically state:

(i) the caption and number of the case;

(ii) the process server's name, residential or business address, and the fact that he or she is ~~eighteen (~~18~~)~~ years of age or older;

(iii) the time and place ~~at which~~ when service was ~~effected~~made;

(iv) the fact that ~~a~~the summons, ~~a copy of the~~ complaint, ~~and the~~ ~~i~~Initial ~~o~~Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing ~~setting the case for an Initial Scheduling Conference~~ were delivered to the person served; and

(v)~~,~~ if service was ~~effected~~made by delivery to a person other than ~~a~~the party named in the summons, then specific facts from which the ~~C~~court can determine that the person to whom process was delivered meets the appropriate qualifications for receipt of process set out in ~~subdivisions~~ Rule 4(e) ~~through~~ (j) ~~of this Rule~~.

(~~2~~B) *Service by Registered or Certified Mail.* If service is made by registered or certified mail under ~~paragraph~~ Rule 4(c)(~~3~~4) ~~of this Rule~~, the return ~~shall~~ must be accompanied by the signed receipt attached to an affidavit which ~~shall~~ must specifically state:

(i) the caption and number of the case;

(ii) the name and address of the person who posted the registered or certified letter;

(iii) the fact that ~~such~~ the letter contained ~~a~~the summons, ~~a copy of the~~ complaint, ~~and the~~ ~~i~~Initial ~~o~~Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing ~~setting the case for an Initial Scheduling Conference~~; and~~,~~

(iv) if the return receipt does not purport to be signed by the party named in the summons, then specific facts from which the ~~C~~court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in ~~subdivisions~~ Rule 4(e) ~~through~~ (j) ~~of this Rule~~.

(2) *Service Outside the United States.* ~~Proof of s~~Service ~~in a place~~ not within the United States ~~shall~~must be proved as follows:

(A)~~,~~ if ~~effected~~ made under ~~paragraph~~ Rule 4(f)(1), ~~of subdivision (f), be made pursuant to the~~as provided in the applicable treaty or convention; ~~, and~~ or

(B) ~~shall,~~ if ~~effected~~made under ~~paragraph~~ Rule 4(f)(2) or (f)(3) ~~thereof~~, ~~include~~ by a receipt signed by the addressee, or by other evidence ~~of delivery to the addressee~~ satisf~~ying~~~~actory to~~ the ~~C~~court that the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing were delivered to the addressee.

(3) *Validity of Service; Amending Proof.* Failure to ~~make~~ prove~~of of~~ service does not affect the validity of ~~the~~ service. The ~~C~~court may ~~allow~~ permit proof of service to be amended.

(m) TIME LIMIT FOR SERVICE~~ime limit for service~~.

(1) *Time Limit; Proof.*

(A) *In General.* Within 60 days of the filing of the complaint or, if an order of publication has been issued, within 60 days from the return date specified in the order, the plaintiff must file either an acknowledgment of service or proof of service of the

summons, ~~the~~ complaint, ~~and any~~ ~~i~~Initial ~~o~~Order, any addendum to that order, and any other order directed by the ~~C~~court to the parties at the time of filing. ~~The~~ A separate acknowledgement or proof ~~shall~~ must be filed as to each defendant who has not responded to the complaint.

(B) *Exceptions to Rule 4(m)(1)(A)*. The following exceptions apply to the 60-day time limit for filing either an acknowledgment or proof of service in Rule 4(m)(1)(A).

(i) *Actions to Foreclose the Right of Redemption Filed Pursuant to D.C. Code § 47-1370*. In a case filed pursuant to D.C. Code § 47-1370 (2015 Repl.), the plaintiff must file a separate acknowledgment or proof of service for each defendant who has not responded to the complaint no later than 180 days after the complaint was filed.

(ii) *Collection and Subrogation Cases*. The time limit for service in these cases is set forth in Rule 40-III.

(iii) *Service Outside of the United States*. When service is made under Rule 4(f), (h)(2), or (j)(1), the plaintiff must follow the deadlines specified in the relevant statute, treaty, or other international law.

(2) *Motion for Extension of Time*. Prior to the expiration of any of the foregoing time periods, the plaintiff~~a~~ may make a motion ~~may be made~~ to extend the time for service. The motion must set forth in detail the efforts ~~which~~ that have been made, and will be made in the future, to obtain service. Except for cases governed by the provisions of Rule 40-III, ~~T~~the ~~C~~court, if the plaintiff shows good cause, ~~shall~~ must extend the ~~period for such~~ time for an appropriate period~~as may be warranted by circumstances set forth in the motion~~.

(3) *Service After Granting Extension of Time*. Along with the materials identified in Rule 4(c)(1), the plaintiff must serve on the party to be served a copy of the order granting a motion for extension of time and notice of the new court date. Proof of service pursuant to Rule 4(*l*) must include, in addition to the materials identified in that rule, the order granting the motion for extension of time and notice of the new court date.

(4) *Dismissal*. With the exception of cases where service is made under Rule 4(f), ~~or~~ (h)(2), or (j)(1), or Rule 54-II, the plaintiff's ~~F~~failure to comply with the requirements of this ~~R~~rule ~~shall~~ will result in the dismissal without prejudice of the complaint. The ~~C~~clerk ~~shall~~ will enter the dismissal and ~~shall~~ serve notice ~~thereof~~ on all the parties ~~entitled thereto~~. Dismissals of collection and subrogation cases are governed by the provisions of Rule 40-III.~~This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (h)(2) or to cases to which Rule 40-III is applicable.~~ Dismissals of actions condemning real or personal property are governed by Rule 71.1.

(n) ~~Seizure of property; service of summons not feasible~~ASSERTING JURISDICTION OVER PROPERTY OR ASSETS.

(1) *District of Columbia Law.* ~~If a statute of the District of Columbia so provides, t~~The ~~C~~court may assert jurisdiction over property if authorized by a District of Columbia statute. Notice to claimants of the property ~~shall~~ must ~~then be sent in the manner~~be given as provided ~~by~~ in the statute or by servi~~ng~~ce ~~of~~ a summons under this rule.

(2) *Acquiring Jurisdiction*. ~~Upo~~On a showing that personal jurisdiction over a defendant cannot be obtained in the District of Columbia ~~with~~by reasonable efforts ~~by~~ to serv~~ic~~e ~~of~~ a summons ~~in any manner authorized by~~under this rule, the ~~C~~court may assert jurisdiction over ~~any of~~ the defendant's assets found ~~with~~in the District of

Columbia. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by District of Columbia law.

(o) [Deleted].~~Time allowed for service of process. Notwithstanding the provisions of section (m) of this Rule, proof of service of the summons and any complaint embraced within section (a) of this Rule must be made no later than 180 days after the filing of the complaint in cases filed pursuant to D.C. Code § 47-1370. Failure to comply with the requirement of this Rule shall result in the dismissal without prejudice of the complaint. The Clerk shall enter the dismissal and shall serve notice thereof on the parties entitled thereto.~~

COMMENT TO 2017 AMENDMENTS

Rule 4 differs substantially from *Federal Rule of Civil Procedure 4*, as amended in 2007 and 2015. The differences include: 1) the addition of language referring to the "Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing" wherever the rule discusses service of the summons and complaint; 2) the substitution of "District of Columbia" for "the state where the district court is located"; 3) the substitution of "District of Columbia" for "federal" and "state"; 4) the substitution of "applicable law" and "applicable statute" for "federal law" and "federal statute"; 5) the addition of sections (a)(3), (c)(4)–(6), (j)(3), and (*l*)(1)(A)–(B); 6) revising sections (b) and (m) to reflect Superior Court practice; 7) the insertion of additional language at the end of subsection (c)(3), which limits the circumstances when a U.S. marshal or deputy marshal or specially appointed process server may be used; and 8) the deletion of section (k)(2) as inapplicable to local practice.

Subsection (c)(5) retains the language of former subsection (c)(4), which dealt with sending the defendant a request for an acknowledgment of service via first-class mail. However, the deadline to return the acknowledgment of service has been changed from 20 days to 21 days based on the time-calculation amendments to Rule 6. Additionally, a provision has been added that allows a party to recover the reasonable expenses, including attorney's fees, for filing a motion to collect the costs of service incurred after the defendant failed to acknowledge service.

The provisions governing service on the District of Columbia or a District of Columbia agency, officer, or employee were moved to subsection (j)(3) so that subsections (j)(1)-(2) would align with the federal rule. Subsection (j)(3) was also amended to specify how service should be made when an officer or employee is sued in their individual capacity for something connected to their duties. Although subsection (j)(1) was omitted in prior versions of Rule 4, it has now been adopted because there are instances where foreign states may be sued in the District of Columbia. *See 28 U.S.C. § 1608*.

Section (m) was amended to include language previously found in section (o). Accordingly, section (o) has been deleted entirely.

In order to dispose of cases within the time limits set by the Chief Judge in an administrative order, the Superior Court rule retains the 60-day service provision in section (m). That 60-day provision permits cases to proceed to an initial hearing within 90-120 days of filing the complaint. Exceptions to that 60-day service provision include the collection and subrogation cases defined in Rule 40-III, cases filed under D.C. Code § 47-1370 (2015 Repl.) (*see* section (m)(1)(B)(i)), cases where an order of publication

has been issued, and any other exceptions set forth in these rules or provided by statute, treaty (*see* section (f)), or other international law.

Finally, subsection (m)(4) includes the 2015 amendment to the federal rule, which clarified that the reference to Rule 4 in Rule 71.1(d)(3)(A) did not include Rule 4(m). Dismissal of actions condemning real or personal property is governed by Rule 71.1 and is not affected by Rule 4(m).

COMMENT

Federal Rule of Civil Procedure 4 was substantially revised and reorganized effective December 1, 1993. In order to maintain uniformity with the Federal Rule to the maximum extent feasible, Superior Court Rule of Civil Procedure 4 has been similarly revised and reorganized to match the structure and substance of the new Federal Rule in large part. Although most provisions of new Superior Court Rule 4 are identical to those of new Federal Rule 4, there are a few variations. Throughout the rule reference is made to the initial order. This refers to the order setting the initial scheduling conference that is given to plaintiffs at the time of their filing the summons and complaint. Many of the other variations result from the obvious inapplicability of the federal provisions and thus require no explanation. A few of the variations merit comment.

Subdivision (a) of this rule is virtually identical to new Federal Rule 4(a) except for the final sentence, which has been added to preserve the substance of a useful provision, contained in former SCR-Civil 4(b), regarding the form of summons or notice to be used when service is made outside the District of Columbia or is based on the seizure of property within the District.

In subdivision (b), the prior Superior Court provision concerning issuance of the summons has been retained, in lieu of the new federal rule provision. The prior Superior Court provision is well known to the Clerk's Office and the Bar and has worked well.

In subdivision (c), a sentence has been added to paragraph (2) to retain the language, contained in former SCR-Civil 4(c)(2)(B), regarding the limited circumstances in which service by a U.S. marshal, deputy marshal, or specially appointed process server is permitted.

Paragraph 3 has been added to subdivision (c) to preserve the long-standing Superior Court practice of allowing service of a summons, complaint and initial order by registered or certified mail, return receipt requested. This practice has been extensively used for years in this Court with great success and little difficulty. Paragraph 4 retains the language of former SCR-Civil 4(c)(2)(C) and (D) which deal with sending the defendant, via first-class mail, a request for an acknowledgment of service.

A paragraph (5) has been added to subdivision (c) to retain the provision of former SCR-Civil 4(c) allowing the plaintiff to attempt service through alternative means, either concurrently or successively.

In subdivision (j), paragraph 1 of the Federal Rule dealing with service upon a foreign national has been deleted as inapplicable to Superior Court jurisdiction. In its place has been inserted the provisions, previously contained in SCR-Civil 4(d)(4), governing service on the District of Columbia or an officer of [or] agency thereof.

In subdivision (1), there has been inserted language describing the information required in affidavits of personal service and mail service. These provisions were previously contained in SCR-Civil 4(g).

Finally, Federal Rule 4(m), which allows 120 days to effect service or obtain a waiver thereof, has been replaced entirely with the language previously contained in Superior Court Rule 4(j). That provision allowed 60 days for effecting service so that the case could proceed to an Initial Scheduling Conference within 90-120 days of filing the complaint (except in cases where an order of publication has been issued) and a disposition within the time limits recommended by the American Bar Association (i.e., one year in 90% of cases and two years in 100% of cases). The rule has an additional paragraph (o) allowing greater time for service of the summons in cases filed under D.C. Code § 47-1370.

Rule 4-I. Service by ~~p~~Publication~~.~~

~~—~~(a) REQUIREMENTS. Notices relating to proceedings in this c~~C~~ourt of which publication is required ~~shall~~ must be published for the prescribed time in at least one legal newspaper or periodical of daily circulation and any other newspaper or periodical specifically designated by the ~~C~~court.

(b) PROOF BY AFFIDAVIT. Publication ~~shall~~ must be proved by affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the order as published.

(c) DEFINITION. For purposes of this rule, a legal newspaper or periodical of daily circulation ~~shall~~ means a publication designated by the c~~C~~ourt that is:

(1) devoted primarily to publication of opinions, notices and other information from the courts of the District of Columbia;~~,~~

(2) circulated generally to the legal community~~,~~; and

(3) published at least on each weekday that the Superior Court is in session.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 4.1. Servingce of oOther pProcess.

(a) IN GENERALenerally. Process—other than a summons as provided inunder Rule 4 or a subpoena as provided inunder Rule 45—mustay be served by a United States marshal or, a deputy United States marshal, or unless otherwise provided by statute, by a person who is not a party and not less than 18 years of age, who shall make proof of service as provided in Rule 4(l). The processIt may be served anywhere within the territorial limits of the District of Columbia, and, when if authorized by an applicable statute, beyond those territorial limits of the District of Columbia. Proof of service must be made under Rule 4(*l*).

(b) ENFORCING ORDERS: COMMITTING FOR CIVIL CONTEMPTCivil contempt proceedings. An Oorders committing a person in for civil contempt proceedings shallmust be served only in the District of Columbia or elsewhere within the United States if not more than 100 miles fromof the District of Columbia.

COMMENT TO 2017 AMENDMENTS

This rule was amended to conform to the 2007 stylistic changes to *Federal Rule of Civil Procedure 4.1*. However, the Superior Court rule maintains several existing substantive differences, including the following language substitutions in section (a): 1) "unless otherwise provided by statute, by a person who is not a party and not less than 18 years of age" is substituted for **"**by a person specially appointed for that purpose"; 2) "District of Columbia" is substituted for "state where the district court is located"; and 3) "applicable statute" is substituted for "federal statute." Also, section (b) conforms to D.C. Code § 11-943 (2012 Repl.), which provides that any order of commitment for civil contempt may be served not more than 100 miles from the District of Columbia.

COMMENT

Rule 4.1 is substantially identical to *Federal Rule of Civil Procedure 4.1*, which sets forth provisions on service of process other than a summons or subpoena. Most of the variations from federal rule language are self-explanatory. The principal change involves the deletion from subdivision (b) of a provision for nationwide service of process of a Federal court order for civil commitment of a person held to be in contempt of a decree or injunction issued to enforce the laws of the United States. This provision is not applicable to Superior Court and has thus been deleted.

Rule 5. Servingce and fFiling of pPleadings and oOther pPapers.

(a) SERVICE: WHEN REQUIREDervice: When required.

(1) *In General*. Except asUnless these rules provide otherwise provided in these Rules, each of the following papers must be served on every party:

(A) everyan order stating that service is required by its terms to be served;,

(B) everya pleading filed aftersubsequent to the original complaint, unless the Ccourt orders otherwise orders,;

(C) every paper relating toa discovery paper required to be served upon a party, unless the Ccourt orders otherwise orders,;

(D) everya written motion, other thanexcept one which that may be heard ex parte,; and

(E) everya written notice, appearance, demand, or offer of judgment, or any designation of record on appeal, and similar paper shall be served upon each of the parties.

(2) *If a Party Fails to Appear*. Anyy pleadings that assertsing a new or additional claims for relief against anyy party in default must be served upon such that party in the manner provided for service of summons in under Rule 4.

(3) *Seizing Property*. Ifn an action is begun by seizingure of property, and in which no person is or need be or is named as a defendant, any service required to be made prior tobefore the filing of an appearance, answer, or claim, or appearance shall must be made upon the person who hadving custody or possession of the property at the time ofwhen it was seizedure.

(b) SERVICE: HOW MADEMaking service.

(1) *Serving an Attorney*. If Service under Rules 5(a) and 77(d) on a party is represented by an attorney, service under this rule must be is made on the attorney unless the Ccourt orders service on the party.

(2) *Service in General*. A paper is served under this Rrule 5(a) is made by:

(A) Delivering a copy to the person served by:

(iA) handing it to the person;

(Bii) leaving it:

(i) at the person's office with a clerk or other person in charge, or, if no one is in charge, leaving it in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion who residesing there.;

(BC) mMailing a copyit to the person's last known address— of the person served. in which event Sservice by mail is complete upon mailing.;

(CD) If the person served has no known address, leaving a copyit with the Cclerk's office of the Court if the person has no known address.;

(ED) Delivering a copy by any other means, includingsending it by electronic means, as permitted or required by administrative order or as consented to in writing by the person—in which event the person served. Sservice by electronic means is complete on transmission, but service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. (3) Service by electronic means under Rule 5(b)(2)(D) is not effective if the serving party making service learns that the attempted serviceit did not reach the person to be served.; or

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) [Omitted].

(c) SERVING NUMEROUS DEFENDANTSSame: Numerous defendants.

(1) *In General*. Ifn any action in which there areinvolves an unusually large numbers of defendants, the Ccourt may, upon motion or ofn its own initiative, may order that:

(A) service of thedefendants' pleadings of the defendants and replies thereto them need not be served on other made as between the defendants;

(B) and that any cross-claim, counterclaim, or matter constituting an avoidance, or affirmative defense in those pleadings and replies to them contained therein shallwill be deemed treated asto be denied or avoided by all other parties; and

(C) that the filing of any such pleading and servingce it thereof upon the plaintiff constitutes due notice of the pleadingit to the all parties.

(2) *Notifying Parties*. A copy of every such order shall must be served upon the parties in such manner and form as the Ccourt directs.

(d) FILINGiling.

(1) *Required Filings*. All filingsny paper after the complaint that is required to be served upon a party, other than those referred to in Rule 12-I(d)(2) and (e), shall must be filed with the Court either before service or within 57 days after service.; however, tThe clerk shall following discovery requests and responses must not accept forbe filed except as provided in Rule 5(d)(2) or until they are used in the proceeding filing:
depositions transcripts, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission, and responses thereto except as set forth below.

(2) *Discovery Requests and Responses*.

(A) *Without Leave of Court*. Discovery requests and responses may be filed, without leave of court, if they are appended to a motion or opposition to which they are relevant.

(B) *By Court Order*. If not appended to a motion or opposition under Rule 5(d)(2)(A), a party may only file discovery requests and responses by court order.

(C) *Retaining Discovery Papers*. The requesting party must retain the original discovery paper, and must also retain personally, or make arrangements for the reporter to retain, in their original and unaltered form, any deposition transcripts which have been made at the party's request. Such discovery papers and deposition transcripts must be retained until the case is concluded in this Ccourt, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any such appeal or petition has been decided.

(D) *Certificate Regarding Discovery*. Discovery papers and deposition transcripts may be filed, without leave of court, if they are appended to a motion or opposition to which they are relevant and may otherwise be filed if so ordered by the Court sua sponte or pursuant to motion. A "CERTIFICATE REGARDING DISCOVERY," setting forth all discovery that has occurred to date, shall must be filed with the Ccourt as an attachment to:

(1i) any motion regarding discovery;

(2ii) any opposition to a dispositive motion based on the need for discovery; and

(3iii) any motion to extend Sscheduling Oorder dates.

(e3) *Filing with the Court defined**How Non-Electronic Filing Is Made*.
(1). The filing ofA paper**s** is filed by delivering it:
(A) with the Court as required by these Rules shall be made by filing them with to the Cclerk's office; or
(B) of the Court, except that the to a judge who agrees to accept it for filing, and who must then may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date on the paper and forthwith transmit thempromptly send it to the Office of the Cclerk's office.
(4) *Chambers Copy Required for Non-Electronic Filing*. When a party files, by non-electronic means, a On the date of the filing of any motion, or of any papers related to thea motion (i.e.g., an opposition to a motion, a memorandum of points and authorities, exhibits, related thereto or a proposed order), the party filing such motion, papers or pretrial statements, and or other papers described in SCR CivilRule 16(d) and (e), the party shall must deliver a chambers copy thereof to a depository designated by the Cclerk's office of the Court for receipt of such papers by the assigned judge.
(A) *Motions*. Along wWith the chambers copy of the a motion, the moving party must provide:
the assigned judge with (1i) an original proposed order; and
(2ii) an addressed envelope or a mailing label for each counsel or unrepresented party to the case.
(B) *Oppositions*. With the chambers copy of any opposition to a motion, the filing party filing the opposition must provide the assigned judge with an original proposed order.
(C) *Filing by Mail*. If the original document has beenwas mailed, the chambers copy may be mailed to chambers. But Nno other papers shall should be delivered to the judge's chambers unless the assigned judge so orders.
(25) *How Electronic Filing Is Made* electronically.
(A) Electronic Filing*In General*. As permitted or required by statute, rule or administrative order, pleadings and filings may be electronically filed by electronic means. A paper filed electronically is a written paper for the purposes of these rules. Electronic Ffiling by electronic means is complete upon transmission, unless the filing party making the transmission learns that the attempted transmission was undelivered or undeliverable.
(B) *Form of Electronically Filed Documents* Electronically Filed.
(i) *Format* of Electronically Filed Documents. All electronic filings submitted electronically shallmust, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper filings, and in suchany other and further format as the Ccourt may require from time to time.
(ii) *Signatures*. Every document filed electronically through the Ccourt's authorized eFiling system shall beis deemed to have been signed by the attorney who made or authorized the filing or authorized that the filing be made. Each filing shall must bear have either an "/s/" or a typographical or imaged signature on the signature line. Below the signature line, the filing attorney must list his or herthere shall appear the typed name, address, telephone number, e-mail address and Bar number of the attorney who submitted the filing.

(iii) *Self-Represented Parties*. If ~~A~~a self-represented party ~~appearing pro se who~~ chooses to ~~eFile through~~use the ~~C~~court's authorized eFiling system ~~shall use either an "/s/" or a typographical signature on the signature line and must include under that line, his or her name, address, telephone number and email address,~~ the same format and signature requirements listed in Rule 5(d)(5)(B)(i) and (ii) apply to him or her except that no Bar number is required. A ~~pro se~~self-represented party ~~shall~~ will be responsible for the filing under Rule 11.

(C) *Maintenance of Original Document*. Unless the court orders otherwise ~~ordered by the Court~~, an original of all electronically filed documents ~~filed electronically~~, including original signatures, ~~shall~~ must be maintained by the filing party ~~filing the document~~ during the pendency of the case and through exhaustion of any appeals or appeal times, ~~and~~and the original documents ~~shall~~ must be made available, ~~u~~upon reasonable notice, for inspection by other counsel or the ~~C~~court.

(D) *Service of Original Complaint and ~~r~~Related ~~d~~Documents*. After electronically filing ~~of~~ the original complaint, a plaintiff is responsible for servingce ~~upon~~ the defendantpartie(s) ~~is the responsibility of the filer and must be accomplished~~ in accordance with these rules. Proof of service mustshall be filed electronically.

~~(E) Conventional Filing of Documents. Notwithstanding the foregoing, the following types of documents may be filed conventionally and need not be filed electronically, unless expressly required by the Court:~~

~~(i) Documents filed under seal. A motion to file documents under seal shall be filed and served electronically. The documents to be filed under seal shall be filed in paper form, unless a different procedure is required by statute, rule, the Court or administrative order. Documents filed under seal should be clearly marked as such by the filer.~~

~~(ii) Exhibits and real objects. Exhibits to declarations or other documents that are real objects (e.g. x-ray film or vehicle bumper) or which otherwise may not be comprehensibly viewed in an electronic format shall be filed and served conventionally in paper form.~~

~~(iii) Courtesy Copies. Unless specifically requested by the Court, paper courtesy copies of documents filed electronically need not be delivered to the Court.~~

(~~F~~E) *Electronic Filing and Service of Orders and Other Papers*. The ~~C~~court may issue, file, and serve notices, orders, and other documents electronically, subject to the provisions of these rules, statutes or administrative order.

(~~G~~F) *Who ~~shall~~Must Electronically File* ~~Electronically~~. By statute, rule or administrative order, all attorneys representing parties may be required to ~~submit~~ electronically file~~ings electronically~~.

(G) *Who May Electronically File*. By statute, rule or administrative order, any ~~person appearing~~ self-represented*~~pro se~~* party, who has consented in writing, may electronically file and serve documents ~~electronically~~ and may be electronically served~~electronically~~, ~~if they have consented in writing thereto, and~~ if such activities are provided for by the ~~C~~court's e-~~f~~Filing program.

(H) *Failure to Process Transmission*. If the electronic filing is not filed because of a failure to process it, through no fault of the ~~sending~~ filing party, the ~~C~~court ~~shall~~ must enter an order ~~permitting~~ allowing the document to be filed nunc pro tunc to the date it was ~~sent~~ electronically filed, as long as the document is filed within ~~ten (~~1~~4~~0~~)~~ days of the attempted transmission.

(6) *Exceptions to Electronic Filing*.

(A) *Documents Filed Under Seal*. A motion to file documents under seal must be electronically filed and served. But the documents to be filed under seal must be filed in paper form, unless a different procedure is required by statute, rule, the court, or administrative order. Documents filed under seal should be clearly marked as such by the filing party.

(B) *Exhibits and Real Objects*. Exhibits to declarations or other documents that are real objects (e.g., x-ray film or vehicle bumper) or which otherwise may not be comprehensibly viewed in an electronic format may be filed and served by non-electronic means, unless a different procedure is required by statute, rule, the court, or administrative order.

(C) *Chambers Copies*.

(i) Paper chambers copies of electronically filed documents exceeding 25 pages must be delivered to the clerk. Otherwise, unless specifically requested by the court or required by administrative order, paper chambers copies of electronically filed documents do not need to be delivered to the court.

(ii) When motions are served, unless otherwise provided by administrative order, a copy of the proposed order must be emailed to the judge's eService email address in a format that can be edited (i.e., a non-write protected format).

(~~f~~e) ~~Privacy requirements~~PRIVACY REQUIREMENTS.

(1) *Excluding Personal Identifiers*. All parties ~~shall~~must exclude the following personal identifiers from all filed documents, except as provided below.

(A) *Social Security ~~n~~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~~must 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 ~~m~~Minor ~~c~~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 ~~b~~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~~must file the document with the acronym "DOB" placed where the individual's date of birth would have been included.

(D) *Financial ~~a~~Account ~~n~~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~~4 digits should be used.

(2) *Motion to File Unredacted Document Under Seal*. A party wishing to file a document containing the unredacted personal identifiers listed in ~~subparagraph (A) through (D) of this r~~Rule 5(e)(1)(A)-(D) may submit a motion to file an unredacted document under seal.

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

COMMENT TO 2017 AMENDMENTS

Rule 5 differs substantially from *Federal Rule of Civil Procedure 5*, as amended in 2007.

Subsection (a)(1)(B) excludes language from the federal rule that permits courts to make exceptions to the requirement that every pleading subsequent to the original complaint be served on each of the parties when there is a large number of defendants. This omission allows the court to make such exceptions in all cases.

Subsection (a)(1)(E) omits the former reference to a designation of record on appeal. District of Columbia Court of Appeals Rule 10 is a self-contained provision for the record on appeal, and it provides for service. This provision has also been deleted from the federal rule. Deleted from subsection (a)(2) is the provision that no service need be made upon parties in default for failure to appear. It is required, for example, that a copy of a Rule 55-II(a) motion and affidavit be sent to a defendant who is in default. If new or additional claims are asserted against parties in default, then such parties must be served in the manner provided in Rule 4.

Subsection (b)(3) is omitted from this rule because it is inapplicable. The Superior Court does not supply parties with facilities to transmit electronically filed documents.

Section (d) differs substantially from its federal counterpart. It includes a significant amount of Superior Court specific material. Subsection (d)(1) is different in the following ways: 1) the substitution of language that specifies the 7-day period within which papers must be filed with the court; 2) the omission of language requiring a certificate of service; 3) the addition of a provision excluding papers filed under Rule 12-I(d)(2) and (e) from the filing requirements of section (d); and 4) the modification of language, which states that the specified discovery requests and responses must not be filed except as provided in subsection (d)(2) or until they are used in the proceeding.

Subsection (d)(2) is unique to the Superior Court rule. It provides exceptions for filing discovery papers. Additionally, it provides rules for retaining discovery papers and submitting certificates regarding discovery.

Subsection (d)(3) is the same as subsection (d)(2) of the federal rule except that the title has been modified and the phrase “clerk’s office” is substituted for “clerk” throughout.

Subsection (d)(4) is unique to the Superior Court rule. It provides the rules for submitting chambers copies. Specifically, it requires that any party filing a motion, any paper related to a motion or a pretrial statement and other papers described in Rule 16(d) and (e), deliver a chambers copy of the motion or papers to judge assigned to the case via a designated depository at the courthouse. If the original paper has been mailed, the copy can likewise be mailed. Note, as to this matter, original papers should never, unless ordered otherwise, be filed with a judge.

Subsection (d)(5) replaces subsection (d)(3) of the federal rule. This subsection provides the specific rules for electronically filing documents in the Superior Court.

Subsection (d)(6) is unique to the Superior Court rule. It provides exceptions to the mandatory electronic filing rules in subsection (d)(5). Certain documents may be filed conventionally if they meet the requirements in this subsection.

Subsection (d)(4) of the federal rule is omitted in its entirety from Superior Court Rule 5.

COMMENT TO 2006 AMENDMENTS

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).

COMMENT

Several changes are made to Federal Rule of Civil Procedure 5. Deleted from paragraph (a) is the provision that no service need be made upon parties in default for failure to appear. It is required, for example, that a copy of a Rule 55-II(a)(3) affidavit be sent to a defendant who is in default. If new or additional claims are asserted against parties in default, then such parties must be served in the manner provided in Rule 4. Unlike the federal rule which permits courts to make exceptions to the requirement that every pleading subsequent to the original complaint be served upon each of the parties because of the large number of defendants, the local rule would allow the Court to make such exceptions in all cases. Paragraph (d) specifies the time within which papers must be filed with the Court and provides that discovery papers or deposition transcripts shall not be filed unless relevant to a motion or opposition or authorized to be filed by order of the Court. Paragraph (e) requires that any party filing a motion, any paper related to a motion or a pretrial statement and other papers described in SCR Civil 16(d) and (e), deliver a chambers copy of such motion or papers to judge assigned to the case via a designated depository at the Courthouse. If the original paper has been mailed, the copy can likewise be mailed. Note, as to this matter, original papers should never, unless ordered otherwise, be filed with a judge.

Rule 5-I. Proof of ~~s~~Service~~.~~

(a) IN GENERAL. Proof of service of filings required or permitted to be served (other than those for which a method of proof is prescribed elsewhere in these ~~R~~rules or by statute) and proof that chambers copies have been supplied to the assigned judge as required by Rule 5(de), ~~shall~~ must be filed before any other action is ~~to be~~ taken on that filing~~thereon~~. The proof ~~shall~~ must show the date and manner of service on the parties and delivery to the judge, and may be made by:

(1) written acknowledgment ~~thereof,~~;

(2) ~~by~~ affidavit of the person making service or delivery~~,~~;

(3) ~~by~~ certificate of a member of the Bar of this ~~C~~court~~,~~; or

(4)~~by~~ other proof satisfactory to the ~~C~~court.

(b) FAILURE TO MAKE PROOF; AMENDING PROOF. Failure to make ~~such~~ proof will not affect the validity ~~thereof~~of service. The ~~C~~court may at any time allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 5-II. Pleadings and ~~o~~Orders ~~a~~Affecting ~~e~~Estates of ~~v~~Veterans~~.~~

A copy of any pleading or order affecting the estate of a veteran ~~shall~~ must be mailed to the United States Department of Veterans Affairs~~dministration~~ by the party filing or obtaining the same.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

This rule helps the United States Department of Veterans Affairs fulfill its statutory responsibility of ensuring that federal funds disbursed to veterans are properly expended and accounted for. *See 38 U.S.C. § 5502*. Parties should mail copies of pleadings and orders to:

Office of Regional Counsel
U.S. Department of Veterans Affairs
1722 I Street, NW, Suite 302
Washington, DC 20421

Rule 5-III. Sealed or ~~c~~Confidential ~~d~~Documents~~.~~

(a) SEALING.

(1) *In General*. Absent statutory authority, no case or document may be sealed without a~~n~~ written court order ~~from the Court~~. Any document filed with the intention of being sealed ~~shall~~ must be accompanied by a motion to seal or an existing written order. The document will be treated as sealed, pending the ruling on the motion.

(2) *Electronically-Filed Cases*. For cases that are electronically filed, the motion to seal must be electronically filed and redacted as necessary for the public record. If the motion to seal is granted, an unredacted motion to seal with the materials sought to be placed under seal must be delivered in paper form to the clerk's office for filing. Any subsequent documents allowed to be filed under seal must be filed in paper with the clerk's office.

(3) *Failure to Comply with This Rule*.

(A) *Failure to File Motion to Seal*. Failure to file a motion to seal will result in the pleading or document being placed in the public record.

(B) *Failure to Redact Electronically Filed Documents*. Filing an unredacted document electronically before or after a motion to seal is granted will result in the document being placed in the public record.

(b) IN CAMERA INSPECTION.

(1) *Submission*. Unless otherwise ordered or ~~otherwise specifically~~ provided in these ~~R~~rules, all documents submitted for a confidential in camera inspection by the ~~C~~court must be submitted to the clerk securely sealed~~,~~ if they ~~which~~ are:

(A) the subject of a ~~P~~protective ~~O~~order;

~~,~~ (B) ~~which are~~ subject to an existing written order that they be sealed;~~,~~ or

(C) ~~which are~~ the subject of a motion ~~for such orders~~requesting that they be sealed~~, shall be submitted to the Clerk securely sealed~~.

(2) *Required Notation*. The envelope or ~~/~~box containing ~~such~~ documents being submitted for in camera inspection ~~shall~~must contain a conspicuous notation such as "DOCUMENT UNDER SEAL" or "DOCUMENTS SUBJECT TO PROTECTIVE ORDER" or ~~the~~ something equivalent.

(c) OTHER FILING REQUIREMENTS. The face of the envelope~~/~~ or box ~~shall~~must also contain the case number, the title of the ~~C~~court, a descriptive title of the document and the case caption unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope or ~~/~~box ~~shall~~must also contain the date of any written order or the reference to any statute permitting the item to be sealed.

(d) HOW TO SUBMIT SEALED MATERIALS. ~~Filings of s~~Sealed materials ~~shall~~must be filed~~made only~~ in the ~~C~~clerk's ~~O~~office during regular business hours. ~~Such f~~Filing~~s~~ of sealed materials at the security desk is~~are~~ prohibited ~~because the Security Officers are not authorized to accept this material~~.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Provisions related to electronic filing were also added.

Rule 5-III(a)(3) does not prohibit the court, in the appropriate exercise of its discretion, from sealing documents already in the public record on motion of a party or on its own initiative.

Rule 5.1. Challenge to Validity or Constitutionality of a District of Columbia Statute, Order, Regulation, or Enactment—Constitutional Challenge to a Federal or State Statute—Notice, Certification, and Intervention

(a) NOTICE BY A PARTY. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute, or the constitutionality or validity under the District of Columbia Self-Government and Government Reorganization Act of 1973, of a District of Columbia statute, order, regulation, or enactment of any type, must promptly:

(1) file a notice of constitutional question or notice of question of validity stating the question and identifying the paper that raises it, if:

(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity;

(B) a District of Columbia statute, order, regulation, or enactment of any type is questioned and the parties do not include the District of Columbia, one of its agencies, or one of its officers or employees in an official capacity; or

(C) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned—or on the Attorney General of the District of Columbia if a District of Columbia statute, order, regulation, or other enactment is questioned—or on the state attorney general if a state statute is questioned—either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) CERTIFICATION BY THE COURT. Where a notice is required under Rule 5.1(a), the court must certify to the appropriate attorney general that a federal or state statute—or a District of Columbia statute, order, regulation, or other enactment—has been questioned.

(c) INTERVENTION; FINAL DECISION ON THE MERITS. Unless the court sets a later time, the appropriate attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the challenge, but may not enter a final judgment holding the statute, regulation, order, or other enactment unconstitutional or otherwise invalid.

(d) NO FORFEITURE. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a claim or defense that is otherwise timely asserted.

COMMENT TO 2017 AMENDMENTS

This rule adopts, with certain modifications and additions, the corresponding federal rule, which was adopted in 2006. Consistent with the approach taken by the federal rules, the current rule moves requirements to Rule 5.1 from Rule 24(c), which addresses the criteria and procedures for intervention.

The rule adds a notification provision for acts, orders, regulations, or enactments exclusively applicable to the District of Columbia so that the court will follow as nearly as possible the notification procedure prescribed for courts of the United States in *28 U.S.C. § 2403.* In order to assist the court in fulfilling its notification responsibilities

under this section, the rule requires an alerting inscription on every pleading the filing of which makes such notification necessary.

The District of Columbia Self-Government and Governmental Reorganization Act of 1973, Public Law 93-198 (also known as the District of Columbia Home Rule Act), is reported primarily at D.C. Code §§ 1-201.01 to -207.71 (2016 Repl.). Individual sections of the Act are codified throughout the D.C. Code, and a listing of those sections and references to their counterparts in the D.C. Code can be found in the Disposition Table in Volume 23 (Tables) of the 2012 Replacement Edition of the D.C. Code, pp. 323-25.

Rule ~~24~~5.1~~.~~-I. Intervention by the United States or the District of Columbia.

In any case in which the ~~C~~court has sent a notification to the Attorney General of the United States or the ~~Corporation Counsel~~Attorney General of the District of Columbia ~~pursuant to~~under Rule ~~24(c)~~5.1, the ~~C~~court ~~shall~~ must permit the United States or the District of Columbia, respectively, to intervene for the presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States, or the District of Columbia, as appropriate, ~~shall~~must, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. This rule was also renumbered to correspond with the relocation to Rule 5.1 of provisions related to notice, certification, and intervention by the United States or the District of Columbia when there is a constitutional challenge.

Rule 6. Computing and Extending Time; Time for Motion Papers.

(a) COMPUTING TIME~~omputation~~. The following rules apply ~~i~~In computing any time period ~~of time prescribed or allowed by~~ specified in these rules, ~~by~~in any court order ~~of Court~~, or in any ~~by any applicable~~ statute that does not specify a method of computing time~~:~~.

(1) *Period Stated in Days or a Longer Unit*. When the period is stated in days or a longer unit of time:

(A) ~~E~~exclude~~,~~ the day of the event~~act, event, or default~~ that~~from which the designated period of time~~ ~~begins~~ triggers the period;~~to run shall not be included.~~

(B) count every day, including intermediate Saturdays, Sundays and legal holidays; and ~~when the period is less than 11 days.~~

(C) include ~~T~~the last day of the period, but if the last day ~~so computed shall be included, unless it~~ is a Saturday, ~~a~~ Sunday, or a legal holiday, ~~or, when the act to be done is the filing of a paper in Court, a day or any part of a day in which the office of the Clerk is closed, in which event~~ the period continues to run~~s~~ until the end of the next day that~~which~~ is not a Saturday, Sunday, or legal holiday~~one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation~~.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined.*~~As used in this Rule and in Rule 77(c),~~ "~~l~~Legal holiday" means:

(A) the day set aside by statute for observing~~includes~~ New Year's Day, ~~Birthday of~~ Martin Luther King~~,~~ Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day~~;~~, and

(B) any other day declaredappointed as a holiday by the President or the Congress of the United States, or by the District of Columbiaobserved as a holiday by the court.

(C) [Omitted].

(b) EXTENDING TIME.

(1) *In General*. Enlargement. When by these Rules or by a notice given thereunder or by order of court an act may or must be done is required or allowed to be done at or within a specified time, the Ccourt may, for good cause, extend the time:

shown may at any time in its discretion (A1) with or without motion or notice if the court acts, or if theorder the period enlarged if request therefor is made, before the original time or its extension expires;ation of the period originally prescribed or as extended by a previous order, or

(2B) upon motion made after the time has expiredation of the specified period permit the act to be done where the if the party failedure to act becausewas the result of excusable neglect.

(2) ;*Exceptions*. but it mayA court must not extend the time for taking anyto action under Rules 50(b) and (dc)(2), 52(b), 59(b), (d), and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) [Omitted].

(d) TIME FOR SERVING AFFIDAVITSime for serving affidavits. When a motion or opposition is supported by affidavit, the affidavit shall be served with the motion or opposition unless the Court permits them to be served at some other time Any affidavit supporting a motion or opposition must be served with the motion or opposition unless the court orders otherwise.

(de) ADDITIONAL TIME AFTER CERTAIN KINDS OF SERVICEdditional time after certain kinds of service. Whenever a party may or must or may act within a specified timeprescribed period after being servedice and service is made under Rule 5(b)(2)(BC) (mail), (CD) (leaving with the clerk), or (FD) (other means consented to), 3 days are added after the prescribed period would otherwise expire under subdivisionRule 6 (a).

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 6*, as amended in 2007, 2009, and 2016, except for 1) deletion of reference to local rules; 2) modification of subsection (a)(6)(B) to include holidays observed by the court, which made federal subsection (a)(6)(C) inapplicable; and 3) in section (c) (formerly section (d)), retention of language reflecting District of Columbia practice for service of affidavits in support of a motion or opposition. As explained in the Advisory Committee Notes to the federal rule, the 2009 federal amendments were intended to simplify and clarify the process for computing deadlines.

COMMENT

Rule 6 identical to *Fed. Rule of Civil Procedure 6* except for deletion from section (a) of reference to local rules of district courts and states in which district courts are held, deletion from section (b) of reference to Federal Rule 74(a), which prescribes the method of appeal from a judgment of a magistrate, and revision of section (d) in

accordance with local practice respecting service of motions and affidavits. In addition, section (a) of the Superior Court Rule, like Superior Court Criminal Rule 45(a), has been modified to permit an extra day for the computation of time for the filing of legal papers only when the office of the clerk has been ordered closed.

Rule 6-I. Continuous Ssession of Court.
Terms of court are abolished. The cCourt wishall be in continuous session.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

TITLE III. PLEADINGSleadings ANDand MOTIONSotions.

Rule 7. Pleadings aAllowed; fForm of mMotions and Other Papers.

(a) Pleadings. PLEADINGS. Only these pleadings are allowed:

(1) There shall be a complaint and;

(2) an answer to a complaint;

(3) an answera reply to a counterclaim denominated designated as a counterclaim such;

(4) an answer to a cross-claim;

(5) if the answer contains a cross-claim; a 3rdthird-party complaint,;

(6) an answer to a third-party complaint; and

(7) if a person who was not an original party is summoned under the provisions of Rule 14; and a 3rd-party answer, if a 3rd-party complaint is served. No other pleading shall be allowed, except that the Ccourt may orders one, a reply to an answer or a 3rd-party answer.

(b) Motions and other papers. MOTIONS AND OTHER PAPERS.

(1) *In General*. A request for a Application to the Ccourt for an order shall must be made by motion. The motion must:

(A) which, unless made during a hearing or trial, shall be made be in writing unless made during a hearing or trial;,

(B)shall state with particularity the grounds for seeking the order;therefor, and

(C)shall set forth state the relief or order sought.

(2) *Form*. The Rrules governing applicable to captions, signing, and other matters of form of in pleadings apply to all motions and other papers. provided for by these Rules.

(3) All motions shall be signed in accordance with Rule 11.

(c) Demurrers, pleas, etc., abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 7*, as amended in 2007.

COMMENT

Civil Rule 7 has been amended to clarify that the Court may impose sanctions against litigants who engage in improper motions practice. A new provision has been added to this rule to make explicit that the certification requirements and sanctions set forth in new Civil Rule 11 apply as well to motions filed with the Court.

Rule 7-I. Stipulations.

~~No~~Neither the court nor a master ~~stipulation shall be~~ will consider~~ed by the Court in any action before it~~ a stipulation unless ~~the same be~~the stipulation is:

(1) in a writing signed by the parties ~~thereto~~ or their attorneys; ~~or~~

(2) made on the record before the c~~C~~ourt or a master ~~at a reported hearing~~; or

(3) made in the taking of a deposition and recorded by or at the direction of the officer before whom the deposition is being taken.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

Rule 7-I is identical to former Rule 43-II. The location of the Rule was changed in order to avoid the impression that stipulations are limited to evidentiary matters.

Rule 7.1. Disclosure Sstatement.

(a) Who must fileWHO MUST FILE; CONTENTS;. nongovernmental corporate party. A nongovernmental corporate party to an action or proceeding must file two 2 copies of a statement disclosure statement that:

(1) identifies any parent corporation and any publicly held corporation that ownsowning 10% or more of its stock; or

(2) states that there is no such corporation.

(b) Time for filingTIME TO FILE; supplemental filingSUPPLEMENTAL FILING. A party must.: A party must (Subject to 7.1(c)):

(1) file the Rule 7.1(a) statement with its disclosure with its first appearance, pleading, petition, motion, response, or other request addressed to the Ccourt.; and

(2) promptly file a supplemental statement upon if any required information changes. in the information that the statement requires.

(c) COLLECTION AND SUBROGATION CASE PROCEDURES. A plaintiff need not file a statement in a case filed pursuant to Civil Rule 40-III(a) unless the defendant files a responsive pleading or otherwise appears to contest the allegations contained in the complaint. In a case in which such a pleading is filed or a defendant appears, the statement shallmust be filed promptly.

COMMENT TO 2017 AMENDMENTS

Sections (a) and (b) are identical to *Federal Rule of Civil Procedure 7.1*, as amended in 2007. Section (c), which is unique to the Superior Court rule, is retained from the prior version of this rule.

Rule 8. General Rrules of Ppleading.

(a) CLAIMlaims forFOR RreliefELIEF.

A pleading that states which sets forth a claim for relief , whether an original claim, counterclaim, cross-claim, or 3rd-party claim, shallmust contain:

(1) a short and plain statement of the grounds forupon which the Ccourt's jurisdiction depends, unless the Ccourt already has jurisdiction and the claim needs no new grounds of jurisdictional to support it;,

(2) a short and plain statement of the claim showing that the pleader is entitled to relief;, and

(3) a demand for judgment for the relief sought, which the pleader seeks. may include Rrelief in the alternative or of several different types may be demandedof relief.

(b) DEFENSESefenses; ADMISSIONS ANDform of dDENIALSenials.

(1) *In General*. In responding to a pleading, a A party must:

(A)shall state in short and plain terms the party'sits defenses to each claim asserted against it; and

(B) shall admit or deny the averments allegations asserted against it by an opposing partyupon which the adverse party relies.

(2) *Denials—Responding to the Substance*. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. A Ddenials shallmust fairly respond tomeet the substance of the averments deniedallegation.

(3) *General and Specific Denials*. When a pleaderA party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) *Denying Part of an Allegation*. A party that intends in good faith to deny only a part or a qualification of an allegationaverment, the pleader must admit the part that is true and deny the rest.

(5) *Lacking Knowledge or Information*. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the Court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11. (6) *Effect of Failing to Deny*. An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) AFFIRMATIVEffirmative defensesDEFENSES.

(1) *In General*. In respondingIn pleading to a preceding pleading, a party mustshall set forth affirmatively state any avoidance or affirmative defense, including:

____· accord and satisfaction;
____·, arbitration and award;,
____· assumption of risk;
____·, contributory negligence;, ~~discharge in bankruptcy,~~
____· duress;
____·, estoppel;
____·, failure of consideration;
____·, fraud;
____·, illegality;
____·, injury by fellow servant;
____·, laches;
____·, license;
____·, payment;
____·, release;
____·, res judicata;
____·, statute of frauds;
____·, statute of limitations; and
____·, waiver.

(2) *Mistaken Designation*. ~~, and any other matter constituting an avoidance or affirmative defense.~~ If~~When~~ a party ~~has~~ mistakenly designate~~sd~~ a defense as a counterclaim, or a counterclaim as a defense, the ~~C~~court must~~on terms~~, if justice so requires, ~~shall~~ treat the pleading as though it were correctly designated, and may impose terms for doing so~~if there had been a proper designation~~.

(d) ~~Effect of failure to deny.~~

~~Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.~~

~~(e)~~ P~~LEADING~~leading ~~to~~TO ~~b~~B~~e~~E ~~c~~C~~oncise~~ONCISE ~~and~~AND ~~d~~D~~irect~~IRECT; ALTERNATIVE STATEMENTS; I~~consistency~~NCONSISTENCY.

(1) *In General*. Each allegation~~averment of a pleading shall~~ must be simple, concise, and direct. No technical form~~s of pleadings or motions are~~is required.

(2) *Alternative Statements of a Claim or Defense*. A party may set ~~forth~~out 2 or more statements of a claim or defense alternately or hypothetically, either in a single~~1~~ count or defense or in separate ones~~ counts or defenses~~. If a party makes alternative ~~When 2 or more~~ statements~~ are made in the alternative and 1 of them if made independently would be sufficient~~, the pleading is ~~not made in~~sufficient if any one of them is sufficient ~~by the insufficiency of 1 or more of the alternative statements~~.

(3) *Inconsistent Claims or Defenses*. A party may ~~also~~ state as many separate claims or defenses as it has, ~~as the party has~~ regardless of consistency~~ and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11~~.

(e~~f~~) C~~ONSTRUING~~onstruction of ~~p~~P~~leadings~~LEADINGS.

~~All p~~P~~l~~eadings ~~shall~~must be ~~so~~ construed so as to do ~~substantial~~ justice.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 8*, as amended in 2007 and 2010. In addition to stylistic changes, "discharge in bankruptcy" is deleted from the list of affirmative defenses. As explained in the Advisory Committee Notes to the 2010 federal amendment:

> Under *11 U.S.C. § 524 (a)(1) and (2)*, a discharge voids a judgment to the extent that it determines a personal liability of the debtor with respect to a discharged debt. The discharge also operates as an injunction against commencement or continuation of an action to collect, recover, or offset a discharged debt. For these reasons it is confusing to describe discharge as an affirmative defense. But § 524 (a) applies only to a claim that was actually discharged. Several categories of debt set out in *11 U.S.C. § 523 (a)* are excepted from discharge. The issue whether a claim was excepted from discharge may be determined either in the court that entered the discharge or—in most instances—in another court with jurisdiction over the creditor's claim.

COMMENT

Identical to *Federal Rule of Civil Procedure 8*.

Rule 9. Pleading Sspecial Mmatters.

(a) CAPACITY OR AUTHORITY TO SUE; LEGAL EXISTENCEapacity.

(1) *In General*. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) It is not necessary to aver the capacity of a party's capacity to sue or be sued;

(B) or thea party's authority of a party to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.,, except to the extent required to show the jurisdiction of the Court

(2) *Raising Those Issues*. When a party desires tTo raise any of those issues, as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, thea party must desiring to raise the issue shall do so by a specific negative avermentdenial, which shallmust stateinclude such any supporting factsparticulars as that are peculiarly within the pleaderarty's knowledge.

(b) FRAUD OR MISTAKE; CONDITIONS OF MINDraud, mistake, condition of the mind.

In alleging averments of fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person's mind may be allegaverred generally.

(c) CONDITIONS PRECEDENTonditions precedent.

In pleading the performance or occurrence of conditions precedent, it is sufficesient to allegever generally that all conditions precedent have occurred or been performed or have occurred. But when A dengingial that a condition precedent has occurred or been of performedance or occurrence, a party must shall be made specifically and do so with particularity.

(d) OFFICIAL DOCUMENT OR ACTfficial document or act.

In pleading an official document or official act, it is sufficesient to allegever that the document was legally issued or the act legally done in compliance with law.

(e) JUDGMENTudgment.

In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or of a board or officer, it is sufficesient to pleadaver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) TIME AND PLACEime and place.

For the purpose of testing the sufficiency of a pleading, avermentsAn allegation of time and place isare material and shall be considered like all other averments of material matterwhen testing the sufficiency of a pleading.

(g) SPECIAL DAMAGESpecial damage.

If anWhen items of special damage isare claimed, it mustthey shall be specifically stated.

(h) [Deleted].

COMMENT TO 2017 AMENDMENTS

Rule 9 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 9.*

COMMENT

Rule 9 identical to *Federal Rule of Civil Procedure 9* except for deletion of section (h) thereof dealing with claims for relief "within the admiralty and maritime jurisdiction" which are within the exclusive jurisdiction of federal District Courts. See *28 U.S.C. § 1333*(1).

Rule 10. Form of Ppleadings.

(a) CAPTIONaption; NAMES OF PARTIESnames of parties.

Every pleading must haveshall contain a caption with the court'ssetting forth the name of the court, athe title of the action, athe file number, and a Rule 7(a) designation. as in Rule 7(a), The title of the complaint must and the name all the or names of the party or parties; the title of other pleadings, after naming the first party on each side, may refer generally to other partieson whose behalf the pleading is filed. If a case has been assigned to a specific judge or magistrate judge, the name of that judge or magistrate judge and, when known, the calendar number must appear below the file number on every pleading.If the case has been assigned to a specific calendar or a single judge, the calendar number or the judge's name shall appear below the file number on every pleading. In the complaint the title of the action shall include the names of all parties, but in other pleadings it is sufficient to state the name of the 1st party on each side with an appropriate indication of other parties.

(b) PARAGRAPHSaragraphs; SEPARATE STATEMENTS. separate statements.

A party must state its claimsll averments of claim or defenses shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances.; and A later pleadinga paragraph may be referred to by number to a paragraph in an earlierin all succeeding pleadings. If doing so would promote clarity, Eeach claim founded upon a separate transaction or occurrence—and each defense other than a denials—shallmust be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) ADOPTION BY REFERENCE; EXHIBITSdoption by reference; exhibits.

A Sstatements in a pleading may be adopted by reference elsewhere in a different part of the same pleading or in any other pleading or in any motion. A copy of any written instrument thatwhich is an exhibit to a pleading is a part thereof the pleading for all purposes.

COMMENT TO 2017 AMENDMENTS

Rule 10 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 10*.

COMMENT

Rule 10 is identical to *Federal Rule of Civil Procedure 10* except for the additional requirement that the calendar number or the judge's name be placed on the pleading. A similar provision was formerly in Rule 40-II(e). Rule 40-I(a) contemplates two different types of case assignment. In almost all instances, a case will be assigned to a particular calendar. Such a case may be transferred from one judge to another as judicial assignments change; for these cases the caption should contain the calendar number only. In exceptional circumstances, a particular judge may be assigned permanently to a case; for these cases the caption should contain the judge's name. Note, that in certain cases described in Rule 24(c) the pleading must bear immediately below the

caption the inscription "RULE 24 NOTIFICATION REQUIRED." Note that the requirements of Rule 10 apply not only to pleadings but also to the form of all motions and other papers provided for by the civil rules. *See* Rule 7(b)(2).

Rule 10-I. Pleadings: Stationery and ~~i~~Llocational ~~i~~Information~~.~~

(a) STATIONERY; TITLE; RELIEF PRAYED~~tationery; title; relief prayed~~.

~~—~~Pleadings and like papers ~~shall~~ must be on opaque white paper, approximately 11 inches long and 8 1/2 inches wide, without back or cover, fastened at the top and stating under the caption the nature of the pleading and the relief, if any, prayed.

(b) LOCATIONAL INFORMATION~~ocational information~~: PLEADINGS AND OTHER PAPERS~~leadings and other papers~~.

~~—~~ The ~~1st~~ first pleading filed by or on behalf of a party ~~shall~~ must set forth in the caption the party's name, full residence address, and unless the party is represented by counsel, the party's telephone number, if any. All subsequent pleadings and other papers filed by or on behalf of a party ~~shall~~ must set forth the name, full residence address and telephone number of the party, unless that party is represented by counsel. If a party is represented by counsel, all pleadings or other papers ~~shall~~ must set forth the name, office address, telephone number, e~~-~~mail address, and Bar number of the attorney. The names, addresses, email addresses, and telephone numbers so shown ~~shall~~ will be conclusively deemed to be correct and current. It is the obligation of the attorney or unrepresented party whose address, email address, or telephone number has been changed to give immediate~~ly~~ noti~~ce~~fy~~ to~~ the appropriate branch or office within the Civil Division and all other attorneys and unrepresented parties named in the case of this change. Attorneys must include their Bar number in all such notices. Should a party incur expenses, including reasonable attorney's fees, due to the failure of any other party, or that party's attorney, to give prompt~~ly give~~ notice of a change of address, email address, or telephone number, the c~~C~~ourt, upon motion or upon its own initiative, may order the party failing to give notice to reimburse the other party for expenses incurred.

(c) NONCONFORMANCE WITH ABOVE~~onconformance with above~~.

~~—~~A pleading or other paper not conforming to the requirements of this ~~R~~rule ~~shall~~ will not be accepted for filing.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 11. Signing ~~of Pp~~leadings, M~~m~~otions, and O~~o~~ther Papers~~filings~~; ~~r~~Representations to Court; ~~s~~Sanctions~~.~~

(a) SIGNATURE~~ignature~~.

Every pleading, written motion, and other paper~~filing shall~~ must be signed by at least one attorney of record in the attorney's ~~individual~~ name~~,~~ or by a party personally~~,~~ if the party is ~~not~~ unrepresented ~~by an attorney, shall be signed by the party~~. ~~Each filing shall~~The paper must state the signer's address, e-mail address, and telephone number ~~and email address, if any~~. If the filing is submitted through the Court's authorized eFiling program, Rule 5(de)(5~~2~~)(B)(ii) and (iii) will govern the signing of any electronic filing. A name affixed by a rubber stamp ~~shall~~ will not be deemed a signature. Unless a~~Except when otherwise specifically provided by~~ rule or statute specifically states otherwise, a pleading~~s~~ need not be verified or accompanied by an affidavit. The court must strike ~~A~~an unsigned paper~~filing shall be stricken~~ unless the omission is promptly~~of the signature is~~ corrected ~~promptly~~ after being called to the attorney's or party's attention ~~of the attorney or party~~. ~~If the filing is submitted through the Court's authorized eFiling program, Rule 5(e)(2)(B)(ii) shall govern the signing of any electronic filing.~~

(b) REPRESENTATIONS TO THE COURT~~epresentations to court~~.

By presenting to the court a pleading, written motion, or other paper, including an electronic filing~~,~~ ~~(~~whether by signing, filing, submitting, or later advocating it~~)~~ ~~,~~ ~~a pleading, written motion, or other filing, including an electronic filing,~~ an attorney or unrepresented party ~~is~~ certifiesying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:~~, --~~

(1) it is not being presented for any improper purpose, such as to harass, ~~or to~~ cause unnecessary delay, or needlessly increase ~~in~~ the cost of litigation;

(2) the claims, defenses, and other legal contentions ~~therein~~ are warranted by existing law or by a nonfrivolous argument for ~~the~~ extendingsion, modifyingication, or reversingal ~~of~~ existing law or for ~~the~~ establishingment ~~of~~ new law;

(3) the ~~allegations and other~~ factual contentions have evidentiary support or, if specifically so identified, willare likely ~~to~~ have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information ~~or belief~~.

(c) SANCTIONS~~anctions~~.

(1) *In General*. If, after notice and a reasonable opportunity to respond, the court determines that ~~subdivision~~ Rule 11(b) has been violated, the court may~~, subject to the conditions stated below,~~ impose an appropriate sanction ~~up~~on any~~the~~ attorney~~s~~, law firm~~s~~, or party~~ies~~ that ~~have~~ violated the rule~~subdivision (b)~~ or ~~are~~is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(~~1~~2) ~~*How initiated*~~*Motion for Sanctions*.

~~(A) By motion.~~

A motion for sanctions ~~under this rule shall~~must be made separately from any other motion~~s~~ and must~~or requests and shall~~ describe the specific conduct that allegedly ~~to~~ violate~~s~~ ~~subdivision~~ Rule 11(b). The motion must~~It shall~~ be served ~~as provided in~~under Rule 5, but it must~~shall~~ not be filed with or presented to the court ~~unless~~if ~~, within 21 days after service of the motion (or such other period as the court may prescribe),~~ the

challenged paper, claim, defense, contention, ~~allegation,~~ or denial is ~~not~~ withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party ~~prevailing on the motion~~ the reasonable expenses, including ~~and~~ attorney's fees, incurred for ~~in presenting or opposing~~ the motion. ~~Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.~~

(~~B~~3) *On the C~~c~~ourt's I~~i~~nitiative*.

On its own ~~initiative~~, the court may ~~enter an~~ order ~~describing the specific conduct that appears to violate subdivision (b) and directing~~ an attorney, law firm, or party to show cause why conduct specifically described in the order ~~it~~ has not violated ~~subdivision~~ Rule 11(b) ~~with respect thereto~~.

(~~2~~4) *Nature of a s~~S~~anction~~s; limitations~~.*

A sanction imposed ~~for violation of~~under this rule ~~shall~~ must be limited to what ~~is~~ suffic~~es~~ient to deter repetition of ~~such~~the conduct or comparable conduct by others similarly situated. ~~Subject to the limitations in subparagraphs (A) and (B), t~~The sanction may ~~consist of, or~~ include, nonmonetary directives ~~of a nonmonetary nature~~, an order to pay a penalty into court~~;~~, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part~~some~~ or all of the reasonable attorney's fees and other expenses ~~incurred as a~~ direct~~ly~~ result~~ing from~~of~~ the violation.

(5)~~(A)~~ *Limitations on Monetary ~~s~~Sanctions*. The court must not impose a monetary sanction:

(A)~~may not be awarded~~ against a represented party for ~~a~~ violati~~ng~~on ~~of subdivision~~Rule 11(b)(2)~~;~~ or

(B) ~~Monetary sanctions may not be awarded~~ on ~~the court's~~its own, ~~initiative~~ unless ~~the court~~it issue~~s~~d ~~the~~ its ~~order to~~ show ~~–~~cause order under Rule 11(c)(3) before ~~a~~ voluntary dismissal or settlement of the claims made by or against the party ~~which~~that is, or whose attorneys are, to be sanctioned.

(~~3~~6) *Requirements for an Order*. An order ~~When~~ imposing a sanction ~~s, the court shall~~must describe the sanctioned conduct ~~determined to constitute a violation of this rule~~ and explain the basis for the sanction ~~imposed~~.

(d) I~~n~~APPLICABILITY TO DISCOVERY~~napplicability to discovery~~.

~~Subdivisions (a) through (c) of t~~This rule do~~es~~ not apply to disclosures and discovery requests, responses, objections, and motions ~~that are subject to the provisions of~~under Rule~~s~~ 26 through 37.

COMMENT TO 2017 AMENDMENTS

Rule 11 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 11*. Two provisions that are unique to the Superior Court rule are retained, including language related to the court's eFiling program and a provision explicitly prohibiting use of a rubber stamp.

COMMENT

This rule is identical to *Federal Rule of Civil Procedure 11*. This Rule also makes clear that a signature affixed by a rubber stamp is not sufficient.

Rule 12. Defenses and ~~o~~Objections ~~--~~: When and ~~h~~How ~~p~~Presented; ~~-- By pleading or motion --~~ Motion for ~~j~~Judgment on the ~~p~~Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing~~.~~

(a) TIME TO SERVE A RESPONSIVE PLEADING~~When presented~~.

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

(A) ~~a~~A defendant ~~shall~~ must serve an answer within 21~~0~~ days after being served with the summons and complaint.

(~~2~~B) A party must serve~~d~~ an answer to ~~with a pleading stating~~ a counterclaim or cross-claim ~~against that party shall serve an answer thereto~~ within 21~~0~~ days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party ~~The plaintiff~~must ~~shall~~ serve a reply to an answer ~~counterclaim in the answer~~ within 21~~0~~ days after being serve~~dice of the answer, or, if a reply is~~ with an order to reply, unless the order specifies a different time ~~ordered by the Court, within 20 days after service of the order, unless the order otherwise directs~~.

(~~3~~2)~~(A)~~ *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 ~~officer~~agency, ~~agency~~ officer, or employee of either sued only in an official capacity ~~shall~~ must serve an answer to ~~the~~ a complaint, counterclaim, or cross-claim~~; or a reply to a counterclaim,~~ within 60 days after service on the United States ~~A~~attorney (in suits involving the United States) or the ~~Corporation Counsel~~Attorney General for the District of Columbia (in suits involving the District of Columbia) ~~is served with the pleading asserting the claim~~.

(~~B~~3) *United States or District of Columbia Officers or Employees Sued in an Individual Capacity*. A United States~~n~~ or District of Columbia officer or employee ~~of the United States~~ sued in an individual capacity for an act~~s~~ or omission~~s~~ occurring in connection with the duties performed~~ance of duties~~ on the United States' or the District of Columbia's behalf ~~of the United States shall~~ must serve an answer to ~~the~~a complaint, counterclaim, or cross-claim ~~-- or a reply to a counterclaim --~~ 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 ~~a different time is fixed by~~the ~~C~~court sets a different time~~order~~, ~~the~~ serving~~ce of~~ a motion ~~permitted~~ under this rule alters these periods ~~of time~~ as follows:

(A) if the ~~C~~court denies the motion or postpones its disposition until ~~the~~ trial ~~on the merits~~, the responsive pleading ~~shall~~ must be served within 14~~0~~ days after notice of the ~~C~~court's action; or

(B) if the ~~C~~court grants a motion for a more definite statement, the responsive pleading ~~shall~~must be served within 14~~0~~ days after the ~~service of the~~ more definite statement is served.

(5) *Entry of Default*. ~~Except where~~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 ~~R~~rule ~~shall~~ will result in the entry of a default by the ~~C~~clerk or the ~~C~~court sua sponte ~~unless otherwise ordered by the Court~~.

(b) H~~ow presented~~OW TO PRESENT DEFENSES.

Every defense~~, in law or fact,~~ to a claim for relief in any pleading~~, whether a claim, counterclaim, cross-claim, or 3rd-party claim, shall~~ must be asserted in the responsive pleading ~~thereto~~ if one is required.~~,~~ But a party may assert ~~except that~~ the following defenses ~~may at the option of the pleader be made~~ by motion:

(1) ~~L~~lack of subject-matter jurisdiction ~~over the subject matter,~~;

(2) lack of personal jurisdiction ~~over the person,~~;

(3) [~~Delet~~Omitted]~~,~~;

(4) insufficien~~tcy of~~ process~~,~~;

(5) insufficien~~tcy of~~ 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~~making~~ any of these defenses ~~shall~~must be made before pleading if a ~~further~~ responsive pleading is ~~permitted~~allowed. ~~No defense or objection is waived by being joined with 1 or more other defenses or objections in a responsive pleading or motion.~~ If a pleading sets ~~forth~~ out a claim for relief ~~to which the adverse party is~~that does not require~~d to serve~~ a responsive pleading, ~~the adverse~~an opposing party may assert at ~~the~~ trial any defense ~~in law or fact~~ to that claim ~~for relief~~. 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. ~~If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.~~

(c) M~~otion for judgment on the pleadings~~OTION FOR JUDGMENT ON THE PLEADINGS.

After the pleadings are closed~~,~~ but ~~within such time as~~early enough not to delay ~~the~~ trial~~,~~ a~~ny~~ party may move for judgment on the pleadings.

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

~~(d) Preliminary hearings.~~

~~The defenses specifically enumerated (1)-(7) in subdivision (b) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this Rule shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.~~

(e) M~~otion for more definite statement~~OTION FOR A MORE DEFINITE STATEMENT.

A party may move for a more definite statement ~~I~~of a pleading to which a responsive pleading is ~~permitted~~ allowed but which is so vague or ambiguous that ~~a~~the party cannot reasonably ~~be required to frame~~prepare a respons~~ive~~ ~~pleading, the party may move for a more definite statement before interposing his responsive pleading~~. The motion ~~shall~~ must be made before filing a responsive pleading and must point out the

defects complained of and the details desired. If ~~the motion is granted and the order of~~ the ~~C~~court orders a more definite statement and the order is not obeyed within 1~~4~~0 days after notice of the order or within ~~such other~~the time ~~as~~ the ~~C~~court ~~may fix~~sets, the ~~C~~court may strike the pleading ~~to which the motion was directed~~ or ~~make such~~issue any other appropriate order ~~as it deems just~~.

(f) MOTION TO STRIKE~~otion to strike~~.

~~Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the Court's own initiative at any time, t~~The ~~C~~court may ~~order stricken~~strike from a~~ny~~ pleading an~~y~~ 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) ~~Consolidation of defenses in motion~~JOINING MOTIONS.

(1) *Right to Join.* A ~~party who makes a~~ motion under this ~~R~~rule may be joined with ~~it~~ any other motion~~s~~ allowed by this rule ~~herein provided for and then available to the party~~.

(2) *Limitations on Further Motions*. Except as provided in Rule 12(h)(2) or (3),~~I~~f a party that makes a motion under this ~~R~~rule ~~but omits therefrom any defense or objection then available to the party which this Rule permits to be raised by motion, the party shall~~must not ~~thereafter~~ make another motion under this rule ~~based on the~~raising a defense or objection that was available to the party but~~so~~ omitted from its earlier motion~~, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated~~.

(h) WAIVING AND PRESERVING CERTAIN DEFENSES~~aiver or preservation of certain defenses~~.

(1) *When Some Are Waived.* A party waives any defense ~~of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived~~ listed in Rule 12(b)(2)–(5) by:

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

(B) failing to either:

(i) ~~if it is neither~~ ma~~d~~ke it by motion under this ~~R~~rule; ~~n~~or

(ii) include~~d~~ it in a responsive pleading or in an amendment ~~thereof permitt~~allowed by Rule 15(a)(1) ~~to be made~~ as a matter of course.

(2) *When to Raise Others.* ~~A defense of f~~Failure to state a claim upon which relief can be granted, ~~a defense of failure~~ to join a person~~arty~~ ~~indispensable under~~required by Rule 19(b), ~~and or~~an objection or failure to state a legal defense to a claim may be ~~made~~raised:

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

~~or~~ (B) by a motion ~~for judgment on the pleadings~~under Rule 12(c)~~,~~; or

(C) at ~~the~~ trial ~~on the merits~~.

(3) *Lack of Subject-Matter Jurisdiction.* If the court determines at any time that it~~Whenever it appears by suggestion of the parties or otherwise that the Court~~ lacks subject-matter jurisdiction ~~of the subject matter~~, the ~~C~~court ~~shall~~ 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 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.

Rule 12-I. Motions ~~p~~Practice~~.~~

(a) EFFORTS TO OBTAIN CONSENT; CONSENT MOTIONS.

(1) *In General*. Before filing any motion, except motions filed pursuant to Rule 11, the moving party ~~shall~~must first ascertain whether other affected parties will consent to the relief sought.

(2) *Rule 11 Motions*. For motions filed pursuant to Rule 11, the moving party must make good faith efforts to resolve or dispose of the issues in dispute ~~must be made~~ before the motion is served pursuant to Rule 11(c)(~~1~~2)~~(A)~~.

(3) *No Resolution or Consent*. The court must consider the motion as a contested matter if~~Only when~~ the movant certifies in writing that, in the case of Rule 11 motions, resolution of the disputed issues is not possible or that despite diligent efforts consent could not be obtained~~, or in the case of Rule 11 motions, resolution of the disputed issues is not possible, will the Court consider the motion as a contested matter~~.

(4) *Consent Obtained*. If consent is obtained, and if the relief does not require court approval, the party seeking the relief may memorialize the other parties' consent in a letter to ~~such~~the parties (which ~~shall~~should not be filed) or in a praecipe filed and served as provided in Rule 5. If the relief sought is consented to but requires court approval, the moving party ~~shall~~must file, serve, and provide to the assigned judge a courtesy copy of a motion which includes the word "~~C~~consent" in its title and states that all affected parties have consented to the relief sought. No response to a consent motion is required.

~~The Court will generally enter the proposed order, submitted with a consent motion pursuant to paragraph (e) of this rule, unless the Court determines that the order is not proper form or would unduly protract the litigation or otherwise be inappropriate. Copies of any order entered by the Court with respect to a consent motion will be docketed and mailed to the parties pursuant to Rule 77(d).~~

(b) ~~Judge in chambers~~JUDGE IN CHAMBERS.

(1~~i~~) The following matters may at any time be presented for disposition to a judge in chambers designated by the Chief Judge, either ex parte or with opposing counsel, as appropriate:

(A) ~~A~~approval of accounts;~~,~~

(B) warrants and return of warrants;~~,~~

(C) approval of subpoenas for administrative proceedings;~~,~~

(D) applications for appointment of special process servers in small claims cases;~~,~~

(E) applications for name change under Rule 205 or any applicable administrative order;~~,~~

(F) petitions to release mechanic's liens;~~,~~

(G) applications for entry of administrative agencies' final orders as judgments;~~,~~

(H) petitions to take depositions pursuant to Rule 27(a);~~,~~

(I) master-meter proceedings under D.C. Code §§ 42-3301 to -3307 (2012 Repl.) ~~43-541 et seq. (1981) [§ 43-541 et seq., 2001 Ed.]~~; ~~and~~

(J) requests for issuance of subpoenas under Rule 28-I(d~~b~~);~~.~~

(K) petitions to amend birth certificates pursuant to Rule 205 or any applicable administrative order; and

(L) petitions to amend death certificates.

(2ii) The following matters, if presented on the day the complaint is filed, must be presented to the Judge in Chambers; thereafter, such matters must be presented to the judge assigned to the case:

(A) Aappointment of a special process server;,

(B) motions with respect to publication of notice requirements;,

(C) judicial approval of settlements involving minors;,

(D) motions regarding security for costs;,

(E) writs of ne exeat;,

(F) applications to set bonds;,

(G) applications for temporary restraining orders;,

(H) writs of attachment before judgment;,

(I) writs of replevin;,

(J) libels of information;,

(K) motions for protective orders barring access to court documents; and

(L) motions to use pseudonyms in any pleading or paper filed in a case.

(c) Judge on Emergency AssignmentJUDGE ON EMERGENCY ASSIGNMENT. Any motion requiring immediate judicial attention at a time outside the regular business hours of the Ccourt may be presented to the Jjudge on Eemergency Aassignment. The Chief Judge shallmust establish a roster for such emergency assignments.

(d) Form of motionsFORM OF MOTIONS.

(1) *In General*. With the exception of motions made in open court during hearing or trial when opposing counsel is present and motions made under emergent conditions, every petition or motion to the Ccourt shallmust be reduced tomade in writing and filed with the Cclerk. Every motion shallmust state clearly its object and the grounds on which it is based or the reasons for the relief sought. If a motion is consented to by all affected parties, that fact shallmust be indicated in the title of the motion, e.g., "Consent Motion to Extend Time for Filing Plaintiff's Rule 26(b)(4) StatementWitness List." The caption must contain the parties' next court date (e.g. case mediation, pretrial conference, or trial) if one has been set.

(2e) *Points and aAuthorities*; failure to file opposing points and authorities. With each motion and opposition there shall be filed and served a proposed order for the Court's signature which shall contain a list of all persons with their current addresses to whom copies of the judge's order shall be sent. Each motion shallmust include or be accompanied by a statement of the specific points and authorities totthat support the motion, including, where appropriate, a concise statement of material facts. SuchThe statement of points and authorities shallmust be a part of the record. 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 points and authorities shallmust be captionedlabeled as such and placed either on a separate paper or below all other material, including signatures, on the last page of the motion.

(e) OPPOSING POINTS AND AUTHORITIES. Within 14 days after service of the motion or at such other time as the court may direct, an opposing party must file and serve Aa statement of opposing points and authorities in opposition to the motionshall be filed and served within 10 days or such further time as the Court may grant. If a

statement of opposing points and authorities is not filed within the prescribed time, the ~~C~~court may treat the motion as conceded.

(f) PROPOSED ORDER. Each motion and opposition must be accompanied by a proposed order for the court's signature. The proposed order must list all persons to whom copies of the judge's order must be sent, including the addresses of those who cannot be served electronically. The proposed order also must list existing dates from the scheduling order and must indicate which dates, if any, would be affected by the motion or opposition.

(g) REPLY. Within 7 calendar days after service of the opposing statement, the moving party may file and serve a statement of points and authorities in reply to the following types of motions only:

(1) motions for summary judgment;

(2) motions to dismiss for failure to state a claim;

(3) motions to strike expert testimony; and

(4) motions for judgment on the pleadings.

(h~~f~~) ~~Hearing: When allowed~~HEARING: WHEN ALLOWED. A party may specifically request an oral hearing by endorsing at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested"; but the ~~C~~court in its discretion may decide the motion without a hearing. If the judge assigned to the case de~~cides~~~~termines~~ to hold a hearing on the motion, that judge ~~shall~~must give to all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing and the amount of time afforded to each party. If a pending motion is resolved by counsel, the movant must immediately notify the ~~C~~court by telephone.

(i~~g~~) ~~Same: Failure of 1 party to appear~~HEARING: FAILURE OF ONE PARTY TO APPEAR. If, at the time the case is called for hearing on a petition or motion, the moving party fails to appear, the petition or motion may be treated as submitted or waived, or may be continued ~~or stricken from the calendar~~. If the opposing party fails to appear, it may be treated as conceded. ~~, or t~~The ~~C~~court in its discretion may hear argument on behalf of the party appearing.

~~(h) Movant to provide pretrial conference scheduling order. At the end of each motion, the movant shall provide a proposed order, as required by Rule 12-I(e), that reflects the existing scheduling order dates as well as the proposed dates that are sought by the motion. If a specific court event has been set (e.g., case evaluation, pretrial conference, or trial), that date shall be shown in the caption of the motion, immediately below the calendar designation, as, for example, "Next Event: Mediation 11/25/91."~~

~~(i) [Vacant].~~

(j) ~~Motions to vacate default; verified answer~~MOTION TO VACATE DEFAULT. A motion to vacate an entry of default or a judgment by default, or both, ~~shall~~must comply with the requirements of Rule 55(c).

(k) ~~Motions for summary judgment~~MOTION FOR SUMMARY JUDGMENT. A motion for summary judgment must comply with the requirements of Rule 56.

~~In addition to the points and authorities required by subparagraph (e) of this Rule, there shall be served and filed with each motion for summary judgment pursuant to Rule 56 a statement of the material facts numbered by paragraphs as to which the moving party contends there is no genuine issue. Each material fact shall be stated in a separate numbered paragraph. Any party opposing such a motion may, within 10 days after~~

~~service of the motion upon the party, serve and file a concise statement of genuine issues setting forth all material facts numbered by paragraphs as far as possible to correspond to the paragraphs of the movant's statement of facts claimed not to be in issue as to which it is contended there exists a genuine issue necessary to be litigated. The opponent's statement of disputed material facts shall be stated in separate numbered paragraphs that correspond to the extent possible with the numbering of the paragraphs in the movant's statement of facts claimed not to be in issue. In determining any motion for summary judgment, the Court may assume that the facts as claimed by the moving party are admitted to exist without controversy except as and to the extent that such facts are asserted to be actually in good faith controverted in a statement filed in opposition to the motion. Any statement filed pursuant to this section of this Rule shall include therein references to the parts of the record relied on to support such statement and shall be a part of the record.~~

(l) ~~Order~~POST-RULING PROPOSED ORDER. ~~Notwithstanding that a proposed order was submitted with a motion as provided in 12-I(e),~~ Unless otherwise directed by the court, counsel prevailing at oral argument ~~shall~~must file and serve~~, unless otherwise directed by the Court, submit~~, within 75 ~~days~~ after the ~~C~~court ~~shall~~ rule~~s~~ on any motion, a proposed ~~form of~~ order ~~in accordance with~~reflecting the ~~C~~court's ruling~~, having previously transmitted a copy thereof to opposing counsel~~.

(m) [Deleted].

(n) ~~Time limit for motions~~TIME LIMIT FOR MOTIONS. All motions, other than motions specified in Rule 16(d) and posttrial motions, must be filed by the deadline set forth in the scheduling order issued pursuant to Rule 16(b). For good cause ~~shown~~, the ~~C~~court may extend the period for filing such motions.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule, and the rule was reorganized so related materials now appear in the same section or subsection. The deadlines were also amended to conform with the time-calculation changes made to Rule 6 as part of the 2009 amendments to the Federal Rules of Civil Procedure and to allow adequate time to resolve motions where the time for filing a response has been extended. The following provisions in section (a) were deleted as unnecessary: 1) the provision suggesting how the court would rule on a consent motion and 2) the provision stating how the court would serve an order for a consent motion. Language in subsection (d)(2) was modified to clarify that the statement of points and authorities may be included as part of the motion; there is no requirement that it be a separate document.

New section (g) permits the filing of a reply as a matter of right on all of the motions listed. However, no further filings are permitted without leave of court. Section (k) now directs parties to Rule 56 for provisions regarding summary judgment motions.

COMMENT TO 2015 AMENDMENTS

Section (m), “matters taken under advisement,” was deleted; the matters previously addressed by this section are now the subject of an administrative order.

COMMENT

Rule 12-I(a) provides that a moving party must seek consent of other affected parties prior to the filing of a motion, except with respect to Rule 11 motions for imposition of sanctions. In these instances, a good faith effort to resolve the disputed issues is required. Even on dispositive motions a good faith effort to achieve consent can eliminate some issues or parties.

In respect to motions for imposition of Rule 11 sanctions, the good faith requirement may be satisfied by giving notice to the other party, whether in person, by telephone or by letter, of a potential violation before proceeding to prepare and serve a Rule 11 motion.

In respect to motions for orders to compel discovery filed pursuant to Rule 37(a), complying with the good faith efforts to obtain discovery under Rule 37(a) satisfies the requirement to obtain consent pursuant to Rule 12-I(a).

Rule 12-I(b) is amended to show which actions may be presented to the Judge in Chambers and which must be handled by the judge assigned to the case.

The last sentence in Rule 12-I(d) provides that motions which are consented to by the affected parties should indicate that fact. The purpose of this provision is to allow the Court to rule on such motions without the necessity of waiting until the end of the opposition deadline.

Prior language in Rule 12-I(f) and (h) is deleted in its entirety and the letter headings of the paragraphs of this Rule are redesigned to reflect these deletions. Accordingly, paragraph (f) now contains the provisions previously found in paragraph (i). A sentence is added to this paragraph which provides for appropriate notice to the parties when a decision is made to hold a hearing on a motion. It also allows the judge to specify the matters to be addressed at the hearing and the amount of time each side shall be given to present arguments on the motion. The last sentence of paragraph (f) re-quires that counsel immediately inform the Court by telephone if the motion has been resolved. New language has been placed in paragraph (h) to provide that all motions must be accompanied by a copy of the Scheduling Order, if any has been issued in the case.

Rule 12-I(m) is intended to have equal applicability to posttrial motions and such non-motion matters as findings of fact and conclusions of law following a nonjury trial.

Rule 12-I(n) should be read in conjunction with Rule 26(d), which imposes a time limit for the completion of discovery.

Rule 13. Counterclaim and ~~c~~Cross-~~claim.~~

(a)~~Compulsory cCounterclaims.~~ COMPULSORY COUNTERCLAIM.

(1) *In General.* A pleading ~~shall~~ must state as a counterclaim any claim ~~which~~ that—at the time of ~~serving~~ its service—~~the pleading~~ the pleader has against an~~y~~ opposing party~~,~~ if the claim:~~it~~

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party ~~for its adjudication the presence of 3rd parties of~~over whom the ~~C~~court cannot acquire jurisdiction.

(2) *Exceptions.* ~~But t~~The pleader need not state the claim if:

(A~~1~~) ~~at the time~~when the action was commenced, the claim was the subject of another pending action;~~, or~~

(B~~2~~) the opposing party ~~brought suit~~sued ~~up~~on ~~the~~ its claim by attachment or other process ~~by which the Court~~ that did not ~~acquire~~ establish personal jurisdiction ~~to render a personal judgment~~over the pleader on that claim, and the pleader does not assert ~~is not stating~~ any counterclaim under this ~~R~~rule ~~13~~;~~,~~ or

(C~~3~~) it is not within the jurisdiction of the~~is~~ ~~C~~court.

(b)~~Permissive Counterclaims~~ PERMISSIVE COUNTERCLAIMS. A pleading may state as a counterclaim ~~any claim~~ against an opposing party ~~not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim~~any claim that is not compulsory if such counterclaim is within the jurisdiction of the ~~C~~court.

(c)~~ Counterclaim exceeding opposing claim~~. RELIEF SOUGHT IN A COUNTERCLAIM. ~~exceeding opposing claim.~~A counterclaim ~~may or may~~need not diminish or defeat the recovery sought by the opposing party. It may ~~claim~~ request relief that exceed~~s~~ing in amount or differ~~s~~ent in kind from ~~that~~ the relief sought ~~in the pleading of~~by the opposing party.

(d) ~~Counterclaim against the United States or the District of Columbia.~~COUNTERCLAIM AGAINST THE UNITED STATES OR THE DISTRICT OF COLUMBIA. These r~~R~~ules ~~shall~~ do not ~~be construed to enlarge beyond the limits now fixed by law~~expand the right to assert a counterclaim—~~s~~ or to claim a credit~~s~~—against the United States or the District of Columbia or an officer or agency of either.

(e) ~~Counterclaim maturing or acquired after pleading.~~COUNTERCLAIM MATURING OR ACQUIRED AFTER PLEADING. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading. ~~A claim which either pleader after serving a pleading may, with the permission of the Court, be presented as a counterclaim by.~~

(f) [Deleted].~~Omitted counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of Court set up the counterclaim by amendment.~~

(g) ~~Cross-claim against a co-party.~~CROSSCLAIM AGAINST A COPARTY. A pleading may state as a crossclaim any claim by one~~1~~ party against a coparty if the claim aris~~es~~ing out of the transaction or occurrence that is the subject matter ~~either~~ of the original action or of a counterclaim ~~therein~~, or if the claim relat~~es~~ing to any property that is the subject matter of the original action. ~~Such~~ The crossclaim may include a claim that the coparty ~~against whom it is asserted~~ is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(h) ~~Joinder of additional parties~~. JOINING ADDITIONAL PARTIES.
Rules 19 and 20 govern the addition of a person as a party ~~Persons other than those made parties to the original action may be made parties~~ to a counterclaim or crossclaim ~~in accordance with the provisions of Rules 19 and 20~~.
(i) ~~Separate trials; separate jJudgments.~~ SEPARATE TRIALS; SEPARATE JUDGMENTS. If the ~~Cc~~court orders separate trials ~~as provided in~~under Rule 42(b), it may enter judgment on a counterclaim or crossclaim ~~may be rendered in accordance with the terms of~~under Rule 54(b) when ~~the Court~~it has jurisdiction ~~so~~ to do so, even if the ~~claims of the~~ opposing party's claims have been dismissed or otherwise ~~disposed of~~resolved.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 13*, as amended in 2007 and 2009, but maintains two local distinctions—1) a reference to the District of Columbia in section (d), which makes clear that these rules do not expand the right to assert a counterclaim—or to claim a credit—against the District of Columbia or a District of Columbia officer or agency and 2) an exception in subsection (a)(2) and section (b) for counterclaims that are not within the court's jurisdiction.

COMMENT

Identical to *Federal Rule of Civil Procedure 13*, (1) reference to the District of Columbia has been added to section (d) which provides that these Rules do not enlarge existing legal limitations with respect to suits against the government or its agents and (2) an exemption has been added to sections (a) and (b) for counterclaims which are with-out the jurisdiction of the Court.

Rule 14. Third-~~p~~Party ~~p~~Practice~~.~~

(a) ~~When defendant may bring in 3rd party~~. WHEN A DEFENDING PARTY MAY BRING IN A THIRD PARTY.

(1) *Timing of the Summons and Complaint.* ~~At any time after commencement of the action A~~a defending party may, as ~~a 3rd~~third-party plaintiff, ~~may cause~~ serve a summons and complaint~~to be served~~, in the manner and within the time limits prescribed by Rule 4, on a nonparty who is or may be liable to it for all or part of the plaintiff's claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more ~~upon a person not a party to the action who is or may be liable to the 3rd-party plaintiff for all or part of the plaintiff's claim against the 3rd-party plaintiff. The 3rd-party plaintiff need not obtain leave to make the service if the 3rd-party plaintiff files the 3rd-party complaint not later~~ than 1~~4~~0 days after ~~the~~ serving its ~~of the~~ original answer.

(2) *Third-Party Defendant's Claims and Defenses.* ~~Otherwise the 3rd-party plaintiff must obtain leave on motion upon notice to all parties to the action.~~ The person served with the summons and ~~3rd~~third-party complaint—the "third-party defendant":

(A) must assert ~~-party complaint, hereinafter called 3rd-party defendant, shall make~~ any defense~~s~~ against the third-party ~~the 3rd-party~~ plaintiff's claim ~~as provided in~~ under Rule 12;

(B) must assert ~~and~~ any counterclaim~~s~~ against the ~~3rd~~third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b), or any~~and~~ crossclaim~~s~~ against another ~~3rd~~third-party defendants ~~as provided in~~ under Rule 13(g);~~.~~

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also ~~The 3rd-party defendant may~~ assert against the plaintiff any claim ~~defenses which the 3rd-party plaintiff has to the plaintiff's claim. The 3rd-party defendant may also assert any claim against the plaintiff~~ arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the ~~3rd~~third-party plaintiff.

(3) *Plaintiff's Claims Against a Third-Party Defendant.* The plaintiff may assert against the third-party defendant ~~plaintiff may~~ any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).~~claim against the 3rd-party defendant arising out of the transaction or occurrence that is the subject matter of the plain-tiff's claim against the 3rd-party plaintiff, and the 3rd-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13.~~

(4) *Motion to Strike, Sever, or Try Separately.* Any party may move to strike the ~~3rd~~third-party claim, to sever it, or to try it ~~or for its severance or~~ separate~~ly trial~~.

(5) *Third-Party Defendant's Claim Against a Nonparty.* A ~~3rd~~third-party defendant may proceed under this ~~R~~rule against a nonparty ~~any person not a party to the action~~ who is or may be liable to the ~~3rd~~third-party defendant for all or part of any~~the~~ claim ~~made in the action~~ against it.~~the 3rd-partydefendant.~~ Persons brought into the action pursuant to the preceding sentence ~~shall~~ must be designated as ~~4th~~fourth-party defendants, ~~5th~~fifth-

party defendants, and so on, as appropriate, but the practice as to such parties ~~shall~~ must be governed by the ~~R~~rules respecting ~~3rd~~third-party defendants.

(6) [Omitted].

(b) ~~When plaintiff may bring in 3rd party.~~ WHEN A PLAINTIFF MAY BRING IN A THIRD PARTY. When a ~~counter~~claim is asserted against a plaintiff, the plaintiff may ~~cause~~ bring in a ~~3rd~~third party ~~to be brought in under cir-cumstances which under~~ if this ~~R~~rule would allow ~~entitle~~ a defendant to do so.

(c) [~~Delet~~Omitted].

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 14*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) subsection (a)(1) contains a provision indicating that service on a third-party defendant must be made in accordance with Rule 4; 2) subsection (a)(5) contains language specifying the designations given to additional parties brought into the action; and 3) subsection (a)(6) and section (c) are omitted as locally inapplicable because both address admiralty and maritime jurisdiction.

COMMENT

Substantially identical to *Federal Rule of Civil Procedure 14* except for deletion therefrom of section (c) and the last sentence of section (a), both of which deal with matters within the exclusive admiralty and maritime jurisdiction of federal district courts, *28 U.S.C. § 1331*(1), and addition to section (a) of one sentence making clear the designations to be given to persons brought into the action by the third-party defendant or by later-party defendants. Also added to the Rule is the provision that service of process must be accomplished in accordance with Rule 4, including the time limit imposed by Rule 4(j). For principles governing service of process on third-party defendants within one hundred miles of the place of hearing or trial, *see* Rule 4(f) and D.C. Code § 11-943 (b) (1981).

Rule 15. Amended and ~~s~~Supplemental ~~p~~Pleadings~~.~~

(a) ~~Amendments~~ AMENDMENTS BEFORE TRIAL.

(1) *Amending as a Matter of Course.* A party may amend ~~the party's~~ its pleading once as a matter of course within:

(A) 21 days after serving it~~at any time before a responsive pleading; is served~~ or~~,~~

(B)~~if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served~~ if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

~~Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.~~

(2) *Amending Dismissed or Stricken Pleading*. If a pleading is dismissed or stricken with leave to amend, an amended pleading must be filed within 21~~0~~ days unless otherwise ~~provided~~ordered by the court~~ Order of Court~~. ~~A party shall plead~~

(3) *Other Amendments*. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(4) *Time to Respond*. Unless the court orders otherwise, any ~~in~~ required response to an amended pleading must be made within the time remaining ~~for~~ to respond~~se~~ to the original pleading or within 14~~0~~ days after service of the amended pleading, whichever ~~period may be the longer~~is later. ~~, unless the Court otherwise orders.~~

(5) *Consent*. No motion to amend will be considered unless it recites that the movant sought to obtain the consent of parties affected, that such consent was denied and the identity of the party or parties who declined to consent.

(b) AMENDMENTS DURING AND AFTER TRIAL.

~~(b) Amendments to conform to the evidence.~~

(1) *Based on an Objection at Trial.* ~~When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues.~~ If, ~~evidence is objected to at the trial on the ground that it~~ at trial, a party objects that evidence is not within the issues ~~made by~~raised in the pleadings, the ~~C~~court may ~~allow~~ permit the pleadings to be amended. ~~and shall do so~~ The court should freely permit an amendment when doing so will aid in ~~the~~ presenting~~ation of~~ the merits ~~of the action will be subserved thereby~~ and the objecting party fails to satisfy the ~~C~~court that the ~~admission of such~~ evidence would prejudice ~~the party in maintaining the~~ that party's action or defense ~~up~~on the merits. The ~~C~~court may grant a continuance to enable the objecting party to meet the ~~such~~evidence.

(2) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) RELATION BACK OF AMENDMENTS.~~Relation back of amendments.~~

(1) *When an Amendment Relates Back.* An amendment to a pleading relates back to the date of the original pleading when:

(A1) relation back is permitted by the law that provides the applicable statute of limitations allows relation backapplicable to the action, or ;

(B2) the claim or defense asserted in the amendment ed asserts a claim or defense that pleading arose out of the conduct, transaction, or occurrence set forth out—or attempted to be set forth out—in the original pleading;, or

(C3) the amendment changes the party or the naming of the party against whom a claim is asserted, if the foregoing provision (2) Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for servingce of the summons and complaint, the party to be brought in by amendment:

(iA) has received such notice of the institution of the action that the partyit will not be prejudiced in maintaining a de-fense defending on the merits;, and

(iiB) knew or should have known that , but for a mistake concerning the identity of the proper party, the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) *Notice to the United States and the District of Columbia.* The delivery or mailing of process to When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the the United States Aattorney, or United States Aattorney's designee, toor the Attorney General of the United States, or to the officer oran agency. or officer who would have been a proper defendant if named, satisfies the requirement of subparagraphs (A) and (B) of the above paragraph with respect to the United States or any agency or officer thereof to be brought into the action as a defendant; and the delivery or mailing of process to the Corporation Counsel of the District of Columbia, or an agency or officer who would have been a proper defendant if named, simi-larly suffices with respect to the District of Columbia or an agency or officer thereof to be brought into the action as a defendant.When the District of Columbia or a District of Columbia officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the Attorney General for the District of Columbia or a District of Columbia officer who, or agency that, would have been a proper defendant if named.

(d) SUPPLEMENTAL PLEADINGS. Supplemental pleadings. UpoOn motion of a party the Court may, uponand reasonable notice, the court may, and upon such just terms as are just, permit the a party to serve a supplemental pleading setting forth out any transaction,s or occurrences, or events which havethat happened since after the date of the pleading sought to be supplemented. The court may Permission permit supplementation may be granted even though the original pleading is defective in its statingement of a claim for relief or defense. If theThe Ccourt deems it advisablemay order that the adverse opposing party plead to the supplemental pleading, it shall so order, specifying the time therefor within a specified time.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 15*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) subsection (a)(2) addresses amendment of a dismissed or stricken pleading; 2) subsection (a)(5) requires a party to seek consent prior to filing a motion to amend; and 3) subsection (c)(2) includes notice requirements for the District of Columbia and its agencies or officers.

COMMENT

Identical to *Federal Rule of Civil Procedure 15* except for additions to paragraph (a) which specify a time limit within which an amended pleading must be filed, a requirement that the movant seek to obtain the consent of affected parties and an addition to the last sentence of paragraph (c) that refers to amendments which seek to change party designations so as to bring in the District of Columbia or an official or agency thereof as a defendant. *See* Rule 54(c).

Rule 16. Pretrial Conferences; Pretrial Status Conferences; Scheduling; Management

(a) APPLICABILITY. With the exception of cases assigned to a magistrate judge under Rule 40-III, or unless otherwise ordered by the judge to whom the case is assigned, the provisions of this rule apply to all civil actions~~,~~ and to both small claims ~~actions,~~ and landlord and tenant actions certified to the ~~Civil Division~~Civil Actions Branch for jury trial.

(b) INITIAL SCHEDULING AND SETTLEMENT CONFERENCE.

(1) *In General*. In every case assigned to a specific calendar or a specific judge, the court must hold an initial scheduling and settlement conference as soon as practicable after the complaint is filed.

(2) *Praecipe in Lieu of Appearance*. No attorney need appear in person for the scheduling conference if a praecipe conforming to the format of Civil Action Form 113 (Praecipe Requesting Scheduling Order) signed by all attorneys is filed no later than ~~seven~~7 calendar days prior to the scheduling conference date consenting to the entry by the court of a track ~~one~~I or track ~~two~~II scheduling order outside their presence.

(A) *Praecipe Requirements*. The praecipe must certify that:

(i) the case is at issue;

(ii) all parties are represented by counsel;

(iii) there are no pending motions; and

(iv) all counsel have discussed the provisions of Rule 16(b)(4)(B) and (C) and do not foresee any issue requiring court intervention.

(B) *Filing the Praecipe; Courtesy Copy*. The praecipe must be accompanied by an addressed envelope or mailing label for each attorney and a courtesy copy must be delivered to the assigned judge's chambers. Neither addressed envelopes nor mailing labels need be provided for documents filed under the court's electronic filing program.

(3) *Scheduling Order; In General*. At the conference, the judge will ascertain the status of the case, explore the possibilities for early resolution through settlement or alternative dispute resolution techniques, and determine a reasonable time frame for bringing the case to conclusion. After consulting with the attorneys for the parties and with any unrepresented parties, the judge will place the case on one of several alternative time tracks and will enter a scheduling conference order which will set dates for future events in the case.

(4) *Contents of the Order*. The scheduling order may:

(A) modify the extent of discovery;

(B) provide for discovery or preservation of electronically stored information;

(C) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced, including agreements on the effects of disclosure reached under Rule 26(b)(5)(C);

(D) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(E~~D~~) set dates for pretrial conferences and for trial; and

(F~~E~~) include other appropriate matters.

(5) *Scheduling Order; Deadlines*. Where applicable, the order will specify dates for the following events:

(A) *Discovery Requests; Depositions*.

(i) No interrogatories, requests for admission, requests for production or inspection, or motions for physical or mental examinations may be served less than 30 days before the date set for the end of discovery.

(ii) Party depositions ad testificandum and nonparty depositions duces tecum or ad testificandum must be noticed not less than 5 days before the date scheduled for the deposition and no deposition may be noticed to take place after the date set for the conclusion of discovery.

(B) *Exchange Lists of Fact Witnesses*. On or before this date, each party must file and serve a listing, by name and address, of all fact witnesses known to that party, including experts who participated in, and will testify about, pertinent events. No witness may be called at trial, except for rebuttal or impeachment purposes, unless he or she was named on the list filed by one of the parties on or before this date or the calling party can establish that it did not learn of the witness until after this date.

(C) *Proponent's Rule 26(a)(2)(B) Report.* By this date, a report required by Rule 26(a)(2)(B) must be filed and served by any proponent of an issue who will offer an expert opinion on such an issue.

(D) *Opponent's Rule 26(a)(2)(B) Report*. By this date, a report required by Rule 26(a)(2)(B) must be filed and served by any opponent who will offer an expert opinion on such an issue.

(E) *Close of Discovery*. After this date, no deposition or other discovery may be had, nor motion relating to discovery filed, except by leave of court on a showing of good cause.

(F) *Filing Motions*. All motions must be filed by this date, except as provided in Rule 16(b)(5)(E) and (d). The order will also specify a date by which dispositive motions will be decided.

(G) *Alternative Dispute Resolution*. The order will set out a time period in which mediation or other alternative dispute resolution proceedings will be held.

(H) *Final Pretrial and Settlement Conference*. The order will specify a time period in which the final pretrial and settlement conference will be held.

(I) *Optional Deadlines*. The scheduling conference order may also set dates for the joinder of other parties and amendment of pleadings, the completion of certain discovery, the filing of particular motions and legal memoranda, and any other matters appropriate in the circumstances of the case.

(6) *Obligations of Parties*. All counsel and all parties must take the necessary steps to complete discovery and prepare for trial within the time limits established by the scheduling order.

(7) *Modification*.

(A) *By Leave of Court*. The scheduling order may not be modified except by leave of court on a showing of good cause. A party seeking a modification of the scheduling order must provide the court with a copy of the existing scheduling order and a detailed discovery plan, which lists the specific methods of discovery to be conducted, the persons or materials to be examined, and the date or dates within which all further discovery must be completed.

(B) *By Stipulation*. Stipulations between counsel will not be effective to change any deadlines in the order without court approval, provided, however, that any date in the scheduling order except for the date of court proceedings (e.g., status hearings, ex

parte proofs, ADR sessions, pretrials and trials) may be extended once for up to 14 days on the filing and delivery to the assigned judge of a praecipe showing that all parties who have appeared in the action consent to the extension. Any motion to further modify a date so extended must recite that the date in question was previously extended by consent and must specify the length of that extension.

(c) MEETING 4~~FOUR~~ WEEKS PRIOR TO PRETRIAL CONFERENCE.

(1) *Attendance*. Not less than 4~~four~~ weeks prior to the pretrial conference, at least one of the attorneys who will conduct the trial for each of the parties, and any unrepresented parties, must meet in person. If such persons are unable to agree on a date, time, and place for the meeting, the parties must notify the judge by phone in advance that they will meet at 9:00 a.m. in the judge's courtroom or such other place to be designated by the judge on the day which is 4~~four~~ weeks prior to the date of the pretrial conference.

(2) *Matters for Consideration*. The participants in the meeting must spend sufficient time together to discuss the case thoroughly and must make a good faith effort to reach agreement on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence;

(E) identifying witnesses and documents;

(F) referring matters to a magistrate judge or master;

(G) settling the case or using alternative dispute resolution procedures to resolve the dispute;

(H) determining the form and content of the pretrial order;

(I) disposing of pending motions;

(J) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(K) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(3) *Exhibits*.

(A) *Documentary Exhibits*. At this meeting, each party must provide to all other parties copies of all documentary exhibits which that party may offer at trial; affixed to each exhibit must be a numbered exhibit sticker and the exhibits must be identified, by exhibit number, on an index provided with the exhibits.

(B) *Non-Documentary Exhibits*. Each party also must make all non-documentary exhibits available for examination by other parties at or before this meeting.

(d) 3~~THREE~~ WEEKS PRIOR TO PRETRIAL CONFERENCE. Three weeks prior to the pretrial conference, each party must file with the court, serve on all other parties, and deliver to the assigned judge in accordance with the provisions of Rule 5(d~~e~~) any motion in limine, motion to bifurcate, or other motion respecting the conduct of the trial, which a party wishes to have the court consider.

(e) ONE WEEK PRIOR TO PRETRIAL CONFERENCE.

(1) *Joint Pretrial Statement*. One week prior to the pretrial conference, the parties must file with the court and deliver to the assigned judge in accordance with the provisions of Rule 5(dе) a joint pretrial statement, which must include a certification of the date and place of the meeting held pursuant to Rule 16(c), must be in a form prescribed by the court, and must also include the following items:

(A) Aa list of any proposed voir dire questions;

(B) Aa list, by number, of those proposed instructions contained in the Standardized Civil Jury Instructions for the District of Columbia;

(C) Tthe complete text of any proposed jury instruction not found in the Standardized Civil Jury Instructions for the District of Columbia;

(D) Aany proposed verdict form, including any special interrogatories to be answered by the jury; and

(E) Aany objections and suggestions for alternative language that a party may have to the voir dire questions, jury instructions, or verdict form submitted by any other party.

(2) *Objections to Exhibits*. Objections, if any, by a party to the exhibits submitted by any other party also must be made at this time as part of the joint pretrial statement. A party raising an objection to an exhibit of another party must attach to the statement of objection a copy of the exhibit to which the objection is made. The court will not consider any objection or alternative language that is filed beyond the time frames prescribed by this rule unless the party making the objection or suggestion can establish that the objection or suggestion could not, for reasons beyond that party's control, be timely filed.

(3) *Unlisted Witnesses or Exhibits*. Except for plaintiff's rebuttal case or for impeachment purposes, no party may offer at trial the testimony of any witness not listed in the pretrial statement of the parties, nor any exhibit not served as required by this rule, without leave of court.

(f) PRETRIAL AND SETTLEMENT CONFERENCE.

(1) *Attendance*. The lead counsel who will conduct the trial for each of the represented parties, and, unless excused by the judge for good cause, all parties must attend the pretrial and settlement conference.

(2) *Exhibits*. All counsel and unrepresented parties must bring to the conference their trial exhibits, copies of which were served on other parties pursuant to Rule 16(cd)(3). If any party proposes to offer more than 15 exhibits at trial, that party's exhibits must be arranged as follows:

(A) *Nonjury Trials*. In nonjury trials, the original exhibits, with numbered exhibit stickers affixed, must be placed in a looseleaf, three-ring notebook with tabbed divider pages. At the front of the notebook must be an Exhibit Summary Form (copies of which are available in the clerk's office) describing each exhibit by number.

(B) *Jury Trials*. In jury trials, the notebook must contain copies of all the exhibits; the original exhibits, with stickers affixed, must be placed in a folder, in numerical order, along with the original Exhibit Summary Form.

(3) *Conference Details*. The conference will generally be held by the judge who will preside at trial and will not be recorded unless the judge orders otherwise. If settlement of the case cannot be achieved within a reasonable time, the judge will discuss with those attending the conference the pretrial filings of the parties as may be pertinent and will set a trial date for the case.

(g) PRETRIAL ORDER.

(1) *Content of the Order*. After the pretrial conference, the court must issue an order reciting the action taken. Insofar as possible, the court will resolve all pending disputes in the pretrial order. With respect to some matters, it may be necessary to reserve ruling until the time of trial or to require additional briefing by the parties prior to trial. Exhibits, the authenticity of which is not genuinely in dispute, will be deemed authentic and the offering party will not be required to authenticate these exhibits at trial. The pretrial order may set limits with respect to the time for voir dire, opening statement, examination of witnesses, and closing argument and may also limit the number of lay and expert witnesses who can be called by each party. The pretrial order controls the course of the action unless the court modifies it.

(2) *Modification*. The pretrial order may be modified at the discretion of the court for good cause and must be modified if necessary to prevent manifest injustice.

(h) COMMENCEMENT OF TRIAL. On any date for which the case has been set for trial, the parties and their counsel must be prepared to commence the trial on that date or on any of the 2~~two~~ succeeding court days in the event that their case must trail another trial on the judge's calendar.

(i) OTHER SCHEDULING OR STATUS CONFERENCES. In addition to the initial scheduling and settlement conference and the pretrial and settlement conference, the court may in its discretion order the attorneys for the parties and any unrepresented parties to appear before it for other conferences for such purposes as:

(1) expediting the disposition of the action;

(2) establishing continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation;

(5) facilitating the settlement of the case; and

(6) addressing any other matters appropriate in the circumstances of the case.

(j) AUTHORITY OF COUNSEL; ATTENDANCE OF PARTIES, PRINCIPALS, AND PERSONS WITH SETTLEMENT AUTHORITY. At least one of the attorneys for each party participating in any conference before trial, or in the meeting described in Rule 16(c), must have authority to enter into stipulations, to make admissions regarding all matters that the participants may reasonably anticipate may be discussed, and to participate fully in all settlement discussions. Unless excused by the judge for good cause, all parties and any person not a party whose authority may be needed to settle the case must attend any pretrial conference conducted pursuant to Rule 16(f) and any alternative dispute resolution session ordered by the court.

(k) CONTINUANCES.

(1) *By Court Order*. No trial or conference provided for in this rule may be continued except by order of the judge on a showing of specific and sufficient reasons why the applicant cannot attend or proceed with the trial or conference as scheduled or, for a conference, will not be able by the scheduled date to report to the court the information required by this rule. An application to continue the trial must include a certificate or affidavit by the party or party's attorney indicating that all other parties were given reasonable notice of the applicant's intent to make the application.

(2) *Timing of Application*. Except for applications based on circumstances arising later, application for a continuance must be made to the judge not less than 30 days before the trial or conference sought to be continued.

(3) *When Effective*. Until an order granting a continuance is docketed, the case will remain set for the trial or conference on the original date.

(l) SANCTIONS.

(1) *In General*. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or a party's attorney:

(A) fails to appear at a scheduling or pretrial conference;

(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) *Imposing Fees and Costs*. Instead of or in addition to any other sanction, the court must order the party, its attorney, or both, to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this rule unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

COMMENT TO 2017 AMENDMENTS

The 2015 amendments to *Federal Rule of Civil Procedure 16*(b)(1)(B) and (b)(2) are inconsistent with Superior Court practice and have not been incorporated into this rule. However, the Superior Court rule incorporates the 2015 federal amendments related to the content of the scheduling order with one alteration—the reference to *Federal Rule of Evidence 502* was replaced with a reference to new Superior Court Rule 26(b)(5)(C). Rule 26(b)(5)(C) contains the relevant language from *Federal Rule of Evidence 502(d) and (e)*. Thus, this provision is intended to operate in the same manner as its federal counterpart.

Section (k) has been amended to address the continuance of a trial. The provisions related to trial continuances were formerly found in Rule 40-I.

COMMENT

This rule differs substantially from *Federal Rule of Civil Procedure 16*, and reflects procedures instituted by the Superior Court to reduce delay in civil litigation.

Section (b) requires that all unrepresented parties and counsel must attend a conference early in the case at which the judge will explore the possibilities of settlement or alternative dispute resolution and will then establish a firm schedule for completion of the litigation. The scheduling order thus set may be modified with court approval and for good cause or the parties may, under certain circumstances, agree to a modification in the order without first obtaining approval from the court.

Section (c) provides for a meeting four weeks before the pretrial conference at which counsel and any unrepresented parties must endeavor to settle the case and to simplify and shorten the trial. The meeting may be held at any location agreed to by the participants; failing agreement, it will be held in the judge's courtroom or another

location designated by the judge. This section also provides for the exchange of exhibits.

Section (d) provides that pretrial motions will be made three weeks before the pretrial conference, and section (e) requires that pretrial statements, suggested voir dire questions, suggested jury instructions and a suggested verdict form be submitted jointly along with responses to these suggestions and to the exhibits one week before pretrial. Note that section (a) permits the court to exempt appropriate cases, such as pro se prisoner cases, from any or all of the provisions contained in this rule.

Subsection (e)(3) provides that, except by leave of court, the only witnesses allowed to testify at a trial whose names were not listed in the pretrial statement of the parties will be those called as rebuttal or impeachment witnesses. See *R. & G. Orthopedic Appliances and Prosthetics, Inc. v. Curtin*, 596 A.2d 530 (D.C. 1991), and *Cooper v. Safeway Stores*, Inc., 629 A.2d 31 (D.C. 1993).

Section (f) governs the conduct of the pretrial and settlement conference.

This rule does not preclude the judge to whom a case is assigned from modifying particular requirements of sections (d), (e) and (f), either by a standing order made available at the Initial Scheduling and Settlement Conference or otherwise as the judge finds appropriate and efficient in any particular case.

Section (g) retains the requirement for the entry of a pretrial order which controls the subsequent course of the action.

Section (h) provides that parties and counsel must be prepared to commence trial on any trial date set by the court or on any of the two succeeding court days if the case must "trail" completion of an earlier trial. If a case is thus trailed, the court will generally permit greater flexibility in the order in which witnesses may be called in each party's case in order to accommodate any rescheduling of witnesses that may be necessary.

Section (i), like *Federal Rule of Civil Procedure 16(b)*, provides that the court may schedule other conferences beyond those called for by sections (b) and (f). It is expected that additional conferences will generally be reserved for more complex cases.

Section (j) requires that, at any conference prior to trial, counsel must have authority to participate fully in discussion of settlement and other matters. Unless excused by the judge for good cause, parties and any person whose authority may be needed to settle the case must attend any pretrial and settlement conference and any alternative dispute resolution session.

Section (k) establishes a strict continuance policy and provides that, except for circumstances arising later, any application for continuance of a conference must be made at least 30 days before the scheduled conference and must set forth specific and sufficient reasons why the applicant cannot attend the conference or cannot provide the information required by the rule by the date of the conference.

Section (l), providing for sanctions, is identical to *Federal Rule of Civil Procedure 16(f).*

Rule 16-I. [~~Abrogat~~Deleted].

Rule 16-II. Failure to ~~a~~Appear for ~~c~~Conference~~.~~

If counsel or a self-represented party ~~proceeding pro se~~ fails to appear at a pretrial, settlement, or status conference, the ~~C~~court may, where appropriate:

(1) enter a default~~,~~;

(2) ~~a~~ dismiss~~al of~~ the case, with or without prejudice~~,~~; or

(3) take ~~such~~ other action, including the imposition of penalties and sanctions~~, as may be deemed appropriate~~.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

TITLE IV. PARTIESarties.

Rule 17. Parties pPlaintiff and dDefendant; cCapacity; Public Officers.

(a) REAL PARTY IN INTERESTeal party in interest.

(1) *Designation in General.* An

Every action mustshall be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A)A an executor;,

(B) an administrator;

,(C) a guardian;

, (D) a bailee;

,(E) a trustee of an express trust;

, (F) a party with whom or in whose name a contract has been made for another'sthe benefit of another; and

, or (G) a party authorized by statute. may sue in that person's own name without joining the party for whose benefit the action is brought; and

(2) *Action in the Name of the United States or the District of Columbia for Another's Use or Benefit.* wWhen an applicable statute so provides, an action for another'sthe use or benefit of another shallmust be brought in the name of the United States or the District of Columbia.

(3) *Joinder of the Real Party in Interest.* The court may notNo action shall be dismissed an action for failure to on the ground that it is not prosecuted in the name of the real party in interest until, after an objection, a reasonable time has been allowed after objection for the real party in interest to ratify,ication of commencement of the action by, or joinder, or be substitutedion of into the action. After, the real party in interest; and such ratification, joinder, or substitution, the action proceeds shall have the same effect as if itthe action had been originally commenced by in the name of the real party in interest.

(b) CAPACITY TO SUE OR BE SUEDapacity to sue or be sued.

The cCapacity to sue or be sued is determined as follows:

(1) for of an individual who is not, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile;

. (2) forThe capacity of a corporation, to sue or be sued shall be determined by the law under which it was organized; and

. (3) forIn all other parties,cases capacity to sue or be sued shall be determined by the law of the District of Columbia, except that:

(1A) that a partnership or other unincorporated association, which hasith no such capacity under by the law of the District of Columbia's laws, may sue or be sued in its common name tofor the purpose of enforceing for or against it a substantive right existing under the United States Constitution or laws of the United States,; and

(2B) *28 U.S.C. §§ 754 and 959 (a)* governthat the capacity of a receiver appointed by a United States court of the United States to sue or be sued is governed by Title *28, U.S.C. §§ 754* and 959(a).

(c) MINOR OR INCOMPETENT PERSONInfants or incompetent persons.

(1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A)~~Whenever an infant or incompetent person has a representative, such as~~ a general guardian;

(B)~~,~~ a committee;

~~,~~ (C) a conservator;~~,~~ or

~~-~~ (D) a~~other~~ like fiduciary.

(2) *Without a Representative~~, the representative may sue or defend on behalf of the infant or incompetent person~~.* A~~n~~ minor~~infant~~ or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must~~shall~~ appoint a guardian ad litem—or issue another appropriate order— to protect ~~for~~ a~~n~~ ~~infant~~minor or incompetent person who is ~~not otherwise~~ unrepresented in an action ~~or shall make such other order as it deems proper for the protection of the infant or incompetent person~~.

(d) PUBLIC OFFICER'S TITLE AND NAME. A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 17*, as amended in 2007, but maintains the following local distinctions: 1) subsection (a)(2) includes suits in the name of the District of Columbia for the use or benefit of another; 2) "District of Columbia" is substituted for "state where the court is located" in subsection (b)(3); 3) "District of Columbia's laws" is substituted for "that state's law" in subsection (b)(3)(A); and 4) "in a United States court" is struck from subsection (b)(3)(B) to indicate that a federally appointed receiver can properly sue or be sued in the Superior Court in accordance with *28 U.S.C § 959*.

In accordance with the 2007 federal amendments, former Rule 25(d)(2) has been moved to section (d) of this rule.

COMMENT

Identical to *Federal Rule of Civil Procedure 17* except for 4 changes: (1) Revision of the 2nd sentence in section (a) thereof to comprehend statutes authorizing suits by the District of Columbia for the use or benefit of another; (2) substitution of "District of Columbia" for "state in which the district court is held" in section (b); (3) substitution of "District of Columbia" for "such state" in the 1st exception clause of section (b); and (4) deletion of the limiting phrase "in a court of the United States" from the 2nd exception clause in section (b). This last modification was effected so as to insure that the suing or suable capacity of federally appointed receivers, who may sue and be sued in state courts, shall be determined as nearly as possible in conformity with applicable federal law under *28 U.S.C. §§ 754 and 959(a)*.

Rule 18. Joinder of ~~c~~Claims ~~and remedies.~~

(a) ~~Joinder of claims.~~ IN GENERAL. A party asserting a claim ~~to relief as an original claim~~, counterclaim, cross~~-~~claim, or ~~3rd~~third-party claim~~,~~ may join, ~~ei-ther~~ as independent or ~~as~~ alternative~~e~~ claims, as many claims~~, legal, equitable, or maritime,~~ as ~~the party~~it has against an opposing party.

(b) JOINDER OF CONTINGENT CLAIMS. ~~Joinder of remedies; fraudulent conveyances.~~ A party may join 2 claims even though one of them is contingent on the disposition of the other; ~~Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the 2 claims may be joined in a single action;~~ but the ~~C~~court ~~shall~~ may grant relief ~~in that action~~ only in accordance with the parties' relative substantive rights ~~of the parties~~. In particular, a plaintiff may state a claim for money and a claim to ~~have~~ set aside a conveyance that is fraudulent as to that plaintiff, without first ~~having~~ obtain~~ing~~ed a judgment ~~establishing the claim~~ for the money.

COMMENT TO 2017 AMENDMENTS

Rule 18 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 18*.

COMMENT

Identical to Federal Rule of Civil Procedure 18.

Rule 19. Required Joinder of Partiespersons needed for just adjudication.

(a) PERSONS REQUIRED TO BE JOINED IF FEASIBLEersons to be joined if feasible.

(1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the Ccourt of subject matter jurisdiction over the subject matter of the action shall must be joined as a party in the action if:

(1A) in thate person's absence, the court complete relief cannot be accorded complete relief among those alreadyexisting parties,; or

(2B) thate person claims an interest relating to the subject of the action and is so situated that the dispositiongtion of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect theat interest; or

(ii) leave any existing party of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because by reason of the claimed interest.

(2) *Joinder by Court Order.* If athe person has not been so joined as required, the Ccourt shallmust order that the person be made a party. Alf the person who refuses to should join as a plaintiff but refuse to do so, the person may be made either a defendant, or, in a proper case, an involuntary plaintiff.

(3) *Service of Process.* Service of process under this Rrule shall must be accomplished in the manner and within the time limits prescribed by Rule 4.

(b) WHEN JOINDER IS NOT FEASIBLEDetermination by Court whenever joinder not feasible.

If a person who is required to be joined if feasible as described in subdivision (a)(1)-(2) hereof cannot be joinedmade a party, the Ccourt mustshall determine whether, in equity and good conscience, the action should proceed among the existing parties before it, or should be dismissed.,, the absent person being thus regarded as indispensable. The factors for to be considered by the Ccourt to consider include:

(1) First, to what the extent to which a judgment rendered in the person's absence might be prejudiceial that to the person or those existingalready parties;

(2)2nd, the extent to which any prejudice could be lessened or avoided ,by:

(A) protective provisions in the judgment;,

(B) by the shaping theof relief,; or

(C) other measures;

, (3) the prejudice can be lessened or avoided; 3rd, whether a judgment rendered in the person's absence wouldill be adequate; and

(4)4th, whether the plaintiff wouldill have an adequate remedy if the action wereis dismissed for nonjoinder.

(c) PLEADING THE REASONS FOR NONJOINDERleading reasons for nonjoinder. When

A pleading asserting a claim for relief, a party must state:

(1) shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) who is required to be joined if feasible hereof whobut are is not joined; and

(2) the reasons for not joining that personwhy they are not joined.

(d) EXCEPTION FOR CLASS ACTIONSxception of class actions. This Rrule is subject to the provisions of Rule 23.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 19*, as amended in 2007, but maintains the following local distinctions: 1) the federal provision related to venue is deleted because it pertains to "[a] change of venue [which] is not an available option in the District [of Columbia]," *Catlett v. United States*, 545 A.2d 1202, 1215 n.27 (D.C. 1988); 2) the federal venue provision is replaced with a provision specifying that service of process must be accomplished in accordance with Rule 4.

COMMENT

Identical to *Federal Rule of Civil Procedure 19* except for the deletion of the inapplicable last sentence in section (a) thereof relating to venue and for the addition of the provision that service of process under the Rule must be accomplished in accordance with Rule 4, including the time limit imposed by Rule 4(j). For discussion of service of process on Rule 19 parties, see Rule 4(f) and D.C. Code § 11-943 (b) (1981).

Rule 20. Permissive ~~j~~Joinder of ~~p~~Parties~~.~~

(a) ~~Permissive joinder~~PERSONS WHO MAY JOIN OR BE JOINED.

(1) *Plaintiffs*. ~~All p~~Persons may join in ~~1~~one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative ~~in~~ with ~~respec~~respect to~~t of~~ or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) ~~if~~ any question of law or fact common to all ~~these persons~~ plaintiffs will arise in the action.

(2) *Defendants*~~All p~~ Persons ~~-- (~~and any property subject to process in rem ~~) --~~ may be joined in ~~1~~one action as defendants if:

(A) ~~there~~any right to relief is asserted against them jointly, severally, or in the alternative ~~, any right to relief in~~with respect to~~of~~ or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) ~~and if~~ any question of law or fact common to all defendants will arise in the action.

(3) *Extent of Relief*. Neither a plaintiff nor a defendant need ~~not~~ be interested in obtaining or defending against all the relief demanded. The court may grant ~~J~~judgment ~~may be given for~~ to one~~1~~ or more of the plaintiffs according to their ~~respective~~ rights ~~to relief~~, and against ~~1~~ one or more defendants according to their ~~respective~~ liabilities.

(b) ~~Separate trials.~~ PROTECTIVE MEASURES. The ~~C~~court may ~~make such~~ issue orders ~~—~~including an order for separate trials ~~—~~to protect a party against ~~as will prevent a party from being~~ embarrass~~ment~~ed, delay~~ed~~, expense, or other prejudice ~~put to expense by the inclusion of a party~~ that arises from including a person against whom the party asserts no claim and who asserts no claim against the party. ~~against the party, and may order separate trials or make other orders to prevent delay or prejudice.~~

COMMENT TO 2017 AMENDMENTS

Rule 20 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 20*.

COMMENT

Identical to *Federal Rule of Civil Procedure 20*, except for deletion of reference to admiralty process in the 2nd sentence of section (a) thereof.

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissingal of an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party. ~~Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.~~

COMMENT TO 2017 AMENDMENTS

Rule 21 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 21*.

COMMENT

Identical to *Federal Rule of Civil Procedure 21*.

Rule 22. Interpleader.

(a) GROUNDS.

(1) *By a Plaintiff*. Persons having with claims that may expose aagainst the plaintiff to double or multiple liability may be joined as defendants and required to interplead. when their claims are such that the plaintiff is or may be exposed to double or multiple liability. Service of process withinunder this Rrule mustshall be accomplished in the manner and within the time limits providedprescribed by Rule 4. Joinder for interpleader is proper even though:

(A) It is not ground for objection to the joinder that the claims of the several claimants, or the titles on which their claims depend, do not havelack a common origin or are not identical but are adverse to and independent rather than identical; or

(B) of one another, or that the plaintiff denies liability avers that the plaintiff is not liable in whole or in part to any or all of the claimants.

(2) *By a Defendant*. A defendant exposed to similar liability may seekobtain such interpleader through a by way of cross-claim or counterclaim.

(b) RELATION TO OTHER RULES AND STATUTES. The provisions of tThis Rrule supplements and does not in any way limit the joinder of parties allowedpermitted in SCR Civil by Rule 20.

(2) [Deleted].

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 22*, as amended in 2007, but maintains the following local distinctions: 1) the addition of a provision specifying that service of process must be accomplished in accordance with Rule 4; 2) the deletion of language addressing interpleader actions in federal district courts.

COMMENT

Identical to *Federal Rule of Civil Procedure 22* except for deletion of section (2) thereof which deals with sections of Title 28, United States Code relating only to interpleader actions in federal district courts and for the addition of the provision that service of process under the Rule must be accomplished in accordance with Rule 4, including the time limit imposed by Rule 4(j).

Rule 23. Class ~~a~~Actions~~.~~

(a) PREREQUISITES~~rerequisites to a class action~~. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

_ (1) the class is so numerous that joinder of all members is impracticable;~~,~~

_ (2) there are questions of law or fact common to the class;~~,~~

_ (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;~~,~~ and

_ (4) the representative parties will fairly and adequately protect the interests of the class.

(b) ~~Class actions maintainable~~TYPES OF CLASS ACTIONS. A~~n~~ class action may be maintained ~~as a class action~~ if ~~the prerequisites of subdivision~~Rule 23(a) ~~are~~ is satisfied~~,~~ and ~~in addition~~if:

__(1) ~~The~~ prosecuti~~ngon of~~ separate actions by or against individual class members ~~of the class~~ would create a risk of:

___(A) ~~I~~inconsistent or varying adjudications with respect to individual class members ~~of the class which~~that would establish incompatible standards of conduct for the party opposing the class;~~,~~ or

___(B) ~~A~~adjudications with respect to individual class members ~~of the class which~~ that, ~~would~~ as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests; ~~or~~

__(2) ~~T~~the party opposing the class has acted or refused to act on grounds that apply generally ~~applicable~~ to the class, ~~thereby making appropriate~~so that final injunctive relief or corresponding declaratory relief is appropriate~~with~~ respecting ~~to~~ the class as a whole; or

__(3) ~~T~~the ~~C~~court finds that the questions of law or fact common to ~~the~~class members ~~of the class~~ predominate over any questions affecting only individual members, and that a class action is superior to other available methods for ~~the~~ fairly and efficiently adjudicati~~ngon of~~ the controversy. The matters pertinent to these findings include:

___(A) ~~The~~the class members' interests ~~of members of the class~~ in individually controlling the prosecution or defense of separate actions;

___(B) the extent and nature of any litigation concerning the controversy already ~~commenced~~ begun by or against class members ~~of the class~~;

___ (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

___ (D) the likely difficulties ~~likely to be encountered~~ in ~~the~~ managi~~ngement of~~ a class action.

(c) CERTIFICATION ORDER; NOTICE TO CLASS MEMBERS; JUDGMENT; ISSUES CLASSES; SUBCLASSES~~Determination by order whether class action to be maintained; notice; costs; judgment; actions conducted partially as class actions~~.

__(1) *Certification Order*.

___(A) *Time to Issue*. At an early practicable time after a person sues or is sued as a class representative~~After the commencement of an action brought as a class action~~, the ~~C~~court ~~shall~~must determine by order whether ~~it is to be so maintained~~to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel*. An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) *Altering or Amending the Order*. An order ~~under this subdivision~~ that grants or denies class certification ~~may be conditional and~~ may be altered or amended before ~~the decision on the merits~~final judgment.

(2) *Notice*.

(A) *For (b)(1) or (b)(2) Classes*. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) *For (b)(3) Classes*. For~~In~~ any class ~~action maintained~~certified under ~~subdivision~~ Rule 23(b)(3), the ~~C~~court ~~shall~~ must direct to class ~~the~~ members ~~of the class~~ the best notice that is practicable under the~~is~~ circumstances, including individual notice to all members who can be identified through reasonable effort. The notice ~~shall~~ must clearly and concisely state in plain, easily understood language: ~~advise each member that~~

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(~~A~~v) that the ~~C~~court will exclude ~~the member~~ from the class any member who ~~if the member so~~ requests exclusion by a specified date;

(vi) the time and manner for requesting exclusion; and

(~~B~~vii) the binding effect of a class judgment~~, whether favorable or not, will include all~~ on members ~~who do not request exclusion~~under Rule 23(c)(3).~~; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through the member's counsel.~~

~~The cost of notice shall be paid by the plaintiff unless the Court, upon conducting a hearing pursuant to Rule 23-I(c)(3), concludes (1) that the plaintiff class will more likely than not prevail on the merits and (2) that it is necessary to require the defendant to pay some or all of that cost in order to prevent manifest injustice.~~

(3) *Judgment*. Whether or not favorable to the class, ~~T~~the judgment in a~~n~~ class action ~~maintained as a class~~ must:

(A) for any class certified ~~action~~ under ~~subdivision~~ Rule 23(b)(1) or (b)(2), ~~whether or not favorable to the class, shall~~ include and describe those whom the ~~C~~court finds to be class members ~~of the class.~~; and

(B) ~~The judgment in an action maintained as a~~for any class certified ~~action~~ under ~~subdivision~~ Rule 23(b)(3), ~~whether or not favorable to the class, shall~~ include and specify or describe those to whom the~~m~~Rule 23(c)(2) notice ~~provided in subdivision (c)(2)~~ was directed, ~~and~~ who have not requested exclusion, and whom the ~~C~~court finds to be class members ~~of the class~~.

(4) *Particular Issues*. When appropriate, ~~(A)~~ an action may be ~~brought or~~ maintained as a class action with respect to particular issues.

(5) ~~or (B)~~ *Subclasses*. When appropriate, a class may be divided into subclasses ~~and each subclass~~that are each treated as a class~~, and the provisions of~~ under this ~~R~~rule ~~shall then be construed and applied accordingly~~.

(d) CONDUCTING THE ACTION~~Orders in conduct of actions~~.

(1) *In General*. In ~~the~~ conducting ~~of~~ an actions ~~to which~~under this ~~R~~rule ~~applies~~, the ~~C~~court may ~~make appropriate~~issue orders that:

(~~1~~A) ~~D~~determining ~~the~~ course of proceedings or prescribing ~~measures~~ to prevent undue repetition or complication in ~~the~~ presentingation ~~of~~ evidence or argument;

(~~2~~B) requiring, ~~for the~~ to protection ~~of the~~ class members ~~of the class or otherwise for the~~and fairly conduct ~~of~~ the action, ~~that notice be~~ givingen appropriate noticein ~~such manner as the Court may direct~~ to some or all ~~of the~~class members of:

(i) any step in the action;~~,~~

(ii) ~~or of~~ the proposed extent of the judgment;~~,~~ or

(iii) ~~of~~ the members' opportunity ~~of members~~ to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise ~~to~~ come into the action;

(~~3~~C) imposing ~~conditions~~ on the representative parties or on intervenors;

(~~4~~D) requiring that the pleadings be amended to eliminate ~~therefrom~~ allegations ~~as to~~about representation of absent persons~~,~~ and that the action proceed accordingly; or

(~~5~~E) dealing ~~with~~ similar procedural matters.

(2) *Combining and Amending Orders*. ~~The~~ An orders under Rule 23(d)(1) may be ~~combined with an order under Rule 16, and may be~~ altered or amended ~~as may be desirable~~ from time to time and may be combined with an order under Rule 16.

(e) SETTLEMENT, VOLUNTARY DISMISSAL, OR COMPROMISE~~ismissal or compromise~~. The claims, issues, or defenses of a certified class may be settled, ~~A class action shall not be~~voluntarily dismissed, or compromised only without the court's approval ~~of the Court.~~, The following procedures apply to a~~and notice of the~~ proposed settlement, voluntary dismissal, or compromise:

(1) The court must direct notice in a reasonable manner ~~shall be given~~ to all class members who would be bound by the proposal~~of the class in such manner as the Court directs~~.

(2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.

(3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under Rule 23(e); the objection may be withdrawn only with the court's approval.

(f) APPEALS~~ppeals~~.

~~The Court of Appeals may in its discretion permit a~~An appeal from an order of the Superior Court granting or denying class action certification under this ~~R~~rule may be permitted in accordance with D.C. Code § 11-721 (d) (2012 Repl.) and the District of Columbia Court of Appeals Rules. ~~if application is made to it within ten days after entry of the order. An appeal does not stay proceedings in the Superior Court unless the trial judge or the Court of Appeals so orders.~~

(g) CLASS COUNSEL.

(1) *Appointing Class Counsel.* Unless a statute provides otherwise, a court that

certifies a class must appoint class counsel. In appointing class counsel, the court:
(A) must consider:
(i) the work counsel has done in identifying or investigating potential claims in the action;
(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
(iii) counsel's knowledge of the applicable law; and
(iv) the resources that counsel will commit to representing the class;
(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;
(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;
(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and
(E) may make further orders in connection with the appointment.
(2) *Standard for Appointing Class Counsel.* When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.
(3) *Interim Counsel.* The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.
(4) *Duty of Class Counsel.* Class counsel must fairly and adequately represent the interests of the class.
(h) ATTORNEY'S FEES AND NONTAXABLE COSTS. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:
(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of Rule 23(h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.
(2) A class member, or a party from whom payment is sought, may object to the motion.
(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).
(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 23*, as amended in 2007 and 2009, except that 1) language in subsection (c)(2)(B)(v) clarifies that there is a deadline for requesting exclusion from the class; and 2) in accordance with *Ford v. ChartOne*, 834 A.2d 875 (D.C. 2003), section (f) has been modified to indicate that the filing of an appeal is governed by D.C. Code § 11-721 (d) (2012 Repl.) and the appellate rules. The provisions allowing the court to shift the cost of notice, which were unique to the Superior Court rule, have been deleted.

If a class action is settled and residual funds remain after all identified members of the class have received their proper distribution, the court may turn to conventional principles of equity to resolve the case. Traditionally, there are four ways by which a court may distribute the residual funds: 1) *pro rata* distribution to the class members; 2) reversion to the defendant; 3) escheat to the government; and 4) *cy pres* distribution. *See, e.g.*, *Powell v. Georgia-Pacific Corp.*, 119 F.3d 703, 706 (8th Cir. 1997). It is generally understood that "neither party has a legal right to the unclaimed funds." *Id.* *See also Diamond Chem. Co. v. Akzo Nobel Chems. B.V.*, 517 F. Supp. 2d 212, 217 (D.D.C. 2007). When determining which method of distribution is most appropriate, the court's choice "should be guided by the objectives of the underlying statute and the interests of the silent class members." *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990).

In the case of a *cy pres* distribution of the residual funds, the court should first consider whether the funds can be distributed in a manner that is closely related to the original purpose. *See Superior Beverage Co. v. Owens-Illinois, Inc.*, 827 F. Supp. 477, 477-80 (N.D. Ill. 1993). If no such distribution is possible, the court may use its equitable powers to consider "other public interest purposes by educational, charitable, and other public service organizations," including "charitable donations . . . to support non-profit provision of pro bono legal services." *Jones v. Nat'l Distillers*, 56 F. Supp. 2d 355, 359 (S.D.N.Y. 1999) (citing *Superior Beverage Co.*, 827 F. Supp. at 478-79) (internal quotation marks omitted). The court may solicit applications for *cy pres* grants by public notice and, if necessary, hold hearings to give the applicants a chance to be heard. Alternatively, the court may allocate some or all of the residual funds to an organization such as the D.C. Bar Foundation or other local bar associations that have already implemented procedures for the distribution of funds to public service organizations.

COMMENT

Rule 23 is identical to Federal Rule of Civil Procedure 23 except for certain changes in subsections (c)(1) and (c)(2) which specifically authorize the judge to shift the costs of notice to the defendant, in whole or in part, under limited circumstances. In order to make this determination relating to costs of notice, the judge is further authorized to conduct a hearing, pursuant to Rule 23-I(c)(3), at which all relevant factors, including the likelihood of success on the merits, can be considered. The amendment, while essentially retaining the previous Superior Court procedure, was made necessary by *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974) which held that under the language of Fed. R. Civ. P. 23, the costs of notice could not be shifted to the defendant, except perhaps in cases involving a fiduciary, and, the Court could not make a preliminary determination of the merits of a case. The specific changes are the deletion of the phrase, "As soon as practicable ..." in the 1st sentence of subsection (c)(1) and the addition of the last sentence in subsection (c)(2).

Rule 23-I. Class ~~a~~Actions~~:~~; ~~p~~Procedure for ~~d~~Determining ~~w~~Whether ~~a~~Action ~~m~~May ~~b~~Be ~~m~~Maintained as ~~a c~~Class ~~a~~Action; Additional ~~procedure for determining~~ ~~n~~Notice ~~r~~Requirements~~.~~

(a) CLASS ACTION ALLEGATIONS~~lass action allegations~~.

In any case sought to be maintained as a class action, the complaint ~~shall~~ must contain under a separate heading styled "Class Action Allegations":

(1) ~~A~~a reference to the portion or portions of Rule 23, under which ~~it~~the suit is claimed ~~that the suit is~~ properly to be maintainable as a class action~~;~~, and

(2) ~~A~~appropriate allegations justifying ~~such~~ the claim, including~~,~~ but not ~~necessarily~~ limited to:

(~~i~~A) ~~T~~the size (or approximate size) and definition of the alleged class;

(~~ii~~B) ~~T~~the basis ~~up~~on which the plaintiff ~~or plaintiffs~~ claims to be an adequate representative~~s~~ of the class, or if the class is comprised of defendants, that those named as parties are adequate representatives of the class;

(~~iii~~C) ~~T~~the alleged questions of law and fact claimed to be common to the class; and

(~~iv~~D) ~~I~~in actions claimed to be maintainable as class actions under Rule 23~~-~~(b)~~-~~(3), allegations supporting the findings required by that ~~subdivision~~rule.

(b) MOTION FOR ~~Certification~~CERTIFICATION.

~~(1) *Motion*.~~ Within 90 days after the filing of a complaint in a case sought to be maintained as a class action, unless the court in the exercise of its discretion has extended this period, the plaintiff ~~shall~~ must move for a certification under Rule 23(c)(1) that the case may be so maintained ~~as a class action~~. ~~Such motion shall be supported by a statement of facts which demonstrates that the action meets the requirements for a class action prescribed in Rule 23(a) and (b). With the motion, the plaintiff may file affidavits or other evidence of any or all of the facts stated and may submit that all or certain specified facts are not in genuine dispute.~~

~~(2) *Opposition*.~~

~~If any party wishes to oppose the request for class action certification, the party shall file within 10 days an opposition to the motion stating the reasons why the action is not properly maintainable as a class action. Such opposition may be supported by a statement of facts disputing any facts alleged in the plaintiff's statement or setting forth other facts relevant to certification of the action as a class action, and the opponent may submit affidavits or other evidence of the facts contained in the opponent's statement. In determining any motion for certification, the Court may assume that the facts as claimed by the plaintiff are admitted to exist without controversy except as and to the extent that such facts are asserted to be actually in good faith controverted in a statement filed in opposition to the motion.~~

~~(3) *Action by the Court*.~~

~~Whether or not the motion to certify is opposed, the Court shall promptly act upon the motion. If any party has requested an opportunity to be heard on the motion or upon its own initiative, the Court may schedule a hearing thereon.~~ In ruling on the motion, ~~T~~the ~~C~~court may allow the action to be so maintained, may deny the motion, or may order that a ruling be postponed pending discovery or ~~such~~ other appropriate preliminary proceedingures ~~as appear appropriate and necessary in the circumstances~~. ~~Nothing in this section shall be construed to preclude a motion by a~~A defendant may move at any time to strike the class action allegations or to dismiss the complaint.

(c) PROVISIONS AS TO NOTICE~~rovisions as to notice~~.
~~(1) *Plaintiff's statement*.~~ In an action maintained under Rule 23(b)(3), the ~~plaintiff shall include in the~~ plaintiff~~'s~~ must include in the motion for certification a statement proposing:
_ (1) how, when, by whom, and to whom the notice required by Rule 23(c)(2) must~~shall~~ be given;~~,~~
_ (2) how and by whom payment ~~therefor~~ is to be made;~~,~~ and
_(3) by whom the response to the notice is to be received.
_In lieu of ~~such a~~this statement, the ~~plaintiff~~ movant may state reasons why a determination of these matters cannot ~~then~~ be made at that time, and offer a proposal as to when ~~such a~~the determination should be made. In certifying a class action as maintainable under Rule 23(b)(3), the court may include in its order the provisions for notice pursuant to Rule 23(c)(2) or may postpone a determination of the matter.~~The plaintiff may file with the motion affidavits or other evidence of any or all of the facts stated or may submit that all or certain specified facts are not in genuine dispute.~~
~~(2) *Opposition*.~~
~~If any party wishes to oppose the plaintiff's proposal for notice or the reasons stated for postponing a determination of the notice requirement, the party shall file an opposition containing a contrary proposal for compliance with the notice requirements of Rule 23(c)(2). Such opposition shall be combined with any opposition to the certification motion and may be supported by a statement of facts disputing any facts alleged in plaintiff's statement or setting forth other facts which are inconsistent with plaintiff's notice proposal or which support the opposing notice proposal. Such party may submit affidavits or other evidence of any and all facts contained in the party's statement.~~
~~(3) *Action by the Court*.~~
~~Upon consideration of the statements and accompanying material, if any, the Court may set the matter of notice for hearing at which time the Court may require the claimant upon adequate notice to make out a prima facie case on the merits of the claim. The Court may, either with or without a hearing, postpone the notice determination until after the parties have had an opportunity for discovery, which the Court may limit to those matters relevant to the notice determination, or until such other time as may be just. As soon as practicable, the Court shall determine how, when, by whom, and to whom the notice shall be given, how and by whom payment therefor is to be made, and by whom the response to the notice is to be received.~~
~~(4) *Other notices*. The Court may follow these procedures for any notice under Rule 23(d)(2).~~
(d) APPLICABILITY TO COUNTERCLAIMS AND CROSSCLAIMS~~pplicability to counterclaims and cross-claims~~.
The foregoing provisions ~~shall~~ apply, with appropriate adaptations, to any counterclaim or crossclaim alleged to be brought for or against a class.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Subsections (b)(2) and (c)(2)-(4) were deleted as unnecessary because the material is covered by other rules.

COMMENT

Rule 23-I. Section (a) incorporates the substance of U.S. District Court for D.C. Rule 23.1 which requires specific allegations, relating to the class character of the suit, to be included in the complaint. Section (b) has been amended to incorporate certain other features in U.S. District Court Rule 23.1. Section (b) provides a clear and simple procedure for promptly securing a Court ruling on the class character of the suit. The amendment requires a motion for certification as a class to be made within 90 days. Ten days is provided for an opposition to be filed. The procedure is similar to the local requirements for handling a motion for summary judgment set forth in Rule 12-I. However, the certification motion necessarily comes much earlier in the action than does a motion for summary judgment. Accordingly, Rule 23(c)(1) permits the Court to "alter or amend" its order later if there should develop matters not apparent to the Court at the time the order was entered. Note that the motion for certification and any opposition thereto should also contain any material with respect to notice procedure which may be required by Rule 23-I(c). Section (c) included matters which were previously contained in Rule 23-II, which is now vacant. This section provides a procedure for the Court to determine the manner in which notice to the class members is to be provided. The procedure is substantially identical to that of former Rule 23-II. As noted above, the use of "mini-hearings" as a tool for determining who should pay for the notice, which was found to be contrary to the language of *Federal Rule 23* in Eisen, is specifically authorized under the amendment to this Court's Rule 23. Section (d) is taken from U.S. District Court Rule 23-1. Accordingly, the word "claimant" is changed to "plaintiff" throughout the Rule.

Rule 23-II. [~~Vacant~~Deleted].

Rule 23.1. Derivative ~~a~~Actions ~~by shareholders.~~

(a) PREREQUISITES. This rule applies when one~~In a derivative action brought by 1~~ or more shareholders or members ~~to enforce a right~~ of a corporation or ~~of~~ an unincorporated association bring a derivative action~~, the corporation or association having failed~~ to enforce a right that the corporation or association~~which~~ may properly ~~be~~ assert~~ed~~ but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.

(b) PLEADING REQUIREMENTS. ~~by it, t~~The complaint must~~shall~~ be verified and must~~shall allege,~~:

_ (1) allege that the plaintiff was a shareholder or member at the time of the transaction complained of~~, which the plaintiff complains~~ or that the plaintiff's share or membership later~~thereafter~~ devolved on it~~the plaintiff~~ by operation of law;~~, and~~

_ (2) allege that the action is not a collusive one to confer jurisdiction that ~~on~~ the ~~C~~court ~~which it~~ would ~~not~~ otherwise lack~~have.~~; and

(3) state with particularity:

(A) any~~The complaint shall also allege with particularity the~~ effort~~s, if any, made~~ by the plaintiff to obtain the desired action ~~the plaintiff desires~~ from the directors or comparable authority and, if necessary, from the shareholders or members~~;~~, and

(B) the reasons for not obtaining ~~the plaintiff's failure to obtain~~ the action or ~~for~~ not making the effort.

(c) SETTLEMENT, DISMISSAL, AND COMPROMISE. ~~The~~A derivative action may be settled, voluntarily dismissed, or compromised only with the court's ~~not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the~~approval~~. of the Court, and~~ ~~n~~Notice of ~~a~~the proposed settlement, voluntary dismissal, or compromise must~~shall~~ be given to shareholders or members in ~~such~~the manner ~~as~~that the ~~C~~court orders~~directs~~.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 23.1*, as amended in 2007.

COMMENT

Identical to *Federal Rule of Civil Procedure 23.1* except that reference to "a court of the United States" has been deleted from the clause describing the allegation of non-collusiveness.

Rule 23.2. Actions ~~r~~Relating to ~~u~~Unincorporated ~~a~~Associations~~.~~

This rule applies to ~~A~~an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that those ~~representative~~ parties will fairly and adequately protect the interests of the association and its members. In ~~the~~ conducting ~~of~~ the action, the ~~C~~court may issue~~make~~ any appropriate orders corresponding with those ~~described~~ in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise ~~of the action shall~~ must correspond with the~~at provided~~ procedure in Rule 23(e).

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 23.2*, as amended in 2007.

COMMENT

Identical to *Federal Rule of Civil Procedure 23.2*.

Rule 24. Intervention.

(a) INTERVENTION OF RIGHTntervention of right.

UpoOn timely motion, the court mustapplication anyone shall be permitted anyone to intervene whoin an action:

(1) is givenWhen applicable law confers an unconditional right to intervene by an applicable law; or

(2) when the applicant claims an interest relating to the property or transaction thatwhich is the subject of the action, and the applicant is so situated that the disposingtion of the action may as a practical matter impair or impede the movantapplicant's ability to protect itsthat interest, unless existing partiesthe applicant's interest is adequately representedthat interestby existing parties.

(b) PERMISSIVE INTERVENTIONermissive intervention.

(1) *In General.* UpoOn timely motion,application the court may permit anyone may be permitted to intervene who in an action:

(1A) is givenWhen applicable law confers a conditional right to intervene by an applicable law; or

(2B) when an applicant'shas a claim or defense that shares withand the main action have a common question of law or fact in common.

(2) *By a Government Officer or Agency.* On timely motion, the court may permitWhen a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal, District of Columbia, or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) upon any regulation, order, requirement, or agreement issued or made underpursuant to the statute or executive order.

(3) *Delay or Prejudice.* the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the Ccourt mustshall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties' rights.

(c) NOTICE AND PLEADING REQUIREDProcedure.

A person desiring motion to intervene mustshall be served a motion to intervene upon the parties as provided in Rule 5. The motion mustshall state the grounds thereforfor intervention and shall be accompanied by a pleading that sets outting forth the claim or defense for which intervention is sought. The same procedure shall be followed when applicable law gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the Court shall notify the Attorney General of the United States in the manner provided in Title *28, U.S.C. § 2403.* When the constitutionality, or the validity under the District of Columbia Self-Government and Government Reorganization Act of 1973, of an order, regulation, or enactment of any type affecting the public interest of the District of Columbia is drawn into question in any action in which the District of Columbia or an officer, agency, or employee thereof is not a party, the Court shall notify the Corporation Counsel of the District of Columbia in a manner similar to that provided for notice upon the Attorney General of the United States in Title *28, U.S.C. § 2403.* In an action of the type described in the two preceding sentences, any pleading alleging the unconstitutionality

~~or invalidity under the Self-Government Act of such an act, order, regulation, or enactment shall bear immediately below the caption the inscription "RULE 24 NOTIFICATION REQUIRED".~~

~~When the constitutionality of any statute of a State affecting the public interest is drawn in question in any action in which that State or any agency, officer, or employee thereof is not a party, the Court shall notify the attorney general of the State as provided in Title *28, U.S.C. § 2403.*~~

~~A party challenging the constitutionality or validity under the Self-Government Act of legislation should call the attention of the Court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.~~

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 24*, as amended in 2007, but maintains the following local distinctions: 1) the addition of "District of Columbia" in subsection (b)(2); and 2) the substitution of "applicable law" for "federal statute" throughout the rule.

As with the federal rule, the notification provisions for challenges to the constitutionality or validity of 1) federal or state statutes, or 2) acts, orders, regulations, or enactments exclusively applicable to the District of Columbia, which were formerly found in section (c), have been moved to Rule 5.1.

COMMENT

Rule 24 identical to *Fed. Rule of Civil Procedure 24* except for (1) addition of "District of Columbia" to the governmental jurisdictions specified in the 2nd sentence of section (b); (2) substitution of "applicable law" for "statute of the United States" in sections (a), (b), and (c) so as to comprehend reference to appropriate statutory or case law relating to intervention rights in the District of Columbia.; and (3) addition to section (c) of a notification provision for acts, orders regulations, or enactments exclusively applicable to the District of Columbia so that this Court will follow as nearly as possible the notification procedure prescribed for courts of the United States in *23 U.S.C. § 2403.* In order to assist the Court in fulfilling its notification responsibilities under this section, the Rule requires an alerting inscription on every pleading the filing of which makes such notification necessary.

The District of Columbia Self-Government and Governmental Reorganization Act of 1973, Public Law 93-198, is reported in its entirety in Volume 1 of the 1981 Michie Edition of the D.C. Code (1991 Replacement Volume, pp. 173-255). Individual sections of the Act are codified throughout the D.C. Code, and a listing of those sections and references to their counterparts in the D.C. Code can be found in the Disposition Table in Volume 11 of the 1981 (1990 Replacement Volume, pp. 216-218).

Rule 25. Substitution of Pparties.

(a) DEATHeath.

(1) *Substitution If the Claim Is Not Extinguished.* If a party dies and the claim is not thereby extinguished, the Ccourt may order substitution of the proper partiesy. A The motion for substitution may be made by any party or by the decedent's successors or representative.s of the deceased party and, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. UnlessIf the motion for substitution is not made not later thanwithin 90 days after service of a statement noting the death, is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action by or against the decedent mustshall be dismissed as to the deceased party.

(2) *Continuation Among the Remaining Parties*. After a party's death, if In the event of the death of 1 or more of the plaintiffs or of 1 or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the remaining partiessurviving defendants, the action does not abate, but. The death shall be suggested upon the record and the action shall proceeds in favor of or against the remainingsurviving parties. The death should be noted on the record.

(3) *Service.* A motion to substitute must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

(b) INCOMPETENCYncompetency. If a party becomes incompetent, the Ccourt may, upon motion, served as provided in subdivision (a) of this Rule may al-lowpermit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) TRANSFER OF INTERESTransfer of interest. If an interest is transferredIn case of any transfer of interest, the action may be continued by or against the original party, unless the Ccourt, upon motion, directs the person to whom the interest is transferredorders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3)Service of the motion shall be made as provided in subdivision (a) of this Rule.

(d) PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICEublic officers; death or separation from office.

(1)An action does not abate Wwhen a public officer who is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office while the action is pending., tThe action does not abate and the officer's successor is automatically substituted as a party. Later Pproceedings following the substitution shouldall be in the name of the substituted party's name, but any misnomer not affecting the parties' substantial rights of the parties shall must be disregarded. The court mayAn order of substitution may be entered at any time, but the absenceomission to enter of such an order shalldoes not affect the substitution.

(2) A public officer who sues or is sued in an official capacity, may be described as a party by the officer's official title rather than by name; but the Court may require the officer's name to be added.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 25*, as amended in 2007, except that, as with the prior version of the Superior Court rule, "notice of hearing" has been deleted from the service provision.

In accordance with the 2007 amendments to the federal rule, former section (d)(2) of this rule has been moved to Rule 17(d).

Rule 25(a)(3) only requires service of the motion to substitute. It does not "incorporate a substantive requirement that a summons and complaint also . . . be served." *Epps v. Vogel*, 454 A.2d 320, 324 (D.C. 1982).

COMMENT

Identical to *Federal Rule of Civil Procedure 25*, except for deletion of inapplicable reference to notice of hearing in subsection (a)(1). In connection with this Rule, see D.C. Code (1967 Edition, Supplement IV) § 12-102.

TITLE V. DISCLOSURESepositions ANDand DISCOVERYiscovery.

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) REQUIRED DISCLOSURES.

(1) [Omitted].

(2) *Disclosure of Expert Testimony*.

(A) *In General*. A party must disclose to the other parties the identity of any witness it may use at trial to present expert testimony.

(B) *Witnesses Who Must Provide a Written Report*. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data or other information considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition;

(vi) a statement of the compensation to be paid for the study and testimony in the case; and

(vii) the following certification, signed by the witness: “I hereby certify that this report is a complete and accurate statement of all of my opinions, and the basis and reasons for them, to which I will testify under oath.”

(C) *Witnesses Who Do Not Provide a Written Report*. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(DC) *Time to Disclose Expert Testimony*. A party must make these disclosures at the times and in the sequence set forth in the scheduling order issued pursuant to Rule 16(b)(5)(C) and (D).

(ED) *Supplementing the Disclosure*. The parties must supplement these disclosures when required under Rule 26(e).

(3) [Omitted].

(4) *Form of Disclosures*. Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

(b) DISCOVERY SCOPE AND LIMITS.

(1) *Scope in General*. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources,

the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable ~~—including the existence, description, nature, custody, condition, and location of any documents, electronically stored information, or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C)~~.

(2) *Limitations on Frequency and Extent*.

(A) *When Permitted*. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or length of depositions under Rule 30. By order, the court may also limit the number of requests under Rule 36.

(B) *Specific Limitations on Electronically Stored Information*. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) *When Required*. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) ~~the burden or expense of~~ the proposed discovery is outside the scope permitted by Rule 26(b)(1). ~~outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.~~

(3) *Trial Preparation: Materials*.

(A) *Documents and Tangible Things*. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4~~5~~), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) *Protection Against Disclosure*. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) *Previous Statement*. Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites substantially verbatim the person's oral statement.

(4) *Trial Preparation: Experts*.

(A) *Deposition of an Expert Who May Testify*. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2) requires a report from an expert, the deposition may be conducted only after the report is provided.

(B) *Trial-Preparation Protection for Draft Reports or Disclosures*. Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) *Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses*. Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D~~B~~) *Expert Employed Only for Trial Preparation*. Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(E~~C~~) *Payment*. Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D~~B~~); and

(ii) for discovery under (D~~B~~), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(5) *Claiming Privilege or Protecting Trial-Preparation Materials*.

(A) *Information Withheld*. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) *Information Produced*. If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(C) *Orders and Agreements Controlling the Effects of Disclosure*.

(i) The court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other proceeding in any jurisdiction.

(ii) An agreement on the effect of disclosure in a proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(6) *Insurance Agreements*. A party may obtain for inspection and copying any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(c) PROTECTIVE ORDERS.

(1) *In General*. A party or any person from whom discovery is sought may move for a protective order in this court—or as an alternative on matters relating to a deposition, in the court for the jurisdiction where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and~~or~~ place or the allocation of expenses, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only by court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) *Ordering Discovery*. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) *Awarding Expenses*. Rule 37(a)(5) applies to the award of expenses.

(d) TIMING AND SEQUENCE OF DISCOVERY.

(1) *Timing*. Time limitations for completion of discovery will be set by court order. The court may order an enlargement of the time limitations for the completion of discovery, pursuant to Rule 16(b)(5)(E) and (F).

(2) *Sequence*. Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

(e) SUPPLEMENTING DISCLOSURES AND RESPONSES.

(1) *In General*. A party who has made an expert disclosure under Rule 26(a) —or who has responded to an interrogatory, request for production, or request for admission— must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) *Expert Witness*. For an expert whose report must be disclosed under Rule 26(a)(2), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 16(c) are due.

(f) [Omitted].

(g) SIGNING DISCOVERY REQUESTS, RESPONSES, AND OBJECTIONS.

(1) *Signature Required, Effect of Signature*. Every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name—or by the party personally, if unrepresented—and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry, the discovery request, response, or objection is:

(A) consistent with these rules and warranted by existing law or a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(B) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(C) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) *Failure to Sign*. Other parties have no duty to act on an unsigned request, response, or objection, until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) *Sanction for Improper Certification*. If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The

sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

(h) MEETING TO RESOLVE DISCOVERY DISPUTES.

(1) *In General*. Before filing any motion relating to discovery except a motion pursuant to Rule 37(b) for sanctions for failure to comply with a court order, the affected parties or counsel must meet for a reasonable period of time in an effort to resolve the disputed matter. Any motion relating to discovery, except a motion pursuant to Rule 37(b), must contain, immediately below the signature of the attorney or party signing the motion, a certification that despite a good faith effort to secure it, the relief sought in the motion has not been provided. The certification must set forth specific facts describing the good faith efforts, including a statement of the date, time, and place of the meeting required by this rule.

(2) *Waiver*. The requirement of a meeting is waived if:

(A) the motion concerns a failure to serve any response whatever to a Rule 33, 34, or 36 discovery request or a failure to appear for a deposition or a Rule 35 examination and the motion is accompanied by a copy of a letter, sent at least 10 days before the motion was filed, asking that the opposing counsel or party respond to the discovery request or that the deponent or examinee appear for a rescheduled deposition or examination; or

(B) the movant certifies that, despite having sent to the opposing counsel or party, at least 10 days before the motion was filed, a letter (a copy of which must be attached to the motion) proposing a time and place for such a meeting, and despite having made 2~~two~~ telephone calls to the office of the opposing counsel or party (the date and time of which calls must be specified in the motion), the movant has been unable to convene a meeting to resolve the disputed discovery matter.

COMMENT TO 2017 AMENDMENTS

This rule incorporates the 2010 and 2015 amendments to *Federal Rule of Civil Procedure 26* with the following exceptions: 1) subsection (a)(2)(C)(i) does not include references to *Federal Rules of Evidence 702, 703, or 705*; 2) the timing of expert disclosures in subsection (a)(2)(D) differs; 3) the subsection entitled "Early Rule 34 Requests" is omitted because there is no discovery moratorium in the Superior Court; and 4) amendments to section (f) are not incorporated because this section was previously omitted.

New subsection (b)(5)(C) was created to address an issue raised by a 2015 amendment to *Federal Rule of Civil Procedure 16*. Instead of referencing *Federal Rule of Evidence 502* in Rule 16(b)(4)(C), Rule 26(b)(5)(C) includes the text of *Federal Rule of Evidence 502(d) and (e)*. These new provisions govern the manner and means by which litigants and the court can control the effects of disclosure of privileged or protected information. Agreements reached under Rule 26(b)(5)(C) can be included in a scheduling order issued under Rule 16(b)(4).

COMMENT

Subsection (a)(1). *Federal Rule of Civil Procedure 26(a)(1)* is inconsistent with Superior Court practice, and would ultimately slow down the process of discovery. The Superior Court rules allow parties to begin discovery at the filing of the complaint; this process gives parties greater options for early discovery than those available under the Federal Rules.

Subsection (a)(2) is new. It requires a written report from an expert; however, it clarifies the federal rule in accordance with the Federal Advisory Committee Notes and case decisions, which explain that legal counsel are not prohibited from being substantively involved with the preparation of the expert's written report so long as the substance and conclusions are the expert's own.

Subsection (a)(3). As it relates to pretrial disclosures, *Federal Rule of Civil Procedure 26(a)(3)* is incorporated in the pretrial statement required under Rule 16.

Subsection (b). The Advisory Committee Notes to the *Federal Rules of Civil Procedure* contain a lengthy discussion of the 2006 amendments to the federal rule addressing the discovery of electronically-stored information. Because these 2015 amendments to the Superior Court Rules closely follow the 2006 *Federal Rules of Civil Procedure* amendments, parties and counsel should refer to the *Federal Rules of Civil Procedure* Advisory Committee Notes for guidance. In particular, the *Federal Rules of Civil Procedure* Advisory Committee Notes to Rule 26(b) address the potential for cost-shifting in the context of discovery and state as follows:

> The good-cause inquiry and consideration of the Rule 26(b)(2)(C) limitations are coupled with the authority to set conditions for discovery. The conditions may take the form of limits on the amount, type, or sources of information required to be accessed and produced. The conditions may also include payment by the requesting party of part or all of the reasonable costs of obtaining information from sources that are not reasonably accessible. A requesting party's willingness to share or bear the access costs may be weighed by the court in determining whether there is good cause. But the producing party's burdens in reviewing the information for relevance and privilege may weigh against permitting the requested discovery.

Rule 27. Depositions ~~before action or pending appeal.~~to Perpetuate Testimony

(a) B~~efore action~~EFORE AN ACTION IS FILED.

(1) *Petition*. A person who ~~desires~~ wants to perpetuate testimony ~~regarding~~ about any matter ~~that may be~~ cognizable in this ~~C~~court may file a verified petition in this ~~C~~court~~, or~~ in an appropriate state court in the place where any expected adverse party resides, or in the United States ~~D~~district ~~C~~court in the district ~~of the residence of~~where any expected adverse party resides. The petition ~~shall~~ must ask for an order authorizing ~~be entitled in the name of~~ the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must ~~and shall~~ show:

(~~1~~A) ~~T~~that the petitioner expects to be a party to an action cognizable in this c~~C~~ourt but ~~is~~ cannot presently ~~unable to~~ bring it or cause it to be brought~~;~~;

(~~2~~B) the subject matter of the expected action and the petitioner's interest ~~therein;~~;

(~~3~~C) the facts ~~which~~ that the petitioner ~~desires~~ wants to establish by the proposed testimony and the reasons ~~for desiring~~ to perpetuate it~~;~~;

(~~4~~D) the names or a description of the persons whom the petitioner expects ~~will~~ to be adverse parties and their addresses, so far as known~~;~~; and

(~~5~~E) the name~~s~~, ~~and~~ address~~es~~ and expected ~~of the persons to be examined and the~~ substance of the testimony ~~which the petitioner expects to elicit from~~of each deponent~~, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony~~.

(2) *Notice and ~~s~~Service*. At least 2~~0~~1 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~~ reasonable diligence on an expected adverse party, the ~~C~~court may order service by publication or otherwise. The c~~C~~ourt 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 i~~If any expected adverse party is a minor or is incompetent, Rule 17(c) applies.

(3) *Order and ~~e~~Examination*.

If ~~the Court is~~ satisfied that ~~the~~ perpetuating~~on of~~ the testimony may prevent a failure or delay of justice, the court must issue~~it shall make~~ an order that designate~~sing~~ or describe~~sing~~ the persons whose depositions may be taken, ~~and~~ specifie~~sying~~ the subject matter of the examinations, and states whether the depositions ~~shall~~ will be taken ~~upon~~ orally ~~examination~~ or by written interrogatories. The depositions may then be taken ~~in accordance with~~ under these ~~R~~rules~~;~~, and the ~~C~~court may ~~make~~ issue orders ~~of the character provided for~~like those authorized by Rules 34 and 35. A reference in these rules ~~For the purpose of applying these Rules to depositions for perpetuating testimony, each reference therein~~ to this ~~C~~court means, for the purposes of this rule, ~~shall be deemed to refer to~~ the court ~~in which~~where the petition for ~~such~~ the deposition was filed.

(4) *Us~~inge of deposition~~ the Deposition*.

~~If a~~A deposition to perpetuate testimony may be used under Rule 32(a) in any later-filed action in this court~~is taken under these Rules or if, although not so taken, it would be~~

admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible in evidence in the courts of the state where it was taken subsequently brought in this Court, in accordance with the provisions of Rule 32(a).

(b) PENDING APPEALending appeal.

(1) *In General*. The court after rendering judgment may, iIf an appeal has been taken from a judgment of the Court or before the taking of an appeal if the time therefor has not expiredor may still be taken, the Court may allowpermit a party to depose the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the cCourt.

(2) *Motion*. In such case tThe party who desires wants to perpetuate the testimony may make a motionmove for leave to take the depositions, upon the same notice and service thereof as if the action was were pending in the Ccourt. The motion shall must show:

(1A) the names, and address,es of persons to be examined and the expected substance of the testimony of each deponent; andwhich the party expects to elicit from each;

(2B) the reasons for perpetuating their testimony.

(3) *Court Order*. If the Ccourt finds that the perpetuationgon of the testimony is proper to avoid amay prevent a failure or delay of justice, the courtit may make an order allowing thepermit the depositions to be taken and may make issue orders of the character provided forlike those authorized by Rules 34 and 35., and thereupon t The depositions may be taken and used in the same manner and under the same conditions as are prescribed in these Rules for depositions taken in pending actionsas any other deposition taken in a pending court action.

(c) Perpetuation by actionPERPETUATION BY AN ACTION.

This Rrule does not limit the a court's power of a court to entertain an action to perpetuate testimony.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 27*, as amended in 2007 and 2009, except that court designations have been modified throughout the rule. This rule is not an attempt to confer jurisdiction on a state court or a United States district court but allows a petition to be heard in that court when permitted.

COMMENT

Identical to *Federal Rule of Civil Procedure 27* except for changes in court designations in sections (a)(1), (a)(3), (a)(4), and (b) to reflect applicability to this Court.

Rule 28. Persons ~~bB~~efore ~~wW~~hom ~~dD~~epositions ~~mM~~ay ~~bB~~e ~~tT~~aken~~.~~

(a) WITHIN THE UNITED STATES~~ithin the United States~~.

(1) *In General*. Within the United States or ~~within~~ a territory or insular possession subject to United States~~the~~ jurisdiction ~~of the United States~~, a deposition~~s~~ must~~shall~~ be taken before:

(A) an officer authorized to administer oaths either by federal~~the~~ law~~s of the United States~~ or by the law in~~of~~ the place ~~where the~~of examination ~~is held,~~; or

(B) ~~before~~ a person appointed by the ~~C~~court~~.~~ to ~~A person so appointed has power to~~ administer oaths and take testimony.

(2) *Definition of "Officer."* The term "officer" ~~as used~~ in Rules 30, 31 and 32 includes a person appointed by the ~~C~~court under this rule or designated by the parties under Rule 29(a).

(b) IN A FOREIGN COUNTRY~~n foreign countries~~.

(1) *In General*. A ~~D~~deposition~~s~~ may be taken in a foreign country:

(~~1~~A) ~~pursuant to~~under any~~y~~ applicable treaty or convention;~~, or~~

(~~2~~B) ~~pursuant to~~under a letter of request, ~~(~~whether or not captioned a "letter rogatory";~~), or~~

(~~3~~C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place ~~where the~~of examination ~~is held, either by the law thereof or by the law of the United States,~~; or

(4D) before a person commissioned by the ~~C~~court~~, and a person so commissioned shall have the power by virtue of the com-mission~~ to administer any necessary oath and take testimony.

(2) *Issuing a Letter of Request or a Commission*. A letter of request, a commission, or both may~~a letter of request shall~~ be issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that ~~on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the~~ taking ~~of~~ the deposition in any~~y~~ other manner is impracticable or inconvenient~~; and both a commission and a letter of request may be issued in proper cases~~.

(3) *Form of a Request, Notice, or Commission*. When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention~~A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title~~. A letter of request may be addressed "To the Appropriate Authority in [~~here~~ name ~~the~~ of country]." A deposition notice or a commission must ~~When a letter of request or any other device is used pursuant to any applicable treaty or convention it shall be captioned in the form prescribed by that treaty or convention~~designate by name or descriptive title the person before whom the deposition is to be taken.

(4) *Letter of Request—Admitting Evidence*. Evidence obtained in response to a letter of request need not be excluded merely because:

(A) it is not a verbatim transcript;~~,~~

(B) ~~because~~ the testimony was not taken under oath;~~,~~ or

(C) ~~because of~~ any similar departure from the requirements for depositions taken within the United States ~~under these rules~~.

(c) DISQUALIFICATION~~isqualification for interest~~.

~~No~~A deposition must not~~shall~~ be taken before a person who is:
(1) any party's relative, ~~or~~ employee, or attorney;
(2) related to or employed by any party's attorney; ~~or counsel of any of the par-ties, or is a relative or employee of such attorney or counsel,~~ or
(3) ~~is~~ financially interested in the action.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 28*, as amended in 2007, except that 1) the phrase "in which the action is pending" is still omitted; and 2) subsection (b)(4) and section (c) are divided into further subsections.

COMMENT

Rule 28 is identical to *Federal Rule of Civil Procedure 28* except for deletion from paragraph (a) of the superfluous Court designation "in which the action is pending."

Rule 28-I. Interstate Depositions and Discovery Procedures ~~outside the forum jurisdiction.~~

(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 -448.

(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. 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) *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.

(3) *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).

(4) *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.

~~(a) *Actions in this Court*.~~

~~Any party to a civil action pending in this Court may file with the Court a motion for appointment of an examiner to take the testimony of a witness who resides outside the~~

~~District of Columbia. The motionshall state the name and address of each witness sought to be deposed and the reasons why the testimony of such witness is required in the action. The motion shall be served on all other parties to the action who may within 5 days file opposition to the motion as prescribed in Rule 12. If the motion is granted, the Court shall appoint an examiner to take the testimony of such witnesses as are designated in the order of appointment and shall issue a commission to the examiner who shall take the testimony in the manner prescribed in these Rules.~~

~~(b) *Actions in other jurisdictions.*~~ 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 ~~C~~court a certified copy of the commission or notice. ~~If the commission or notice is in order, the Clerk shall, u~~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 ~~this section~~Rule 28-I(d) ~~shall~~ must be taken in the manner prescribed by~~in~~ these ~~R~~rules, and the ~~C~~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 ~~C~~court.

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-II. Appointment of Examiner to Take Testimony of a Witness Residing Outside the District of Columbia; Commissions

(a) APPOINTMENT OF EXAMINER; ISSUING COMMISSION. Any party to a civil action pending in this court may file with the court a motion for appointment of an examiner to take the testimony of any witnesses who reside outside the District of Columbia. If the motion is granted, the court must appoint an examiner to take the testimony of such witnesses as are designated in the order of appointment and must issue a commission to the examiner who will take the testimony in the manner prescribed by these rules.

(b) MOTION REQUIREMENTS. A motion for appointment of an examiner must state:

(1) the name and address of each witness sought to be deposed; and

(2) the reasons why the testimony of such witness is required in the action.

(c) SERVICE OF THE MOTION; OPPOSITIONS. The motion must be served on all other parties to the action who may within 7 days file an opposition to the motion as prescribed by Rule 12.

COMMENT TO 2017 AMENDMENTS

The substance of this rule is substantially similar to former Rule 28-I(a) and is derived from D.C. Code § 14-104 (2012 Repl.).

Rule 29. Stipulations ~~regarding~~ About ~~d~~Discovery ~~p~~Procedure~~.~~

Unless the court orders otherwise~~, directed by the Court,~~ the parties may ~~by written~~ stipulat~~e~~ion that:

_ (~~1~~a) a~~provide that~~ deposition~~s~~ may be taken before any person, at any time or place, ~~up~~on any notice, and in the manner specified~~—~~in which event it~~any manner and when so taken~~ may be used in the same way as any~~like~~ other deposition~~s~~, and

_(~~2~~b) ~~modify~~ other procedures governing or limiting~~ations placed upon~~ discovery be modified~~—~~, ~~except~~but ~~that~~ the parties may only stipulate to extend a~~ny~~ deadline set by the ~~C~~court ~~only~~ to the extent permitted by Rule 16(b).

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 29*, as amended in 2007, except that section (b) retains references to Superior Court Rule 16(b).

COMMENT

Identical to *Federal Rule of Civil Procedure 29* except for the reference to Superior Court Rule 16(b) with respect to deadlines.

Rule 30. Depositions ~~upon~~ by ~~o~~Oral ~~e~~Examination~~.~~

(a) WHEN A DEPOSITION MAY BE TAKEN~~hen depositions may be taken; when leave required~~.

(1) *Without Leave*. A party may, by oral questions, depose ~~take the testimony of~~ any person, including a party, ~~by deposition upon oral examination~~ without leave of court except as provided in ~~paragraph (2)~~Rule 30(a)(2). The deponent's attendance ~~of witnesses~~ may be compelled by subpoena ~~as provided in~~under Rule 45.

(2) *With Leave*. A party must obtain leave of court, ~~which shall be~~and the court must grant~~ed~~ leave to the extent consistent with ~~the principles stated in~~ Rule 26(b)(1) and (2):~~,~~

(A) if the ~~person~~ parties have not stipulated to the deposition and:~~to be examined is confined in prison or if, without the written stipulation of the parties,~~

(~~A~~i) ~~a proposed~~the deposition would result in more than ~~ten~~ 10 depositions being taken under this ~~R~~rule or Rule 31 by the plaintiffs, or by the defendants, or by the third~~-~~-party defendants;

(~~B~~ii) the deponent~~person to be examined~~ has already ~~has~~ been deposed in the case~~,~~;; or

(~~C~~iii) the plaintiff seeks to take ~~a~~ the deposition ~~prior to~~before the expiration of 30 days after service of the summons and complaint upon any defendant or 70 days in any case involving the District of Columbia or its officer or agency, or the United States or its officer or agency~~;, except that leave is not required~~ or

(B) if the deponent is confined in prison; except

(C) leave is not required under Rule 30(a)(2)(A)(iii) if:

(i) ~~if~~ a defendant has served a notice of taking deposition or otherwise sought discovery~~;,~~ or

(ii) ~~if~~ the plaintiff's notice states that the ~~person to be examined~~deponent is ~~about to go~~expected to be out of the District of Columbia and more than 25 miles from the place of trial~~, or is about to go out of the United States, or is bound on a voyage to sea,~~ and ~~will~~ be unavailable for examination unless the person's deposition is taken before the expiration of the 30-day or 70-day period, and sets forth facts to support the statement.

(b) NOTICE OF THE DEPOSITION; OTHER FORMAL REQUIREMENTS~~otice of examination; general requirements; method of recording; production of documents and things; deposition of organization; deposition by telephone~~.

(1) *Notice in General*. A party ~~desiring~~ who wants to ~~take the~~ depos~~e~~ition ~~of a~~ny person ~~upon~~ by oral ~~examination shall~~questions must give reasonable written notice ~~in writing~~ to every other party ~~to the action~~. The notice ~~shall~~ must state the time and place ~~for taking~~of the deposition and, if known, the deponent's ~~the~~ name and address. ~~of each person to be examined, if known, and, i~~If the name is ~~not~~ unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Documents*. If a subpoena duces tecum is to be served on the ~~person to be examined~~deponent, the materials designat~~ed~~ion for production, ~~of the materials to be produced~~ as set ~~forth~~ out in the subpoena, ~~shall~~ must be ~~attached~~ listed to, ~~or included,~~ in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at

the deposition. If the deposition is to be recorded by videotape or audiotape, the notice shall specify the method of recording. If a videotape deposition is to be taken for use at trial pursuant to Rule 32(a)(4), the notice shall so specify.

(23) *Method of Recording.*

(A) *Method Stated in the Notice.* The party taking who notices the deposition shall must state in the notice the method by whichfor recording the testimony shall be recorded. Unless the Ccourt orders otherwise, testimonyit may be recorded by soundaudio, sound-and-audiovisual, or stenographic means., and tThe noticing party taking the deposition shall bears the recording costs of the recording. Any party may arrange for ato transcribeption to be made from the recording of a deposition taken by nonstenographic means.

(3B) *Additional Method.* With prior notice to the deponent and other parties, any party may designate another method to for recording the deponent's testimony in addition to theat method specified by the person taking the depositionin the original notice. That party bears the expense of Tthe additional record or transcript shall be made at that party's expense unless the Ccourt orders otherwise orders.

(4) *By Remote Means.* The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place in the District of Columbia and where the deponent answers the questions.

(5) *Officer's Duties.*

(A) *Before the Deposition.* Unless the parties stipulate otherwise agreed by the parties, a deposition shall must be conducted before an officer appointed or designated under Rule 28. The officer must and shall begin the deposition with an on-the-record statement on the record by the officer that includes:

(Ai) the officer's name and business address;

(Bii) the date, time, and place of the deposition;

(Ciii) the deponent's name of the deponent;

(Div) the officer's administration of the oath or affirmation to the deponent; and

(Ev) anthe identityfication of all persons present.

(B) *Conducting the Deposition; Avoiding Distortion.* If the deposition is recorded other thannon-stenographically, the officer shall must repeat the items in Rule 30(b)(5)(A)(i)–(iii) through (C) at the beginning of each unit of the recorded tape or other recording medium. The deponent's and attorneys' appearance or demeanor of deponents or attorneys shallmust not be distorted through camera or sound recording techniques.

(C) *After the Deposition.* At the end of the deposition, the officer shall must state on the record that the deposition is complete and shall must set forth out any stipulations made by counsel the attorneys concerning aboutthe custody of the transcript or recording and of the exhibits, or concerning about other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) *Notice or Subpoena Directed to an Organization.* A party may iIn the party'its notice and in aor subpoena, a party may name as the deponent a public or private corporation, or a partnership, or an association, or a governmental agency, or other

entity and must describe with reasonable particularity the matters ~~on which~~ for examination ~~is requested~~. ~~In that event, the~~The named organization ~~so named shall~~must then designate ~~1~~one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf~~;~~, and it may set ~~forth~~out~~, for each person designated,~~ the matters on which ~~the~~each person designated will testify. A subpoena ~~shall~~ must advise a non-party organization of its duty to make ~~such a~~this designation. The persons ~~so~~ designated ~~shall~~ must testify ~~as to~~about ~~matters~~ information known or reasonably available to the organization. ~~This~~Rule ~~subdivision~~ 30(b)(6) does not preclude ~~taking~~ a deposition by any other procedure ~~authorized in~~allowed by these ~~R~~rules.

~~(7) The parties may stipulate in writing or the Court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this Rule and Civil Rules 28(a), and 37(b)(1), a deposition taken by such means is taken in the District and at the place where the deponent is to answer questions.~~

(c) EXAMINATION AND CROSS-EXAMINATION; RECORD OF THE EXAMINATION; OBJECTIONS; WRITTEN QUESTIONS~~xamination and cross-examination; record of examination; oath; objections~~.

(1) *Examination and Cross-Examination*. The ~~E~~examination~~s~~ and cross-examination of ~~witnesses~~ a deponent ~~may~~ proceed as ~~permitted~~ they would at ~~the~~ trial under the provisions of Rule 43(~~c~~b). After putting the deponent under oath or affirmation, ~~T~~the officer ~~before whom the deposition is to be taken shall put the witness on oath or affirmation and shall~~must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally~~,~~ or by ~~someone~~ a person acting in the presence and under the ~~officer's~~ direction of the officer. ~~and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this Rule.~~

(2) *Objections*. ~~All~~ An objection~~s made~~ at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications ~~of the officer taking the deposition~~, to the manner of taking ~~it~~the deposition~~, to the evidence presented, to the conduct of any party~~, or to any other aspect of the ~~proceedings shall~~deposition—must be noted on the record, ~~by the officer upon the record of the deposition;~~ but the examination ~~shall~~ still proceed~~s;~~ ~~with~~ the testimony ~~being~~ is taken subject to ~~the~~ any objection~~s~~. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) *Participating Through Written Questions*. ~~In lieu~~Instead of participating in the oral examination, a party~~ies~~ may serve written questions in a sealed envelope on the party ~~taking~~ noticing the deposition~~, and the party taking the deposition shall~~ who must ~~transmit~~ deliver them to the officer~~.~~~~,~~ The officer must ask the deponent those questions ~~who shall propound them to the witness~~ and record the answers verbatim.

(d) DURATION; SANCTION; MOTION TO TERMINATE OR LIMIT~~Schedule and duration; motion to terminate or limit examination~~.

(1) *Duration*. ~~Any objection during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to~~

answer only when necessary to preserve a privilege, to enforce a limitation directed by the Court, or to present a motion under Rule 30(d)(4).

(2) Unless otherwise stipulated or ordered authorized by the Ccourt, or stipulated by the parties, a deposition is limited to one day of seven 7 hours. The Ccourt must allow additional time consistent with Rule 26(b)(1) and (21) if needed for ato fairly examineation of the deponent or if the deponent, or another person, or any other circumstance impedes or delays the examination.

(32) *Sanction*. If tThe Ccourt finds that any impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party— upon the a persons who impedes, delays, or frustrates the fair examination of the deponent.responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(3) *Motion to Terminate or Limit.*

(4A) *Grounds*. At any time during a deposition, on motion of a party or of the deponent or a party may move to terminate or limit it on the ground that it and upon a showing that the examination is being conducted in bad faith or in such a manner as that unreasonably to annoys, embarrasses, or oppresses the deponent or party.. The motion may be filed in this Ccourt or the court in the districtjurisdiction where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order*. The court may order that the officer conducting the examination to cease forthwith from taking the deposition be terminated, or may limit the its scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examinationterminated, the depositionit may be resumed thereafter only byupon the order of this Ccourt, except as provided in Rule 45(e). Upon demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order.

(C) *Award of Expenses*. The provisions of Rule 37(a)(45) appliesy to the award of expenses incurred in relation to the motion.

(e) REVIEW BY THE WITNESS; CHANGESeview by witness; changes; signing.

(1) *Review; Statement of Changes*. If On requested by the deponent or a party before completion of the deposition is completed, the deponent shall must be allowedhave 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and,

(B) if there are changes in form or substance, to sign a statement reciting suchlisting the changes and the reasons given by the deponent for making them.

(2) *Changes Indicated in the Officer's Certificate*. The officer shall indicatemust note in the certificate prescribed by subdivision Rule 30(f)(1) whether any review was requested and, if so, shall must attach append any changes the deponent madkes by the deponent during the 30-day period allowed.

(f) CERTIFICATION AND DELIVERY; EXHIBITS; COPIES OF THE TRANSCRIPT OR RECORDING; FILINGertification and delivery by officer; exhibits; copies.

(1) *Certification and Delivery*. The officer must certify in writing that the witness was duly sworn by the officer and that the deposition is a trueaccurately records of the

witness's testimony ~~given by the witness~~. Th~~is~~e certificate must ~~be in writing and~~ accompany the record of the deposition. Unless the court orders otherwise ~~ordered by the Court~~, the officer must ~~securely~~ seal the deposition in an envelope or package bearing ~~indorsed with~~ the title of the action and marked "Deposition of [~~here insert name of~~ witness's name]" and must promptly send it to the attorney who arranged for the transcript or recording. The officer must comply with the requirements of Rule 5(d) for the processing of such materials. If the deposition is recorded by other than stenographic means, the ~~cassette or tape~~storage media must be clearly ~~marked~~ identified with the name of the deponent, the date of the deposition, and the title of the action. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and Tangible Things*.

(A) *Originals and Copies*. Documents and tangible things produced for inspection during ~~the examination of the witness~~a deposition must, ~~up~~on ~~the~~ a party's request ~~of a party~~, be marked for identification and ~~annexed~~ attached to the deposition. Any party ~~and~~ may ~~be~~ inspect~~ed~~ and copy~~ied~~ them ~~by any party.~~, But~~except that~~ if the person who produce~~ding~~ the~~m~~ ~~materials desires~~wants to ~~retain~~ keep the~~m~~ originals, the person may:

(~~A~~i) offer copies to be marked, attached to the deposition, and then used ~~for identification and annexed to the deposition and to serve thereafter~~ as originals~~, if the person affords to~~after giving all parties a fair opportunity to verify the copies by compari~~ng~~son them with the originals;~~,~~ or

(~~B~~ii) ~~offer the originals to be marked for identification, after giving~~give all ~~to each~~ parties~~y~~ a~~n~~ fair opportunity to inspect and copy the~~m~~ originals after they are marked~~—~~ in which event the ~~materials~~ originals may ~~then~~ be used ~~in the same manner~~ as if ~~annexed~~ attached to the deposition.

(B) *Order Regarding the Originals*. Any party may move for an order that the originals be ~~annexed~~ attached to ~~and re-turned with~~ the deposition ~~to the Court,~~ pending final disposition of the case.

(~~2~~3) *Copies of the Transcript or Recording*. Unless otherwise stipulated or ordered by the ~~C~~court ~~or agreed by the parties~~, the officer ~~shall~~ must retain the stenographic notes of a~~ny~~ deposition taken stenographically or a copy of the recording of a deposition taken by another method. When~~Upon~~ pa~~idyment of~~ reasonable charges ~~therefor~~, the officer ~~shall~~ must furnish a copy of the transcript or ~~other~~ recording ~~of the deposition~~ to any party or ~~to~~ the deponent.

(~~3~~4) *Notice of Filing*. ~~The~~A party ~~taking~~ who files the deposition ~~shall~~ must~~give~~ promptly notify~~ce~~ ~~of its filing to~~ all other parties of the filing.

(g) F~~AILURE TO ATTEND A DEPOSITION OR SERVE A SUBPOENA; EXPENSES~~ailure to attend or to serve subpoena; expenses~~. A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) ~~If the party giving the notice of the taking of a deposition fails to~~ attend and proceed ~~there~~with the deposition; or ~~and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.~~

(2) ~~If the party giving the notice of the taking of a deposition of a witness fails to~~ serve a subpoena ~~upon the witness and the witness because of such failure~~a nonparty deponent, who consequently did~~does~~ not attend~~, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees~~.

(h) FILING TRANSCRIPTION OF DEPOSITION TAKEN BY NONSTENOGRAPHIC MEANS~~iling of transcription of deposition taken by nonstenographic means~~.

If a party intends to use in the proceeding a deposition recorded by other than stenographic means, the person ~~shall~~ must have prepared a typewritten, verbatim transcript of testimony. The original transcription ~~shall~~ must not be filed with the c~~C~~ourt unless otherwise ordered. If so ordered, a copy ~~shall~~ must be served ~~upon~~ all parties, at least 30 days before ~~such~~ the proceeding.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 30*, as amended in 2007 and 2015, except that: 1) the time period in subsection (a)(2)(A)(iii) reflects local practice; 2) exceptions to the restriction in subsection (a)(2)(A)(iii) have been moved to new subsection (a)(2)(C) and continue to reflect the 25-mile subpoena range of this court; 3) subsection (b)(4) provides that remote depositions taken by telephone are considered to have taken place in the District of Columbia and the location where the person answers the questions; 4) subsection (c)(1) refers to Rule 43(c) rather than the Federal Rules of Evidence; 5) subsection (d)(3) refers to depositions taken in Superior Court actions as well as those taken in the District of Columbia pursuant to the Uniform Interstate Depositions and Discovery Act; 6) subsection (f)(1) requires the officer to comply with Rule 5(d) regarding filing; and 7) section (h) retains the requirement that a party transcribe a deposition that was recorded by nonstenographic means if the party intends to use the deposition in the proceeding.

The term "storage media" as used in subsection (f)(1) means any technology used to store a deposition recording for later reuse. This includes, but is not limited to, cassette tapes, videotapes, CDs, DVDs, memory cards, and USB flash drives.

COMMENT

Largely identical to *Federal Rule of Civil Procedure 30* except that there is no cross-reference in subparagraph (a)(2)(C) to Rule 26, since the changes in that Rule have not been adopted herein, and that subparagraph provides additional time to the District of Columbia and the United States after service of summons and complaint before the taking of testimony is allowed without leave of Court because the District of Columbia and the United States have 60 days to answer a complaint under Rule 12(a). Subparagraph (a)(2)(C) has also been modified to reflect the 25 mile subpoena range of the Court. Subparagraph (b)(1) has been amended to provide notice if the deposition is to be recorded by audio or videotape. In addition, paragraph (c) refers to Rule 43(b) rather than to the Federal Rules of Evidence. Paragraphs (b), (d), and (f) are revised to

show reference only to cases pending in this Court. Subparagraph (f)(1) comports with Rule 5(d), which provides, among other things, that depositions shall not be filed with the Court unless their filing is pursuant to Court order or they are appended to a motion or opposition to which they are relevant. Paragraph (h) requires the preparation, filing and serving of a transcription of a deposition recorded by other than stenographic means if a party intends to use the deposition in the proceeding.

Rule 31. Depositions ~~upon~~ by ~~w~~Written ~~q~~Questions~~.~~

(a) WHEN A DEPOSITION MAY BE TAKEN~~Serving questions; notice~~.

(1) *Without Leave*. A party may, by written questions, depose ~~take the testimony of~~ any person, including a party, ~~by deposition upon written questions~~ without leave of court except as provided in ~~paragraph~~ Rule 31(a)(2). The deponent's attendance ~~of witnesses~~ may be compelled by ~~the use of~~ subpoena ~~as provided in~~under Rule 45.

(2) *With Leave*. A party must obtain leave of ~~C~~court, ~~which shall be~~and the court must grant~~ed~~ leave to the extent consistent with ~~the principles stated in~~ Rule 26(b)(1) and (2):~~,~~

(A) if the p~~erson~~arties have not stipulated to the deposition and:~~to be examined is confined in prison or if, without the written stipulation of the parties,~~

(~~A~~i) ~~a proposed~~the deposition would result in more than ~~ten~~10 depositions being taken under this ~~R~~rule or Rule 30 by the plaintiffs, or by the defendants, or by the third-party defendants;

(~~B~~ii) the ~~person to be examined~~deponent has already been deposed in the case; or

(~~C~~iii) the plaintiff seeks to take a deposition ~~before~~prior to the expiration of 30 days after service of the summons and complaint upon any defendant or 70 days in any case involving the District of Columbia or its officer or agency, or the United States or its officer or agency; or~~, except that leave is not required~~

(B) if the deponent is confined in prison; except

(C) leave is not required under Rule 31(a)(2)(A)(iii) if:

(i) ~~if~~ a defendant has served a notice of taking deposition or otherwise sought discovery;~~,~~ or

(ii) ~~if~~ the plaintiff's notice states that the ~~person to be examined~~deponent is ~~about to go~~expected to be out of the District of Columbia and more than 25 miles from the place of trial ~~United States, or is bound on a voyage at sea,~~ and ~~will~~ be unavailable for examination unless the person's deposition is taken before expiration of the 30-day or 70-day period, and sets forth facts to support the statement.

(3) *Service; Required Notice*. A party ~~desiring~~ who wants to ~~take a deposition upon~~depose a person by written questions ~~shall~~ must serve them ~~up~~on every other party, with a notice stating, if known, ~~(1)~~ the deponent's name and address. ~~of the person who is to answer them, if known, and i~~If the name is ~~not~~ unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.~~,~~ The notice must also state~~and (2)~~ the name or descriptive title and the address of the officer before whom the deposition ~~is to~~will be taken.

(4) *Questions Directed to an Organization*. A ~~deposition upon written questions may be taken of a~~ public or private corporation, ~~or~~ a partnership, ~~or~~an association, or a governmental agency may be deposed by written questions in accordance with ~~the provisions of~~ Rule 30(b)(6).

(~~4~~5) *Questions from Other Parties*. Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, ~~W~~within 14 days after being served with the notice and ~~written~~ direct questions ~~are served,~~; redirect questions, ~~a party may serve cross questions upon all other parties. W~~within 7 days after being served with cross-questions;~~,~~ and recross-questions, ~~a party may serve redirect~~

~~questions upon all other parties. W~~w~~ithin 7 days after being served with redirect questions~~, a party may serve recross questions upon all other parties~~. The ~~C~~c~~ourt may~~, for ~~good~~ cause~~, shown enlarge~~ extend or shorten the~~se~~ time~~s~~.

(b) DELIVERY TO THE OFFICER; OFFICER'S DUTIES~~Officer to take responses and prepare record~~.

~~The party who noticed the deposition must deliver to the officer A~~a copy of ~~the notice and copies of~~ all the questions served and of the notice. The officer must ~~shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed~~ promptly proceed~~,~~ in the manner provided ~~by~~ in Rule 30(c), (e), and (f), to:

(1) take the deponent's testimony ~~of the witness~~ in response to the questions;

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and of the notice.

(c) FILING. The deposition ~~shall~~ must not be filed except as provided in Rule 5(d).

~~(c) [Deleted].~~

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 31*, as amended in 2007 and 2015, except that: 1) the time period in subsection (a)(2)(A)(iii) reflects local practice; 2) exceptions to the restriction in subsection (a)(2)(A)(iii) have been moved to new subsection (a)(2)(C) and continue to reflect the 25-mile subpoena range of this court; and 3) section (c) prohibits the filing of a deposition except as permitted in Rule 5(d).

COMMENT

SCR Civil 31 is largely identical to *Federal Rule of Civil Procedure 31* except that there is no cross-reference in subparagraph (a)(2)(C) to Rule 26, since the changes in that Rule have not been adopted herein, and that subparagraph restricts the taking of depositions within 30 days of the service of the summons and complaint or within 70 days after service of the summons and complaint in the case of the United States or the District of Columbia. Additionally, paragraph (b) provides that the deposition shall not be filed and paragraph (c) has been deleted in its entirety.

Rule 32. Usinge of dDepositions in Court pProceedings.

(a) USING DEPOSITIONSse of depositions.

(1) *In General.* At the a hearing or trial or upon the hearing of a motion or an interlocutory proceeding, all orny part or all of a deposition may be used against a party on these conditions:

(A), so far as admissible under the Rules of Evidence applied as though the witness were then present and testifying, may be used against any the party who was present or represented at the taking of the deposition or who had reasonable notice thereofof it;,

(B) it is used to the extent it would be admissible under the law of evidence if the deponent were present and testifying; and

(C) the use is allowed by Rule 32(a)(2) through (9). in accordance with any of the following provisions:

(12) *Impeachment and Other Uses.* Any party may use a deposition may be used by any party for the purpose ofto contradicting or impeaching the testimony of given by the deponent as a witness, or for any other purpose allowed by the law of evidence.

(23) *Deposition of Party, Agent, or Designee.* An adverse party may use for any purpose tThe deposition of a party or of anyone who, when deposed, at the time of taking the deposition was an the party's officer, director, or managing agent, or a person designeeated under Rule 30(b)(6) or 31(a)(4) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(34) *Unavailable Witness.* A party may use for any purpose Tthe deposition of a witness, whether or not a party, may be used by any party for any purpose if the cCourt finds:

(A) Tthat the witness is dead; or

(B) that the witness is at a greater distancemore than 25 miles from the place of trial or hearing or trial, or is outside of the United States, unless it appears that the absence of the witness's absence was procured by the party offering the deposition; or

(C) that the witness is unable to cannot attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable tocould not procure the attendance of the witness's attendance by subpoena; or

(E) upon application motion and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting thelive testimony of witnesses orally in open court, to allow permit the deposition to be used.

(5) *Limitations on Use.*

(A) *Deposition Taken on Short Notice.* A deposition must not be used taken without leave of court pursuant to a notice under Rule 30(a)(2)(C) shall not be used against a party who demonstrates that, having received less than 14 days' notice of the deposition, promptly moved when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(1)(B) requesting that the depositionit not be held

taken or be held taken at a different time or place—and such this motion iwas still pending at the timewhen the deposition is heldwas taken.

(B) *Unavailable Deponent; Party Could Not Obtain an Attorney.* A deposition taken without leave of court under the unavailability provision of Rule 30(a)(2)(C)(ii) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(46) *Videotape deposition of expert*. A videotape deposition of a treating or consulting physician or of any expert witness may be used for any purpose, unless otherwise ordered by the Court for good cause shown, even though the witness is available to testify, if the notice of that deposition specified that it was to be taken for use at trial.

(56) *Using Part of a Deposition.* If a party offers in evidence only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other parts which oughtthat in fairness to should be considered with the part introduced, and any party may itself introduce any other parts.

(7) *Substituting a Party.* Substitutingon of a partyies pursuant to Civilunder Rule 25 does not affect the right to use a depositions previously taken.

(8); *Deposition Taken in an Earlier Action*. A deposition lawfully taken and, if required, filed when an action has been brought in this Ccourt or in any federal- or state-court of the United States or of any state and another action may be used in a later action involving the same subject matter is afterward brought between the same parties, or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken thereforto the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the law of evidence.

(9) *Videotape Deposition of Physicians or Experts*. A videotape deposition of a treating or consulting physician or of any expert witness may be used for any purpose, unless otherwise ordered by the court for good cause, even though the witness is available to testify, if the notice of that deposition specified that it was to be taken for use at trial.

(b) OBJECTIONS TO ADMISSIBILITYbjections to admissibility. Subject to the provisions of Rules 28(b) and subdivision 32(d)(3) of this Rule, an objection may be made at a hearing orthe trial or hearing to the admission of receiving in evidence any deposition testimony or part thereof for any reason whichthat would require the exclusion of the evidence if the witness were thenbe inadmissible if the witness were present and testifying.

(c) EFFECT OF TAKING OR USING DEPOSITIONSffect of taking or using depositions. A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part thereof of it for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall does not apply to the use by an adverse party of a deposition under subdivision Rule 32(a)(32) of this Rule. At the hearing or trial, or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

(d) Effect of errors and irregularities in depositionsWAIVER OF OBJECTIONS.

(1) *As tTo the nNotice*. An objection to an

All errors and/or irregularities in the a deposition notice for taking a deposition are is waived unless written objection is promptly served in writing upon the party giving the notice.

(2) *To the Officer's Qualification As to disqualification of officer*. An Oobjection to taking a deposition because of based on disqualification of the officer before whom a deposition it is to be taken is waived if not unless made:

(A) before the taking of the deposition begins; or

(B) promptly as soon there after as the the basis for disqualification becomes known or, could be discovered with reasonable diligence, could have been known.

(3) *As tTo the tTaking of the dDeposition*.

(A) *Objections to the cCompetencey, of a witness or to the competency, rRelevancey, or mMateriality*. An objection to a deponent's competence—or to the competence, relevance, or materiality of testimony— are is not waived by failure to make them objection before or during the taking of the deposition, unless the ground of the objection is one which for it might have been obviated or removed if presented corrected at that time.

(B) *Objection to an Error or Irregularity*. An objection to an Eerrors and or irregularities occurring at the an oral examination is waived if:

(i) it relates into the manner of taking the deposition, in the form of the a questions or answers, in the oath or affirmation, or in the a party's conduct of parties, and or other matters that errors of any kind which might have been obviated, removed, or cured if promptly presented corrected at that time; and

(ii) it is not timely made during the deposition, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) *Objection to a Written Question*. An Oobjections to the form of a written questions submitted under Rule 31 are is waived unless if not served in writing upon the party propounding them submitting the question within the time allowed for serving the succeeding cross or other responsive questions or, if the question is a recross-question, and within 57 days after service of the last questions authorized being served with it.

(4) *As tTo completingon and Rreturning theof dDeposition*.

An objection to how the officer Errors and irregularities in the manner in which the testimony is transcribed the testimony—or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed sent, or otherwise dealt with the deposition—by the officer under Rules 30 and 31 are is waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness promptly after such defect is the error or irregularity becomes known, or, with due reasonable diligence, might could have been known, ascertained.

(e) FORM OF PRESENTATION orm of presentation. Unless the court orders Except as otherwise directed by the Court, a party offering deposition testimony pursuant to this Rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also must provide the Court with a transcript of the portions so offered any deposition testimony the party offers, but may provide the court with the testimony in nontranscript form as well. On request of any party's request in a case tried before a jury, deposition testimony offered in a jury trial for any purpose other than for impeachment purposes shall must be presented in nonstenographic nontranscript form, if available, unless the Ccourt for good cause orders otherwise.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 32*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) subsection (a)(4) refers to a distance of 25 miles instead of 100 miles; 2) subsection (a)(8) refers to actions in the Superior Court as well as actions in state or federal courts; 3) subsection (a)(9) addresses the use of videotaped depositions of physicians and other experts; 4) references to the Federal Rules of Evidence are replaced with "the law of evidence"; 5) section (c), entitled "Effect of Taking or Using Depositions," retains provisions that were eliminated from the federal rule when the Federal Rules of Evidence were adopted; and 6) the provisions contained in section (c) of the federal rule appear in section (e) of the Superior Court rule.

COMMENT

Largely identical to *Federal Rule of Civil Procedure 32* except that subparagraph (a)(3) refers to a 25 mile rather than 100 mile distance. Subparagraph (a)(4) is an amendment and covers the videotape depositions of expert witnesses. It is intended that such depositions will not be taken until after opposing parties have had the opportunity to obtain relevant discovery. Subparagraph (a)(5) parallels (a)(4) of the Federal Rule, but is revised so as to refer explicitly to previous actions either in the Superior Court or in any other state or federal court. Reference to the Federal Rules of Evidence has been deleted from paragraph (a). In addition, paragraph (c) was retained by this Court after its federal counterpart was eliminated upon the adoption of the Federal Rules of Evidence. Paragraph (e) is identical to paragraph (c) of *Federal Rule of Civil Procedure 32*.

Rule 33. Interrogatories to Parties

(a) IN GENERAL.

(1) *Number*. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 40 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).

(2) *Scope*. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(3) *Electronic Format*. A party, represented by counsel, serving interrogatories must, upon request of any other party, promptly transmit to such other party an electronic version of the interrogatories in a format that will enable the receiving party to copy the language of the interrogatories electronically. A self-represented party may participate in electronic discovery pursuant to this rule, provided that the party files a completed Civil Action Form 115, which includes the party's email address and confirms the party's capacity to file documents and receive the filings of other parties electronically and on a regular basis.

(b) ANSWERS AND OBJECTIONS.

(1) *Responding Party*. The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party

(2) *Time to Respond*. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant or within 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) *Answering Each Interrogatory*. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath. Answers and objections to interrogatories must identify and quote each interrogatory in full immediately preceding the answer or objection.

(4) *Objections*. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) *Signature*. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) USE. An answer to an interrogatory may be used to the extent allowed by the law of evidence.

(d) OPTION TO PRODUCE BUSINESS RECORDS. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden

of deriving or ascertaining the answer ~~is~~will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

(e) FILING. Except as provided for in Rule 5(d), interrogatories, answers, and any objections must not be filed with the court.

COMMENT TO 2017 AMENDMENTS

This rule incorporates the 2015 amendment to *Federal Rule of Civil Procedure 33*. Specifically, in subsection (a)(1), the cross-reference to Rule 26 has been updated to reflect that the proportionality factors are now in Rule 26(b)(1).

Section (d) is amended to include a stylistic change which was inadvertently omitted when the Superior Court rule was amended in 2015.

COMMENT

This rule is identical to *Federal Rule of Civil Procedure 33*, as amended in 2007, with certain exceptions. The rule retains four provisions of the existing rule that differ from the federal rule: (1) the provision in subsection (a)(1) that allows 40 interrogatories rather than 25, given that Rule 26 does not require the initial disclosures contemplated by *Federal Rule of Civil Procedure 26*; (2) the requirement of subsection (b)(3) that a party quote each interrogatory in full before answering or objecting to it; (3) the substitution of “law of evidence” for “rules of evidence” in section (c), because evidence in the District of Columbia is governed by statute and common law principles rather than rules comparable to the Federal Rules of Evidence; and (4) the requirement in section (e) that parties not file interrogatories, answers, and any objections with the court unless so ordered.

The rule adds a new subsection (a)(3), requiring represented parties, and self-represented parties electing to participate in electronic discovery to, upon request, transmit electronic copies of interrogatories to another party, facilitating compliance with subsection (b)(3). The additional language in subsection (b)(3) comes from Local Rule 26.2(d) of the United States District Court for the District of Columbia.

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

(a) IN GENERAL. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) PROCEDURE.

(1) *Contents of the Request*. The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) *Responses and Objections*.

(A) *Time to Respond*. The party to whom the request is directed must respond in writing within 30 days after being served, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant or within 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(B) *Responding to Each Item*. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for ~~an~~ objecting~~on~~ to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

(C) *Objections*. An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.

(D) *Responding to a Request for Production of Electronically Stored Information*. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

(E) *Producing the Documents or Electronically Stored Information*. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(F) *Quoting Each Request in Full*. Responses and objections to requests for production of documents must identify and quote each request in full immediately preceding the response or objection.

(3) *Electronic Format*. A party, represented by counsel, requesting production must, upon request of any other party, promptly transmit to such other party an electronic version of the request in a format that will enable the receiving party to copy the language of the request electronically. A self-represented party may participate in electronic discovery pursuant to this rule, provided that the party files a completed Civil Action Form 115, which includes the party's email address and confirms the party's capacity to file documents and receive the filings of other parties electronically and on a regular basis.

(c) NONPARTIES. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

COMMENT TO 2017 AMENDMENTS

This rule incorporates the 2015 amendments to *Federal Rule of Civil Procedure 34,* except for the amendment related to early Rule 34 requests, which were deemed inconsistent with Superior Court practice.

COMMENT

Identical to *Federal Rule of Civil Procedure 34*, as amended in 2007, except for: (1) the addition of language in subsection (b)(2)(A), clarifying the extended 75–day response period to requests for the United States, the District of Columbia, or officers or agents of either, and the extended 45-day response period to requests for all other defendants; (2) the addition of subsection (b)(2)(F), which requires that the responses and objections to requests for production must quote each request in full preceding the response or objection; and (3) the addition of subsection (b)(3), requiring represented parties, and self-represented parties electing to participate in electronic discovery to, upon request, transmit electronic copies of requests to any other party.

The language in subsection (b)(2)(F) comes from Local Rule 26.2(d) of the United States District Court for the District of Columbia.

Rule 35. Physical and Mmental eExaminations of persons.

(a) ORDER FOR AN EXAMINATIONrder for examination.

(1) *In General*. The court may order a party When thewhose mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the Court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authorityor to order to produce for examination the person in thea party's to produce for examination a person who is in its custody or under its legal control.

(2) *Motion and Notice; Contents of the Order*. The order:

(A) may be made only on motion for good cause shown and upon notice to all parties and the person to be examined; and

(B) to all parties and shallmust specify the time, place, manner, conditions, and scope of the examination, as well as and the person or persons by whom it is to be madewho will perform it.

(b) Report of examinerEXAMINER'S REPORT.

(1) *Request by the Party or Person Examined*. If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shallThe party who moved for the examination must, on request, deliver to the requestering party a copy of the detailed writtenexaminer's report, of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive fromThe request may be made by the party against whom the examination order was issued or by the person examined.

(2) *Contents*. The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) *Request by the Moving Party*. After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issuedis made a like reports of all earlier or lateranyexaminations, previously or thereafter made, of the same condition. But, unless, in the case of a those reports need not be delivered by the party with custody or control of examination of athe person examined ifnot a party, the party shows that it could notsuch a party is unable to obtain itthem. The Court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the Court may exclude the examiner's testimony if offered at trial.

(24) *Waiver of Privilege*. By requesting and obtaining the examiner'sa report, of the examination so ordered or by taking the deposingtion of the examiner, the party examined waives any privilege the partyit may have in that action or any other action involving the same controversy, regardingconcerning the testimony about all examinations of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(35) *Failure to Deliver a Report*. The court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) *Scope*. ~~This subdivision~~Rule 35(b) applies also to an examination~~s~~ made by the parties' agreement ~~of the parties~~, unless the agreement states ~~expressly provides~~ otherwise. ~~This subdivision~~Rule 35(b) does not preclude obtaining ~~discovery of a report of~~ an examiner's report or ~~the taking of a~~ deposi~~ng~~tion ~~of the~~ an examiner ~~in accordance with the provisions of any~~under other ~~R~~rule~~s~~.

COMMENT TO 2017 AMENDMENTS

Rule 35 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 35*. The phrase "where the action is pending" is still omitted from section (a) of the Superior Court rule.

COMMENT

Identical to *Federal Rule of Civil Procedure 35* except for deletion from section (a) thereof of the phrase "in which the action is pending."

Rule 37. Failure to Cooperate in Discovery; Sanctions

(a) MOTION FOR ORDER COMPELLING DISCOVERY.

(1) *In General*.

(A) *Certification of Good Faith Effort to Secure Required Discovery*. Before any motion to compel discovery is filed, the affected parties or counsel must meet in person for a reasonable period of time in an effort to resolve the disputed matter. The movant must accompany any motion to compel discovery with a certification that despite a good faith effort to secure it, the discovery material sought has not been provided.

(B) *Contents of Certification*. This certification must set out specific facts describing the good faith effort, including a statement of the date, time, and place of the meeting required by Rule 37(a)(1)(A), and must be placed immediately below the signature of the attorney or party signing the motion.

(C) *Requirement of Meeting Waived ~~i~~If No Response Made*. The requirement of a meeting is waived if:

(i) the motion concerns a failure to serve any response to a Rule 33, 34, or 36 discovery request, a failure to appear for a deposition, or a Rule 35 examination, and the motion is accompanied by a copy of a letter, sent at least 10 days before the motion was filed, asking that the opposing counsel or party respond to the discovery request or that the deponent or examinee appear for a rescheduled deposition or examination; or

(ii) the movant certifies that, despite having sent to the opposing counsel or party, at least 10 days before the motion was filed, a letter (a copy of which must be attached to the motion) proposing a time and place for a meeting, and despite having made ~~two~~2 telephone calls to the office of the opposing counsel or party (the date and time of each call must be specified in the motion), the movant has been unable to convene a meeting to resolve the disputed discovery matter.

(D) *Format of Motion to Compel.* Any motion to compel discovery must set out verbatim the question propounded and the answer given, or a description of the other discovery requested and the response to this request. The motion must also set out the reason or reasons the answer or response is inadequate.

(2) *Appropriate Court*. An application for an order to a party must be made to this court, or, on matters relating to a deposition, to the court in the jurisdiction where the deposition is being taken. A motion for an order to a nonparty must be made in the court where discovery is or will be taken.

(3) *Specific Motion*s.

(A) [Omitted].

(B) *To Compel a Discovery Response*. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to produce documents, electronically stored information, or tangible things, or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.

(C) *Related to a Deposition*. When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) *Evasive or Incomplete Answer or Response*. For purposes of Rule 37(a), an evasive or incomplete answer or response must be treated as a failure to answer or respond.

(5) *Payment of Expenses; Protective Orders*.

(A) *If the Motion Is Granted (or Discovery Is Provided After Filing)*. If the motion is granted—or if the requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay ~~to~~ the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the discovery without court action;

(ii) the opposing party's response or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) *If the Motion Is Denied*. If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) *If the Motion Is Granted in Part and Denied in Part*. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) FAILURE TO COMPLY WITH A COURT ORDER.

(1) *Sanctions* Sought *in the Jurisdiction Where the Deposition Is Taken*. If the court where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court. If a deposition-related motion is transferred to the court where the action is pending, and that court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.

(2) *Sanctions* Sought ~~by~~in *This Court*.

(A) *For Not Obeying a Discovery Order*. If a party or a party's officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4~~3~~)—fails to obey an order to provide or permit discovery, including an order under Rule 26(e), 35, or 37(a), the court may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for the purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) *For Not Producing a Person for Examination*. If a party fails to comply with an order under Rule 35(a)~~,~~ requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(2)(A)(i)–(vi), unless the disobedient party shows that it cannot produce the other person.

(C) *Payment of Expenses*. Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) FAILURE TO ADMIT. If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) PARTY'S FAILURE TO ATTEND ITS OWN DEPOSITION, SERVE ANSWERS TO INTERROGATORIES, OR RESPOND TO A REQUEST FOR INSPECTION.

(1) *In General*.

(A) *Motion; Grounds for Sanctions*. The court may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent—or a person designated under Rule 30(b)(6) or 31(a)(4~~3~~)— fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or ~~a~~ written response.

(B) *Certification*. A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) *Unacceptable Excuse~~s~~ for Failing to Act*. A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) *Types of Sanctions*. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)–(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) FAILURE TO ~~PROVIDE~~PRESERVE ELECTRONICALLY STORED INFORMATION. If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court: ~~Absent~~

~~exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.~~

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

(f) EXPENSES AGAINST UNITED STATES OR DISTRICT OF COLUMBIA. Except to the extent permitted by statute, expenses and fees may not be awarded against the United States or the District of Columbia under this rule.

COMMENT TO 2017 AMENDMENTS

This rule was amended to conform to the 2013 and 2015 amendments to *Federal Rule of Civil Procedure 37*. Section (b) was amended to allow the transfer of a deposition-related motion to the court where the action is pending. Violation of any resulting order may be treated as contempt of either the court where discovery is taken or the court where the action is pending.

Consistent with the 2015 federal amendment, section (e) now addresses the preservation of electronically stored information. The rule does not seek to define the duty to preserve; instead, it focuses on the remedies available once the court has determined that there was a duty to preserve electronically stored information and that the information was lost.

A cross-reference in subsection (b)(2)(B) has been corrected to reflect that a judge may issue any of the orders listed in Rule 37(b)(2)(A)(i)–(vi). Subsection (b)(2)(A)(vi) was inadvertently omitted when the Superior Court rule was amended in 2015.

COMMENT

Identical to *Federal Rule of Civil Procedure 37*, as amended in 2007, except for: (1) the deletion of references to initial disclosures under Rule 26(a) throughout; (2) the substitution of District of Columbia specific provisions for subsections (a)(1) and (2) and section (f); (3) the omission of subsection (a)(3)(A); (4) the addition of language referring to the production of documents, electronically stored information, and tangible things in subsection (a)(3)(B)(iv) to eliminate any arguable ambiguity as to the obligation to produce such items; (5) the substitution of District of Columbia specific titles in subsections (b)(1) and (2); and (6) the omission of subsection (c)(1). Section (g) from previous versions of the rule has been deleted.

The words "in person" have been added to subsection (a)(1) to clarify that the required meeting should be in person, which has always been the intention of the rule. As per the General Order, motions to compel discovery and motions relating to discovery must comply with Rules 5, 26(i) and 37(a) and must include the various

certifications required by Rule 37(a). The meeting required under the circumstances set forth in Rule 37(a) must be face to face, for a reasonable period of time (usually at least 60 minutes) in an effort to resolve the matter before filing a motion. Motions lacking any certification required by Rule 37(a), including the date, time, and place at which a meeting was held, will be summarily denied**.** Motions lacking a Certificate Regarding Discovery will not be accepted for filing.

TITLE VI. TRIALSrials.

Rule 38. Right to a Jury Ttrial of right; Demand.

(a) RIGHT PRESERVEDight preserved.
The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as providedgiven by an applicable statute—shall beis preserved to the parties inviolate.
(b) DEMANDemand. On any
Any party may demand a trial by jury of any issue triable of right by a jury, a party may demand a jury trial by:
(1) serving upon the other parties with a written demand—which may be included in a pleading—therefor in writing at any time after the commencement of the action and not later than 140 days after the service of the last pleading directed to suchthe issue is served,; and
(2) filing the demand in accordanceas required by with Rule 5(d). Such demand may be endorsed upon a pleading of the party.
(c) SPECIFYING ISSUESSame: Specification of issues.
In itsthis demand, a party may specify the issues which the partythat it wishes to haveso tried by a jury; otherwise, it is consideredthe party shall be deemed to have demanded trial bya jury trial foron all the issues so triable. If the party has demanded a jury trial by jury for onlyon only some of the issues, any other party may—within 140 days after being servedice ofwith the demand or within a shorter time ordered by the court—such lesser time as the Court may order, may serve a demand for a jury trial by jury ofn any other or all of thefactual issues of fact in the actiontriable by jury.
(d) WAIVERaiver; WITHDRAWAL.
The failure of aA party waives a jury trial unless itsto serve and file a demand is properly served and filed. as required by this rule constitutes a waiver by the party of trial by jury. Subject to the provisions of Rule 38-II, aA proper demand for trial by jury made as herein provided may not be withdrawn only if without the parties consent of the parties.
(e) [Deleted].

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 38*, as amended in 2007 and 2009, but maintains two local distinctions—1) in subsection (a), the phrase "applicable statute" is substituted for "federal statute"; 2) subsection (e) addressing admiralty and maritime claims is omitted.

COMMENT

Rule 38 is substantially similar to *Federal Rule of Civil Procedure 38* except for the deletion of section (e) thereof pertaining to admiralty and maritime claims and the substitution of "applicable statute" for "statute of the United States" in section (a).

Rule 38-I. [~~Reserved~~Deleted].

Rule 38-II. Failure to ~~a~~Appear for ~~t~~Trial as ~~c~~Consent to ~~t~~Trial ~~w~~Without ~~j~~Jury~~.~~

Failure of a party to appear for trial, in person or through counsel, ~~shall~~ will be deemed by the ~~C~~court to constitute ~~a~~ consent by that party to a trial~~that the case be tried~~ without a jury.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 39. Trial by Jjury or by the Court.

(a) WHEN A DEMAND IS MADEBy jury. When a trial by jury trial has been demanded underas provided in Rule 38, the action shallmust be designated upon the docket as a jury action. The trial ofn all issues so demanded shallmust be by jury, unless:

(1) the parties or their attorneys of record, by written file a stipulation to a nonjury trial orfiled with the Court or by an oral stipulation made in open court and entered i so stipulate on the record;, consent to trial by the Court sitting without a jury or

(2) the Ccourt, upon motion or ofn its own initiative, finds that a right of trial by jury ofn some or all of those issues there is no right to a jury trialdoes not exist under the Constitution or applicable law.

(b) WHEN NO DEMAND IS MADEBy the Court. Issues on whichnot demanded for a jury trial by jury is not properly demanded are toas provided in Rule 38 shall be tried by the Ccourt.; bBut the court may, on motion, order a jury trial on any issue for which a jury might have been , notwithstanding the failure of a party to demanded a jury in an action in which such a demand might have been made of right, the Court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) ADVISORYdvisory JURYjury; JURY TRIAL BY CONSENT and trial by consent. In anll actions not triable of right by a jury, the Ccourt, upon motion or ofn its own:

(1) initiative may try any issue with an advisory jury; or

(2), except in actions as to which an applicable statute provides for trial without a jury, the Court may, with the parties' consent, of both parties, may otry any issue byrder a trial with a jury whose verdict has the same effect as if a jury trial by jury had been a matter of right, unless the action is one for which an applicable statute provides a nonjury trial.

COMMENT TO 2017 AMENDMENTS

Rule 39 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 39*. As with the prior version of the rule, the exception in subsection (c)(2) is framed in terms of local practice.

COMMENT

Identical to *Federal Rule of Civil Procedure 39* except that "statutes of the United States" in section (a) has been changed to "applicable law" and the exception clause in section (c) has been rephrased so as to comprehend any applicable statute.

Rule 39-I. Appearance at ~~t~~Trial~~.~~

(a) WHEN NO RESPONSE BY ANY PARTY~~hen no response by any party~~.
When an action is called for trial and no party responds, the ~~C~~court may dismiss the same, with or without prejudice, or take such other action as may be deemed appropriate.

(b) WHEN NO RESPONSE BY PARTY SEEKING RELIEF~~hen no response by party seeking relief~~.
When an action is called for trial and the party seeking affirmative relief fails to respond, an adversary may have the claim dismissed, with or without prejudice as the c~~C~~ourt may decide, or the ~~C~~court may, in a proper case, conduct a trial or other proceeding.

(c) WHEN NO RESPONSE BY PARTY AGAINST WHOM RELIEF IS SOUGHT~~hen no response by party against whom relief is sought~~.
When an action is called for trial and a party against whom affirmative relief is sought fails to respond, in person or through counsel, an adversary may where appropriate proceed directly to trial. When an adversary is entitled to a finding in the adversary's favor on the merits, without trial, the adversary may proceed directly to proof of damages.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

See District of Columbia Transit System v. Young, 293 A.2d 488 (1972).

Rule 39-II. Number of ~~c~~Counsel~~.~~

(a) EXAMINING WITNESSES; ADDRESSING COURT. Except by permission of the ~~C~~court, only one attorney for each party ~~shall~~ may examine a witness or address the ~~C~~court on a question arising in a trial.

(b) FINAL ARGUMENTS. With the court's approval ~~of the Court~~, 2 attorneys for each party may address the ~~C~~court or jury in final arguments on the facts.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

This rule should be liberally construed and flexibly applied where representation is being provided by law students accompanied by supervising attorneys.

Rule 40. [~~Deleted~~Omitted].

Rule 40-I. Assignment of Ccases.

(a) Assignment of casesIN GENERAL. The clerk will randomly assign new civil actions to judges in the Civil Division.

(b) SPECIAL ASSIGNMENTS. The Chief Judge may specially assign Alla civil actions may be assigned for all purposes by the Chief Judge of the Superior Court to (1) a specific calendar or (2) a single judge. All proceedings in a case after its assignment shall be scheduled and conducted by the judge to whom the case is assigned in accordance with provisions in these Rules. Upon termination of an assignment of a judge to the Civil Division, the Chief Judge may designate the judge or judges to whom the cases on the calendar of the former judge shall be reassigned. The Chief Judge's authority under this Rule may be delegated to the Presiding Judge of the Civil Division the authority to make special assignment of cases only to a judge currently assigned to the Civil Division.

(b) Distribution of cases.

The Civil Clerk's Office shall randomly distribute all cases assigned pursuant to paragraph (a)(1) of this Rule to the judges assigned to the Civil Division.

(c) Notice of new trial datePROCEEDINGS AFTER ASSIGNMENT. All proceedings in a case after its assignment, including trial, will be scheduled and conducted by the assigned judge.

The assigned judge shall have sole responsibility for the assignment of trial dates for cases on the judge's calendar.

(d) REASSIGNMENT. When a judge's assignment to the Civil Division is concluded, the Chief Judge or the Presiding Judge may designate the judge or judges to whom the cases on the calendar of the previous judge will be reassigned.

Trial continuances.

No trial shall be continued except by order of the assigned judge upon a showing of specific and sufficient reasons why the applicant cannot attend the trial as scheduled or cannot try the case on the date scheduled. Applications for continuance shall be made to the assigned judge. Except for applications based on circumstances arising thereafter, application for such continuance must be made to the assigned judge not less than 30 days prior to scheduled trial date and must show by certificate of counsel or affidavit that all other parties were given reasonable notice of the applicant's intent to make application.

(e) ASSIGNMENT TO A MAGISTRATE JUDGE. Nothing in this Rrule shall precludes the assignment of civil actions to hearing commissionersmagistrate judges under Rule 73.

(f) RELATED CASES.

(1) "*Related Case" Defined*. Civil cases are deemed related when the earliest is still pending on the merits in the Superior Court and they:

(A) involve common property;

(B) involve common issues of fact;

(C) grow out of the same event or transaction; or

(D) involve common and unique issues of law, which appear to be of first impression in this jurisdiction.

(2) *Notification of Related Cases*. The parties must notify the clerk of the existence of related cases as follows:

(A) At the time of filing a civil case, the plaintiff or his attorney must indicate on a form provided by the clerk, the name, docket number and relationship of any related cases in the Superior Court or in the District of Columbia Court of Appeals. The plaintiff must serve a copy of this form on the defendant with the complaint. The defendant must serve a statement with the first responsive pleading either objecting or concurring with the related case designation.

(B) Whenever an attorney or party becomes aware of the existence of a related case, he or she must immediately notify, in writing, the judges on whose calendars the cases appear.

(g) REFILED CASES. If a case is refiled after it was dismissed, with or without prejudice, the clerk must reassign the case to the original judge unless the Presiding Judge orders otherwise. Additionally, cases are deemed refiled where a case is dismissed, with or without prejudice, and a second case is filed involving the same parties and relating to the same subject matter.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. The rule was also reorganized to clarify general assignment procedures. The provisions related to trial continuances were moved to Rule 16(k), which addresses other continuances; its location in Rule 40-I was a vestige of the original rule on assignment of trials by the assignment commissioner. Section (f), "Related Cases," has been moved from Rule 42(f). Section (g) is new, and it describes the procedure for assigning refiled cases.

COMMENT

Federal Rule of Civil Procedure 40 which authorized the establishment of local systems for the assignment and calendaring of cases has been deleted. It has been replaced by SCR Civil 40-I which describes the Superior Court's Assignment System. Note that the second and third sentences of paragraph (a) contain essentially the same provisions as appeared in former Rule 40-II(d) and that language of the last sentence of paragraph (a) is essentially the same as that which formerly appeared in paragraph (f) of Rule 40-I.

Paragraph (b), on random distribution of cases among the judges, is derived from former Rule 40-II(c). Its purpose is to insure equitable allocation of the caseload to all judges assigned to the Division and to preclude any potential for litigants to predetermine the judge to whom the case will be assigned.

Rule 40-II. ~~Certification~~ Designation and Aassignment of Ccases to Civil I Calendars~~.~~

(a) ~~Designation of Civil I cases~~IN GENERAL. All cases involving claims for relief based ~~up~~on exposure to asbestos or asbestos products ~~shall~~ must be designated to a Civil I calendar. The Presiding Judge of the Civil Division may designate any other case to a Civil I calendar.

(b) ON RECOMMENDATION. On motion of a party or sua sponte, a judge assigned to a case may recommend to the Presiding Judge that ~~All other~~the case~~s, if assigned to a specific calendar or a single judge pursuant to Rule 40-I(a), may~~ be designated to a Civil I calendar. ~~upon motion by any party or joint motion of the parties, subject to approval by the judge assigned to the case and by the Presiding Judge of the Civil Division, or cases may be so designated upon recommendation of the assigned judge sua sponte if the designation is approved by the Presiding Judge.~~

(c~~b~~) FACTORS CONSIDERED~~actors considered~~.

In ~~certify~~designating a case to a Civil I calendar, the Presiding Judge may consider the following:

(1) the estimated length of trial~~;~~,

(2) the number of witnesses that may appear~~;~~,

(3) the number of exhibits that may be introduced~~;~~,

(4) the nature of the factual and legal issues involved~~;~~,

(5) the extent to which discovery may require supervision by the ~~C~~court~~;~~,

(6) the number of motions that may be filed in the case~~;~~, or

(7) any other relevant factors.

(d~~c~~) DISTRIBUTION OF CIVIL I CASES~~istribution of Civil I cases~~. The Presiding Judge ~~shall~~ must assign cases designated to a Civil I calendar on a rotational basis unless doing so would have an adverse impact on the efficient resolution of a case.

(e~~d~~) ASSIGNMENT TO JUDGE~~ssignment to judge~~. All proceedings in a case after its assignment to a Civil I calendar ~~shall~~ must be scheduled and conducted by the judge to whom the case is assigned, except as otherwise provided in these r~~R~~ules. ~~Upo~~On the ~~termination of an assignment of~~When a judge's assignment to a Civil I calendar is concluded, the Chief Judge or the Presiding Judge must~~shall~~ designate the judge or judges to whom the cases on the calendar of the former Civil I judge ~~shall~~will be reassigned.

(f~~e~~) PROCEDURE~~rocedure~~. After a case has been assigned to a Civil I calendar, the judge's name and, when known, the calendar number ~~or judge's name shall~~ must appear below the ~~civil action~~case number on ~~all~~ every pleading and other paper~~s~~ filed in the case. ~~The filing of p~~Pleadings and other papers in cases designated to a Civil I calendar must~~shall~~ be ~~accomplish~~filed in accordance with ~~the provisions of~~ Rule 5(d) ~~and (e)~~.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 40-III. Collection and Ssubrogation Ccases.

(a) APPLICABILITYpplicability. This Rrule applies to all civil actions in which the complaint seeks:

(1) collection of a liquidated debt of greater than the maximum amount set under D.C. Code §Sec. 11-1321 (2017 Supp.) for jurisdiction of actions in the Small Claims and Conciliation Branch; or

(2) recovery as subrogee of damages of greater than the maximum amount set under D.C. Code §Sec. 11-1321 (2017 Supp.) for jurisdiction of actions in the Small Claims and Conciliation Branch.

(b) TIME ALLOWED FOR SERVICE OF PROCESSime allowed for service of process. Notwithstanding the provisions of Rule 4(m), proof of service of the summons and any complaint embraced withlisted in section Rule 40-III(a) of this Rule must be made no later than 180 days after the filing of the complaint. Failure to comply with the requirements of this Rrule willshall result in the dismissal without prejudice of the complaint. The Cclerk willshall enter the dismissal and shall serve notice thereof on the parties entitled thereto.

(c) EXTENSION OF TIME FOR SERVICE OF PROCESSxtension of time for service of process. Notwithstanding the provisions of Rule 6(b), the time allowed for service of process of complaints covered by this rRule will not be extended unless a motion for extension of time is filed within 180 days after the filing of the complaint. The motion must set forth in detail the efforts which have been made, and will be made in the future, to obtain service. An extended period for service will be granted only if exceptional circumstances, detailed in the motion, demonstrate that additional time is required in order to prevent manifest injustice.

(d) PLAINTIFF'S CONSENT TO MAGISTRATE JUDGE CALENDARlaintiff's consent to hearing commissioner calendar. Upon filing any complaint covered by this rRule, plaintiff may file a written consent to have the complaint assigned to a magistrate judgehearing commissioner calendar. If such consent is filed, the magistrate judgehearing commissioner may rule on any motion, and take any other judicial action (including conducting ex parte proof of damage hearings), as to any defendant who has not answered or otherwise responded to the complaint.

(e) INITIAL SCHEDULING CONFERENCEnitial status hearing. As soon as practicable after the filing of any defendant's response to a complaint covered by this Rrule, the Ccourt mustshall notify the parties to appear for an initial status hearingscheduling conference. If all appearing parties so consent, the case, including all claims therein, shall may be assigned to the magistrate judgehearing commissioner calendar. If the parties have thus consented, the magistrate judgehearing commissioner will ascertain the status of the case, rule on any pending motions, explore the possibilities for early resolution through settlement or alternative dispute resolution techniques, and determine a reasonable time frame for bringing the case to conclusion. After consulting with the attorneys for the parties and with any unrepresented parties, the hearing commissionermagistrate judge will schedule future events in the case.

(f) WITHDRAWAL OF CONSENT TO MAGISTRATE JUDGE CALENDARithdrawal of consent to hearing commissioner calendar. If a party has consented to the assignment of the case to the magistrate judgehearing commissioner calendar, such consent may

be withdrawn only for good cause ~~shown~~ upon leave of the P~~p~~residing J~~j~~udge of the Civil Division or that judge's designee.

(g) C OPIES OF PAPERS TO MAGISTRATE JUDGE~~opies of papers to magistrate judge~~.

(1) *Motions*. ~~In any case assigned to the magistrate judge calendar, the~~When a party fil~~es, by non-electronic means,~~~~ing~~ a~~ny~~ motion or ~~any~~ paper relating to a motion (i.e., an opposition to a motion, memorandum of points and authorities, related exhibits, ~~related thereto~~ or a proposed order) in a case assigned to the magistrate judge calendar, the party ~~shall~~must deliver a copy to the magistrate judge as follows:~~, unless the filings are designated as ones which may be electronically filed,~~

(A) if the motion or paper is filed in person at the clerk's office, the party, on the date the original is filed, must hand-deliver ~~(or if the original paper has been mailed, may mail),~~a copy addressed to the magistrate judge to the court mail depository~~on the date the original is filed~~; or

(B) if the motion or paper is mailed, the party, on the date the original is mailed, must mail a copy to the magistrate judge~~or mailed, a copy thereof to the court mail depository of the magistrate judge currently assigned to the collection/subrogation calendar~~.

(2) *Other Pleadings and Papers*. No other pleading or paper ~~shall~~should be ~~so~~ delivered to the magistrate judge unless so ordered.

(h) A SSIGNMENT TO A JUDGE'S CALENDAR~~ssignment to a judge's calendar~~.

In any case ~~embraced within~~covered by ~~section~~ Rule 40-III(a) ~~of this Rule~~, if the plaintiff does not file a consent as provided in ~~section~~ Rule 40-III(d) ~~of this Rule~~, the case must~~shall~~ be assigned to a judge's individual calendar pursuant to Rule 40-I. A complaint covered by this rule ~~shall~~must also be promptly assigned to a judge's individual calendar ~~pursuant to~~in accordance with Rule 40-I if any party makes a jury demand ~~or fails at the Initial Status Hearing to consent to assignment of the case to the hearing commissioner calendar~~.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 41. Dismissal of Aactions.

(a) VOLUNTARY DISMISSALoluntary dismissal: Effect thereof.

(1) *By the pPlaintiff; by stipulation.*

(A) *Without a Court Order.* Subject to the provisions of Rules 23(e), of23.1(c), 23.2, and Rule 66, and of any applicable statute, the plaintiffan action may be dismissed by the plaintiff an action without a court order of Court (i) by filing:

(i) a notice of dismissal at any time before service by the adverseopposing party serves either of an answer or of a motion for summary judgment; , whichever first occurs, or

(ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action.

(B) *Effect.* Unless the notice or stipulation states otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice.. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) *By Court oOrder; Effect of Court.* Except as provided in Rule 41(a)paragraph (1) of this subdivision of this Rule, an action may shall not be dismissed at the plaintiff's request only byinstance save upon court order of the Court and up, on such terms and conditions asthat the Ccourt considersdeems proper. If a defendant has pleaded a counter-claim has been pleaded by a defendant prior to thebefore being servedice upon the defendant ofwith the plaintiff's motion to dismiss, the action mayshall not be dismissed overagainst the defendant's objection only ifunless the counterclaim can remain pending for independent adjudication by the Court. Unless the order states otherwise specified in the order, a dismissal under this paragraphRule 41(a)(2) is without prejudice.

(b) INVOLUNTARY DISMISSAL; EFFECTnvoluntary dismissal: Effect thereof.

(1) *By the Court.*

(A) *In General.* For failure ofIf the plaintiff fails to prosecute or to comply with these Rrules or anny court order: of Court,

(i) a defendant may move forto dismissal of anthe action or of any claim against itthe defendant or; or

(ii) the Ccourt may, on its own initiativesua sponte, enter an order dismissing the action or any claim therein.

(B) *Result of Dismissal.* An order dismissing a claim for failure to prosecute must specify that the dismissal is without prejudice, unless the court determines that the delay in prosecution of the claim has resulted in prejudice to an opposing party. Unless the dismissal order states otherwise or as provided elsewhere in these rules, a dismissal by the court—except a dismissal for lack of jurisdiction or for failure to join a party under Rule 19—operates as an adjudication on the merits.

(2) *By the Clerk.*

(A) *In General.* The clerk may, on his or her own initiative, and with written notice to the parties:

(i) in a case where there is only one defendant, dismiss the case for failure to file proof of service;

(ii) in a case where there are multiple defendants, dismiss any individual defendant for whom no proof of service has been filed;

(iii) dismiss a case for failure to comply with a court order requiring the filing of supplemental proof of service by a date certain, unless the court has ordered otherwise;

(iv) require a supplementation, for the judge or magistrate judge to consider, of any proof of service that is incomplete, unclear, or does not on its face adequately explain why the person allegedly served was authorized to accept service on behalf of the defendant; and

(v) dismiss a case when otherwise authorized by these rules or by a court order.

(B) *Result of Dismissal*. Unless a court order specifies otherwise, a dismissal by the clerk is without prejudice.

(3) *Effect*. Any order of dismissal entered ~~sua sponte, including a dismissal for failure to effect service within the time prescribed in Rule 4(m),~~by the court or the clerk under this rule does~~shall~~ not take effect until ~~fourteen (~~14~~)~~ days after the date on which it is docketed and must~~shall~~ be vacated upon the granting of a motion filed by the plaintiff within the~~such~~ 14-~~-~~day period showing good cause why the case should not be dismissed. ~~Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.~~

(c) DISMISSING A COUNTERCLAIM, CROSSCLAIM, OR THIRD-PARTY CLAIM~~ismissal of counterclaim, cross-claim, or 3rd-party claim~~.

~~The provisions of t~~This ~~R~~rule apply~~ies~~ to a~~the~~ dismissal of any counterclaim, crossclaim, or ~~3rd~~third-party claim. A claimant's voluntary dismissal ~~by the claimant alone pursuant to paragraph (1) of subdivision (a) of this~~under Rule 41(a)(1)(A)(i) must~~shall~~ be made:

(1) before a responsive pleading is served; or

(2)~~,~~ if there is no~~ne~~ responsive pleading, before ~~the introduction of~~ evidence is introduced at a~~the~~ hearing or trial ~~or hearing~~.

(d) COSTS OF A PREVIOUSLY DISMISSED ACTION~~osts of previously dismissed action~~.

If a plaintiff who previously~~has once~~ dismissed an action in any court ~~commences~~files an action based ~~up~~on or including the same claim against the same defendant, the ~~C~~court:

(1) may ~~make such~~ order the plaintiff to~~for the~~ pay~~ment~~ all or part of the costs of that previous~~e~~ action; and

(2) ~~previously dismissed as it may deem proper and~~ may stay the proceedings ~~in the action~~ until the plaintiff has complied ~~with the order~~.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 41*, as amended in 2007, but maintains the following local distinctions: 1) in subsection (a)(1)(A), "applicable statute" was substituted for "federal statute"; 2) subsection (b)(1) includes language from United States District Court for the District of Columbia Local Civil Rule 83.23, which specifies that the court may dismiss a case on its own initiative and that an order of dismissal must state that it is without prejudice unless the opposing party would

suffer prejudice from the delay; 3) subsection (b)(1)(B) includes the phrase “or as provided elsewhere in these rules” to clarify that where dismissal under a rule other than Rule 41 is required to be without prejudice (such as Rule 4(m)), a dismissal under that other rule does not operate as an adjudication on the merits; 4) the reference to dismissal for “improper venue” is omitted from subsection (b)(1)(B); and 5) subsection (b)(2) allows the clerk to dismiss an action without prejudice in certain situations—a deviation which is necessary because of the significantly higher volume of annual filings in the Superior Court compared to the federal district courts.

COMMENT

SCR Civil 41 is identical to *Federal Rule of Civil Procedure 41* except for the substitution of "applicable statute" for "statute of the United States" in section (a) and deletion of venue reference in section (b). Language has also been added to paragraph (b) of this Rule making it clear that the Court or Clerk may, sua sponte, dismiss an action when a plaintiff fails to prosecute or to comply with the Rules or any order of Court.

Rule 41-I. ~~Dismissal for failure to prosecute.~~[Deleted].

~~(a) Dismissal without prejudice; notice of.~~

~~Any time after April 1, 1991, if a party seeking affirmative relief shall have failed for 90 days from the time action may be taken to comply with any law, Rule or order requisite to the prosecution of that party's claim, to avail of a right arising through the default or failure of an adverse party, or take other action looking to the prosecution of the claim, the complaint, counterclaim, crossclaim, or 3rd party complaint of said party, as the case may be, shall stand dismissed without prejudice, whereupon the Clerk shall make entry of that fact and serve notice thereof by mail upon every party not in default for failure to appear, of which mailing the Clerk shall make an entry.~~

~~(b) [Deleted].~~

~~(c) Referral to the Disciplinary Board.~~

~~When a case has been dismissed because of inexcusable neglect or other dereliction of counsel and is reinstated by the Court to prevent unfairness to a litigant, the Court granting the motion to reinstate may refer the matter involving the delinquent or offending counsel to the Disciplinary Board of the District of Columbia Court of Appeals for appropriate action, citing the circumstances of the dismissal and subsequent reinstatement.~~

~~(d) Applicability.~~

~~This Rule shall only be applicable to cases filed before January 1, 1991 which have not been assigned to a specific judge or a specific calendar.~~

~~COMMENT~~

~~Rule 41-I provides a mechanism for dismissal for want of prosecution of cases not assigned to a particular calendar or judge.~~

Rule 42. Consolidation; Sseparate Ttrials.

(a) CONSOLIDATIONonsolidation.

(1) *In General*. If actions before the courtWhen actions involvinge a common question of law or fact, are pending before the Ccourt, it may:

(A) order a joint for hearing or trial of any or all the matters atin issue in the actions;

(B) it may order allconsolidate the actions; or

(C) consolidated; and it may make suchissue any other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(2) *Motion Judge*. Any motion to consolidate 2two or more civil actions shall must be decided by the judge on whose calendar appears the oldest assigned case covered by the motion. If the motion is granted, all the consolidated cases shall must be placed on the calendar of the judge who granted the motion.

(b) SEPARATE TRIALSeparate trials.

The Court, in furtherance ofFor convenience, or to avoid prejudice, or when separate trials will be conducive to expediteion and economyize, the court may order a separate trial of one or more separate issues,any claims, cross-claims, counterclaims, or 3rdthird-party claims. When ordering, or of any a separate trial, the court must preserve any right to a jury trialissue or of any number of claims, cross-claims, counterclaims, 3rd-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by an applicable statute.

(c) Related cases.

(1) Civil cases are deemed related when the earliest is still pending on the merits in the Superior Court and they(i) involve common property; or (ii) involve common issues of fact; or, (iii) grow out of the same event or transaction; or, (iv) involve common and unique issues of law which appear to be of first impression in this jurisdiction. (2) The parties shall notify the clerk of the existence of related cases as follows: At the time of filing a civil case, the plaintiff or his attorney shall indicate on a form provided by the clerk, the name, docket number and relationship of any related cases pending in the Superior Court or in the D.C. Court of Appeals. The plaintiff shall serve a copy of this form on the defendant with the complaint. The defendant shall serve a statement with the first responsive pleading either objecting or concurring with the related case designation.

(3) Whenever an attorney or party becomes aware of the existence of a related case, he or she shall immediately notify, in writing, the judges on whose calendars the cases appear.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 42*, as amended in 2007, but maintains the following local distinctions: 1) subsection (a)(2) has been added to address responsibility for ruling on a motion to consolidate; and 2) the word "federal" has been omitted from section (b). Section (c), "Related Cases," has been moved to Rule 40-I so that Rule 42 more closely aligns with its federal counterpart. This placement also conforms with the placement of similar provisions in United States District Court for the District of Columbia Local Civil Rule 40.5.

COMMENT

Rule 42 differs from *Federal Rule of Civil Procedure 42* in several respects. Added to paragraph (a) is a provision that the judge on whose calendar appears the oldest assigned case will make the determination as to whether or not other related actions will be consolidated with the case on that judge's calendar. In paragraph (b) the phrase "an applicable statute" is substituted for "a statute of the United States." Also added is paragraph (c) which defines what is meant by "related cases." This substantially tracks the definition used by the United States District Court for the District of Columbia.

Rule 43. Evidence.

(a) IN GENERAL. The admissibility of evidence and the competency and privileges of witnesses are governed by the principles of the common law as they may be interpreted by the courts in the light of reason and experience, except when a statute or these rules otherwise provide.

(b) IN OPEN COURTForm and admissibility. AtIn every trial, the witnesses' testimony of witnesses shallmust be taken in open court unless otherwise provided by these rRules. The Court may, Ffor good cause shown in compelling circumstances and upon with appropriate safeguards, the court may permit presentation of testimony in open court by contemporaneous transmission from a different location.

All evidence shall be admitted which is admissible under applicable statutes, or under the rules of evidence applied in the District of Columbia. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statute or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

(bc) MODE AND ORDER OF EXAMINING WITNESSES AND PRESENTING EVIDENCE. *Federal Rule of Evidence 611* is incorporated herein.Scope of examination and cross-examination.

A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate the witness by leading questions and contradict and impeach the witness in all respects as if the witness had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of the examination in chief.

(cd) RULINGS ON EVIDENCE. *Federal Rule of Evidence 103* is incorporated herein. Record of excluded evidence. In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the Court, the examining attorney may make a specific offer of what the attorney expects to prove by the answer of the witness. The Court may require the offer to be made out of the hearing of the jury. The Court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the Court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(de) AFFIRMATION INSTEAD OF AN OATHffirmation in lieu of oath. Whenever under these rules require an oath is required to be taken, a solemn affirmation may be accepted in lieu thereofsuffices.

(ef) EVIDENCE ON A MOTIONvidence on motions. When a motion is basedrelies on facts not appearing ofoutside the record, the Ccourt may hear the matter on affidavits or presented by the respective parties, but the Court may direct that the matter be heardhear it wholly or partly on oral testimony or on depositions.

(f) Interpreters.

~~The Court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by 1 or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court.~~

COMMENT TO 2017 AMENDMENTS

Rule 43 differs substantially from *Federal Rule of Civil Procedure 43*, as amended in 2007, and from the prior rule. Section (a) is taken from Criminal Rule 26. Sections (c) and (d) incorporate by reference *Federal Rules of Evidence 611* and *103*, respectively. Sections (b), (e), and (f) are substantially identical to sections (a), (b), and (c) of the federal rule. The section regarding interpreters has been deleted. The subject of interpreters is addressed in statutes, administrative orders, and Department of Justice guidance.

Rule 43-I. Record ~~made in~~of a ~~r~~Regularly ~~course of business~~Conducted Activity; Public Record; ~~p~~Photographic ~~c~~Copies~~.~~

(a) RECORD OF A REGULARLY CONDUCTED ACTIVITY. A record of an act, event, condition, opinion, or diagnosis is not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness, if:

(1) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

(2) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(3) making the record was a regular practice of that activity;

(4) all these conditions are shown by the testimony of the custodian or another qualified witness or by other means as may be provided by statute; and

(5) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

~~Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility.The term "business", as used in this section, includes business, profession, occupation, and calling of every kind.~~

(b) PUBLIC RECORDS. A record or statement of a public office is not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness, if:

(1) it sets out:

(A) the offices' activities;

(B) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(C) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(2) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

(c) PHOTOGRAPHIC COPIES.

(1) *In General*. ~~If any business, institution, member of a profession or calling or any department or agency of government, in the regular course of business or activity, has kept or recorded any memorandum, writing, entry, print, representation or combination thereof of any act, transaction, occurrence or event, and in the regular course of business, has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process, which appears to accurately reproduces or forms a durable medium for so reproducing the original, t~~The reproduction of a record or an enlargement or facsimile of the reproduction, when satisfactorily identified, is as admissible in evidence as the original ~~itself~~, whether the original is in existence or not, if ~~and a~~An enlargement ~~of such reproduction is likewise also~~ admissible in evidence. any business, institution, member

of a profession or calling, or any department or agency of government, in the regular course of business or activity, has:

(A) kept or recorded any memorandum, writing, entry, print, representation or combination thereof of any act, transaction, occurrence or event; and

(B) caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process, which appears to accurately reproduce or form a durable medium for reproducing the original,

(2) *Admission of Original*. The introduction of a reproduced record, ~~or~~ enlargement, or facsimile does not preclude admission of the original.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

The rule was also amended to make it more consistent with federal practice. Section (a) adopts language from *Federal Rule of Evidence* 803(6), except that the reference to "a certification that complies with [*Federal Rule of Evidence*] *902(11) or (12)*" was replaced with "by other means as may be provided by statute." While the majority of states permit authentication of domestic or foreign business records by a certification under 902(11) or (12), this jurisdiction does not currently permit it.

Section (b) adopts language from *Federal Rule of Evidence* 803(8). Section (c) maintains the Superior Court practice of permitting photographic copies.

Rule 43-II. [~~Omitted~~Deleted].

COMMENT

The subject matter of former Rule 43-II is now treated in Rule 7-I.

Rule 44. Provingof anof oOfficial Rrecord.

(a) AuthenticationMEANS OF PROVING.

(1) *Domestic Record*. Each of the following evidences an official record—or an entry in it—that is otherwise admissible and isAn official record kept within the United States, or any state, district, or commonwealth, or within aany territory subject to the administrative or judicial jurisdiction of the United States:, or an entry therein, when admissible for any purpose, may be evidenced by

(A) an official publication thereof of the record; or

(B) by a copy attested by the officer having thewith legal custody of the record, or by the officer's deputy, and accompanied by a certificate that suchthe officer has the custody. The certificate may must be made under seal:

(i) by a judge of a court of record of the district or political subdivision in whichwhere the record is kept; or

(ii), authenticated by the seal of the court, or may be made by any public officer having with a seal of office and having with official duties in the district or political subdivision in whichwhere the record is kept, authenticated by the seal of the officer's office.

(2) *Foreign Record*.

(A) *In General*. Each of the following evidences a foreign official record—or an entry in it—that is otherwise admissible:

A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by (i) an official publication thereof the record; or

(ii) the record—or a copy— thereof,that is attested by an person authorized person to make the attestation, and is accompanied either by a final certification as to theof genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) *Final Certification of Genuineness*. A final certification must certifyof the genuineness of the signature and official position (i) of the attestoring person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation;, by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) *Other Means of Proof*. If all parties have had a reasonable opportunity has been given to all parties to investigate a foreign record'sthe authenticity and accuracy, of the documents, the cCourt may, for good cause, shown,either:

(i) admit an attested copy without final certification; or

(ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) LACK OF A RECORDack of record.

A written statement that after diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must found to exist in the records

~~designated by the statement,~~be authenticated ~~as provided in subdivision~~under Rule 44(a)(1). For foreign records, the statement ~~of this Rule in the case of a domestic record, or~~ must comply~~ing~~ with ~~the requirements of subdivision~~ Rule 44(a)(2)(C)(ii). ~~of this Rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.~~

(c) OTHER PROOF~~ther proof~~. A party may~~This Rule does not prevent the proof of~~ prove an official record~~—~~s or ~~of~~an entry or lack of entry ~~therein~~ in it~~—~~by any other method authorized by law.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 44*, as amended in 2007.

Rule 44-I. Provingof of Sstatutes, Oordinances, and Rregulations.

Printed books or pamphlets purporting on their face to be the statutes, ordinances, or regulations, of the United States, or of any state or territory thereof the United States, or of any foreign jurisdiction, which are either published by the authority of any suchthe state, territory, or foreign jurisdiction or are commonly recognized in its courts, shall must be presumptively considered by the cCourt to constitute thesuch statutes, ordinances, or regulations. The Ccourt's determination on such a matter shall must be treated as a ruling on a question of law.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 44.1. Determining~~ation of~~ ~~f~~Foreign ~~l~~Law~~.~~

A party who intends to raise an issue ~~concerning the law of a foreign country shall~~about a foreign country's law must give notice by a pleading~~s~~ or other writing~~reasonable written notice~~. In determining foreign law, ~~T~~the ~~C~~court~~, in determining foreign law,~~ may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The ~~C~~court's determination must~~shall~~ be treated as a ruling on a question of law.

COMMENT TO 2017 AMENDMENTS

Rule 44.1 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 44.1*.

COMMENT

Identical to Federal Rule of Civil Procedure 44.1 except that it refers to Rule 43 of the Civil Rules of this Court rather than to the Federal Rules of Evidence.

Rule 45. Subpoena

(a) IN GENERAL.

(1) *Form and Contents*.

(A) *Requirements—In General*. Every subpoena must:

(i) state the name of the court;

(ii) state the title of the action, its civil action number, the calendar number, when known, and if assigned to a specific judge or magistrate judge, the name of that judge or magistrate judge;

(iii) command each person to whom it is directed to do the following at a specified time and place within the District of Columbia, unless the parties and person subpoenaed otherwise agree or the court, upon application, fixes another convenient location: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(c) and (d).

(B) *Command to Attend a Deposition—Notice of the Recording Method*. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information*. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) *Command to Produce; Included Obligations*. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person~~arty~~ to permit inspection, copying, testing, or sampling of the materials.

(2) [Omitted].

(3) *Issued by Whom*. The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney authorized to practice in the District of Columbia also may issue and sign a subpoena ~~as an officer of the court~~.

(4) *Notice to Other Parties Before Service*. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

(b) SERVICE.

(1) *By Whom and How; Tendering Fees~~; Serving a Copy of Certain Subpoenas~~*. Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for one day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or the District of Columbia or any officers or agencies of either. ~~If the subpoena commands production of documents, electronically stored~~

~~information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party.~~

(2) *Service in the District of Columbia*. Subject to Rule 45(c)(3)(A)(ii), a subpoena may be served at any place:

(A) within the District of Columbia;

(B) outside the District of Columbia but within 25 miles of the place specified for the deposition, hearing, trial, production, or inspection; or

(C) that the court authorizes on motion and for good cause, if an applicable statute so provides.

(3) *Serving in a Foreign Country*. *28 U.S.C. § 1783* governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country.

(4) *Proof of Service*. Proving service, when necessary, requires filing with the clerk of the court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA; ENFORCEMENT.

(1) *Avoiding Undue Burden or Expense; Sanctions*. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection*.

(A) *Appearance Not Required*. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for deposition, hearing, or trial.

(B) *Objections*. A person commanded to produce documents, electronically stored information, or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena*.

(A) *When Required*. On timely motion, the court must quash or modify a subpoena that:

(i) fails to allow reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 25 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place to the place of trial;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted*. To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 25 miles to attend trial.

(C) *Specifying Conditions as an Alternative*. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents or Electronically Stored Information*. These procedures apply to producing documents or electronically stored information:

(A) *Documents*. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified*. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form*. The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information*. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection*.

(A) *Information Withheld*. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation materials must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced*. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court ~~under seal~~ for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) TRANSFERRING A SUBPOENA-RELATED MOTION. A subpoena-related motion may be transferred to the court where the action is pending if the person subject to the subpoena consents or if the court finds exceptional circumstances. To enforce its order, the court where the action is pending may transfer the order to the court where the motion was made.

(f~~e~~) CONTEMPT. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

COMMENT TO 2017 AMENDMENTS

This rule conforms to the 2013 amendments to *Federal Rule of Civil Procedure 45* with the following exceptions: 1) subsection (a)(2) of the federal rule, which states that "[a] subpoena must issue from the court where the action is pending," has been omitted as inconsistent with language in the Uniform Interstate Depositions and Discovery Act (D.C. Code §§ 13-441 to -448 (2012 Repl.)) that instructs the Superior Court clerk to "issue a subpoena for service upon the person to which the foreign subpoena is directed"; 2) the amendment to permit service throughout the United States has been omitted as inconsistent with D.C. Code § 11-942 (2012 Repl.); 3) new section (c) of the federal rule has been rejected in order to maintain the Superior Court rule's focus on place of service, which is also the focus of D.C. Code § 11-942 (2012 Repl.); 4) language in new section (e) (section (f) in the federal rule) has been modified to reflect omission of federal subsection (a)(2); and 5) the second sentence in section (f) of the federal rule, which authorizes an attorney to file papers and appear in a district court where s/he may not be barred, has been rejected as locally inapplicable.

COMMENT

Identical to *Federal Rule of Civil Procedure 45*, as amended in 2007, except for: (1) references to 100 mile limits in the federal rule have been changed to 25 miles, which preserves the geographic proportionality originally expressed by Congress in D.C. Code § 11-942; (2) the omission of the inapplicable subsection (a)(2); (3) the addition of language in subsection (a)(1)(A)(iii) providing that the deposition, production, or inspection of documents must be in the District of Columbia, unless otherwise agreed or ordered by the court; and (4) the substitution of specific local language for inapplicable federal language in subsections (a)(1)(A)(i)–(ii), (a)(3), (b)(2), and (c)(3)(A)(ii).

This rule provides a means for issuing deposition subpoenas for nonresidents of the District of Columbia in cases which qualify, but does not preclude the alternatives of filing with the court a motion for appointment of an examiner under Rule 28-I or resorting directly to the courts of another jurisdiction under its rules and statutes.

Subpoenas issued by attorneys under subsection (a)(3) must be substantially in the format of Civil Action Form 14.

Rule 46. Objecting to a Ruling or Order~~Exceptions unnecessary.~~

A ~~F~~formal exception~~s~~ to a ruling~~s~~ or order~~s of the Court are~~ is unnecessary. ~~; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time~~ When the ruling or order ~~of the Court~~ is requested or made ~~or sought~~, ~~makes known to the Court the action which the~~ a party ~~desires~~ need only state the action that it wants the ~~C~~court to take or ~~the party's~~ objection ~~sion~~ to, ~~the action of the Court and~~along with the grounds ~~therefor~~for the request or objection~~;~~. ~~and, if a party has no opportunity~~ Failing to object ~~to a ruling or order at the time it is made, the absence of an objection~~ does not ~~not thereafter~~ prejudice ~~the~~ a party who had no opportunity to do so when the ruling or order was made.

COMMENT TO 2017 AMENDMENTS

Rule 46 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 46*.

COMMENT

Identical to *Federal Rule of Civil Procedure 46*.

Rule 47. Selecti~~o~~ng ~~of~~ Jjurors~~.~~

(a) ~~Examination of jurors~~EXAMINING JURORS. The c~~C~~ourt may permit the parties or their attorneys to ~~conduct the examination of~~examine prospective jurors or may itself ~~conduct the examination~~do so. ~~In the latter event,~~ If the c~~C~~ourt examines the jurors, it ~~shall~~must permit the parties or their attorneys to ~~supplement the examination by such~~ make any further inquiry ~~as~~ it ~~deems~~ considers proper, or ~~shall~~ must itself ask any of their ~~submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.~~ additional questions it considers proper.

(b) PEREMPTORY CHALLENGES. The court must allow each party to exercise 3 peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly. All challenges for cause or favor, whether to the array or panel or to individual jurors, must be determined by the court.

(c) ~~Excuse~~EXCUSING A JUROR. During trial or deliberation, ~~T~~the c~~C~~ourt may ~~for good cause~~ excuse a juror for good cause~~from service during trial or deliberation~~.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 47*, as amended in 2007, except that section (b) includes language from *28 U.S.C. § 1870* instead of just a reference to the statute.

COMMENT

Identical to *Federal Rule of Civil Procedure 47*.

Rule 47-I. ~~Peremptory challenges~~[Deleted].

~~In civil cases, each party shall be entitled to 3 peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the Court may allow additional peremptory challenges and permit them to be exercised separately or jointly.~~

~~All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the Court.~~

COMMENT TO 2017 AMENDMENTS

The substance of Rule 47-I has been moved to Rule 47(b), where peremptory challenges are addressed in the federal rules.

~~COMMENT~~

~~Identical to *28 U.S.C. § 1870*.~~

Rule 48. Number of Jjurors.; Verdict; Polling

(a) NUMBER OF JURORS. In all jury cases theA jury shall consist ofmust begin with at least six6 jurors, but the court may empanel up to 6 plus such number of additional jurors as the Court mayit deems necessary. The Court shall seat a jury of not fewer than six and not more than twelve members and allEach jurors shallmust participate in the verdict unless excused from service by the Court pursuant tounder Rule 47(cb).

(b) VERDICT. Unless the parties otherwise stipulate otherwise, (1) the verdict shallmust be unanimous and (2) no verdict shallmust be taken fromreturned by a jury reduced in size to fewer thanof at least six6 members.

(c) POLLING. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 48*, as amended in 2007 and 2009, except for language in section (a), which specifies that the decision to empanel additional jurors rests with the court.

Section (c) regarding polling is new to the federal and Superior Court civil rules. In *Harris v. United States*, 622 A.2d 697 (D.C. 1993), the District of Columbia Court of Appeals examined under what conditions a trial court should require a jury to resume deliberations after a juror dissents in open court during a jury poll. The court noted that there is less coercive potential if the dissenting juror is earlier in line and the poll is terminated. *Id*. at 703.

COMMENT

Identical to *Federal Rule of Civil Procedure 48* except that a jury demand under SCR Civ 38 is conclusively presumed to be to a jury of 6 persons unless the demand expressly states otherwise**.**

Rule 49. Special Vverdicts; General Verdict and Questions and interrogatories.

(a) SPECIAL VERDICT.Special verdicts.

(1) *In General.* The Ccourt may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. The court may do so by:In that event the Court may submit to the jury

(A) submitting written questions susceptible of a categorical or other brief answer;

(B) or may submitting written forms of the several special findings which that might properly be made under the pleadings and evidence; or

(C) it may useing such any other method that the court considers appropriate.of submitting the issues and requiring the written findings thereon as it deems most appropriate.

(2) *Instructions.* The Ccourt shall must give the instructions and explanations to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each submitted issue.

(3) *Issues Not Submitted.* If in so doing the Court omits any issue of fact raised by the pleadings or by the evidence, each A party waives the right to a jury trial by jury of the issue so omitted on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, As to an issue omitted without such demand the Ccourt may make a finding on the issue. ; or, if it fails to do so, it shall be deemedIf the court makes no finding, it is considered to have made a finding in accordconsistent with the its judgment on the special verdict.

(b) GENERAL VERDICT WITH ANSWERS TO WRITTEN QUESTIONS.General verdict accompanied by answer to interrogatories.

(1) *In General.* The cCourt may submit to the jury, together with appropriate forms for a general verdict, together with written interrogatoriesquestions upon one1 or more issues of fact the decision of which is necessary to a verdictthat the jury must decide. The Ccourt shall must give such the instructions and explanations or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and answer the questions in writing, and must direct the jury to do both.the Court shall direct the jury both to make written answers and to render a general verdict.

(2) *Verdict and Answers Consistent.* When the general verdict and the answers are harmonousconsistent, the court must approve, for entry under Rule 58, an appropriate judgment upon the verdict and answers. shall be entered pursuant to Rule 58.

(3) *Answers Inconsistent with the Verdict.* When the answers are consistent with each other but one1 or more is inconsistent with the general verdict, the court may:

(A) approve, for entry under judgment may be entered pursuant to Rule 58, an appropriate judgment according to in accordance with the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its or the Court may return the jury for further consideration of its answers and verdict; or

(C) may order a new trial.

(4) *Answers Inconsistent with Each Other and the Verdict.* When the answers are inconsistent with each other and one1 or more is likewise also inconsistent with the general verdict, judgment shall must not be entered;, instead, but the Ccourt shall must

~~return~~ direct the jury ~~for~~ to further consider ~~ation of~~ its answers and verdict, or ~~shall~~ must order a new trial.

COMMENT TO 2017 AMENDMENTS

Rule 49 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 49*.

COMMENT

Identical to *Federal Rule of Civil Procedure 49*.

Rule 50. Judgment as a ~~m~~Matter of ~~l~~Law in a ~~j~~Jury ~~t~~Trial~~s~~; ~~alternative~~ Related ~~m~~Motion for a ~~n~~New ~~t~~Trial; ~~c~~Conditional ~~r~~Ruling~~s.~~

(a) JUDGMENT AS A MATTER OF LAW~~udgment as a matter of law~~.

(1) *In General*. If ~~during a trial by jury~~ a party has been fully heard on an issue during a jury trial and the court finds that~~re is no legally sufficient evidentiary basis for~~ a reasonable jury would not have a legally sufficient evidentiary basis to find for the~~at~~ party on that issue, the ~~C~~court may:

(A) ~~determine~~ resolve the issue against the~~at~~ party; and

(B) ~~may~~ grant a motion for judgment as a matter of law against the~~at~~ party ~~with respect to~~on a claim or defense that, ~~cannot~~ under the controlling law, can be maintained or defeated only with~~out~~ a favorable finding on that issue.

(2) *Motion*. A ~~M~~motion~~s~~ for judgment as a matter of law may be made at any time before ~~submission of~~ the case is submitted to the jury. ~~Such a~~The motion ~~shall~~ must specify the judgment sought and the law and ~~the~~ facts that~~on which the moving party is~~ entitle~~d~~ the movant to the judgment.

(b) RENEWING THE MOTION AFTER TRIAL; ALTERNATIVE MOTION FOR A NEW TRIAL~~enewing motion for judgment after trial; alternative motion for new trial~~.

If~~, for any reason,~~ the ~~C~~court does not grant a motion for judgment as a matter of law made ~~at the close of all the evidence~~under Rule 50(a), the ~~c~~Court is considered to have submitted the action to the jury subject to the ~~c~~Court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—~~T~~the movant may file a renewed motion~~its request~~ for judgment as a matter of law ~~by filing a motion no later than 10 days after entry of judgment --~~and may include an alternative~~ly~~ or joint request for a new trial ~~or join a motion for a new trial~~ under Rule 59. In ruling on ~~a~~the renewed motion, the ~~C~~court may:

(1) allow judgment on the verdict, if a verdict was returned;~~:~~

~~(A) allow the judgment to stand,~~

(~~B~~2) order a new trial;~~,~~ or

(~~C~~3) direct the entry of judgment as a matter of law.~~; or~~

~~(2) if no verdict was returned:~~

~~(A) order a new trial, or~~

~~(B) direct entry of judgment as a matter of law.~~

(c) GRANTING THE RENEWED MOTION; CONDITIONAL RULING ON A MOTION FOR A NEW TRIAL~~ranting renewed motion for judgment as a matter of law; conditional rulings; new trial motion~~.

(1) *In General*. If the court grants a renewed motion for judgment as a matter of law~~ is granted~~, it must~~the Court shall~~ also conditionally rule on ~~the~~ any motion for a new trial~~, if any,~~ by determining whether ~~it~~ a new trial should be granted if the judgment is ~~thereafter~~ later vacated or reversed. The court must~~, and shall~~ ~~specify~~ state the grounds for conditionally granting or denying the motion for ~~the~~ a new trial.

(2) *Effect of a Conditional Ruling*. ~~If~~ Conditionally granting the motion for a new trial ~~is thus conditionally granted, the order thereon~~ does not affect the judgment's finality~~; of the judgment. In case the motion for a new trial has been conditionally granted and~~ if the judgment is reversed, ~~on appeal,~~ the new trial ~~shall~~ must proceed unless the appellate court ~~has~~ orders otherwise~~ ordered~~. ~~In case~~ If the motion for a new trial ~~has~~

~~been~~is conditionally denied, the appellee ~~on appeal~~ may assert error in that denial; ~~and~~ if the judgment is reversed ~~on appeal~~, ~~subsequent proceedings shall be in accordance with the order of~~ the case must proceed as the appellate court orders.

(d~~2~~) TIME FOR A LOSING PARTY'S NEW-TRIAL MOTION. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered ~~shall~~ must be filed no later than ~~10~~28 days after the entry of the judgment.

(e~~d~~) DENYING THE MOTION FOR JUDGMENT AS A MATTER OF LAW; REVERSAL ON APPEAL~~Same: Denial of motion for judgment as a matter of law~~.

If the court denies the motion for judgment as a matter of law ~~is denied~~, the prevailing party ~~who prevailed on that motion~~ may, as appellee, assert grounds entitling ~~the party~~it to a new trial should ~~in the event~~ the appellate court concludes ~~s~~ that the trial court erred in denying the motion ~~for judgment~~. If the appellate court reverses the judgment, it may order ~~nothing in this Rule precludes it from determining that the appellee is entitled to~~ a new trial, ~~or from~~ direct~~ing~~ the trial court to determine whether a new trial ~~shall~~ should be granted; or direct the entry of judgment.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 50*, as amended in 2007 and 2009. Consistent with the federal rule, language has been added to section (e) recognizing the authority of the appellate court to direct the entry of judgment in accordance with the decisions in *Weisgram v. Marley Co.*, 528 U.S. 440 (2000), and *Neely v. Martin K. Eby Constr. Co.*, 386 U.S. 317 (1967). Also, as in the federal rule, the 10-day deadline for parties to file post-judgment motions has been expanded to 28 days. This was necessitated by the Rule 6(b) prohibition on an extension of this deadline. The change is intended to give parties more time to prepare a satisfactory post-judgment motion while maintaining certainty in appeal times.

COMMENT

Identical to *Federal Rule of Civil Procedure 50*.

Rule 51. Instructions to the jJury~~:~~; Objections; Ppreserving a Cclaim of ~~e~~Error~~.~~

(a) REQUESTS~~equests~~.

__(1) *Before or at the Close of the Evidence*. At the close of evidence or at any earlier reasonable time that the court orders, Aa 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 for the jury instructions it wants~~that~~ the court to give ~~instruct the jury on the law as set forth in the requests~~.

__(2) *After the Close of the Evidence*. After the close of the evidence, a party may:

___(A) file requests for instructions on issues that could not reasonably have been anticipated ~~at~~by an earlier time that the court set 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~~nstructions~~. 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~~bjections~~.

__(1) *How to Make*. 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~~ for the objection.

__(2) *When to Make*. 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~~provided under Rule 51(b)(2); or

___(B) a party ~~that has~~was not ~~been~~ informed of an instruction or action on a request before th~~at~~e ~~time~~opportunity to~~for~~ objecti~~on~~, and the party ~~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~~ssigning error; Plain error~~.

__(1) *Assigning Error*. A party may assign as error:

___(A) an error in an instruction actually given, if that party ~~made a~~ properly objected~~ion under Rule 51(c),~~; or

___(B) a failure to give an instruction, if that party ~~made a~~ properly requested it ~~under Rule 51(a),~~ and—unless the court rejected the request in~~made~~ a definitive ruling on the record—~~rejecting the request --~~ also ~~made a~~ properly objected~~ion under Rule 51(c)~~.

(2) *Plain Error*. 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)~~ if the error affects substantial rights.

COMMENT TO 2017 AMENDMENTS

Rule 51 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 51*.

COMMENT

Identical to *Federal Rule of Civil Procedure 51*.

Rule 52. Findings and Conclusions by the Ccourt; Jjudgment on Ppartial Ffindings.

(a) FINDINGS AND CONCLUSIONSEffect.

(1) *In General*. Unless expressly waived by all parties, in an action tried on the facts without a jury or with an advisory jury, the Ccourt shall must find the state findings of facts specially and state separately its conclusions of law separately. The findings and conclusions may be stated on the record or may appear in an opinion or a memorandum of decision filed by the court and are sufficient if they state the controlling factual and legal grounds of decision. Judgment mustin every action tried upon the facts without a jury or with an advisory jury and judgment shall be entered pursuant tounder Rule 58.

(2) *For an Interlocutory Injunction*. In granting or refusing an interlocutory injunctions, the Ccourt shall must similarly set forth state the findings of fact and conclusions of law which constitute the grounds ofthat support its action.

(3) *For a Motion*. The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) *Effect of a Master's Findings*. A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) *Questioning the Evidentiary Support*. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) Requests for findings are not necessary for purposes of review. Such findings of fact and conclusions of law may be in writing or may be stated orally in open court if recorded stenographically or by other means permitted by these Rules and shall be sufficient if they state the controlling factual and legal grounds of decision. *Setting Aside the Findings*. Findings of fact, whether based on oral or documentary other evidence, shall must not be set aside unless clearly erroneous, and the reviewing court must give due regard shall be given to the opportunity ofto the trial court's opportunity to judge the witnesses' credibility of the witnesses. The findings of a master, to the extent that the Court adopts them, shall be considered as the findings of the Court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this Rule.

(b) AMENDED OR ADDITIONAL FINDINGSmendment. On a party's motion filed no later than 2810 days after the entry of judgment, the Ccourt may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may be later questioned whether or not the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

(c) JUDGMENT ON PARTIAL FINDINGSudgment on partial findings. If a party has been fully heard on an issue during a nonjury trial without a jury a party has been fully heard on an issue and the Ccourt finds against the party on that issue, the cCourt may

enter judgment ~~as a matter of law~~ against th~~e~~at party on~~with respect to~~ a claim or defense that, ~~cannot~~ under the controlling law, can be maintained or defeated only with~~out~~ a favorable finding on that issue., ~~or~~ t~~T~~he ~~C~~court may, however, decline to render any judgment until the close of ~~all~~ the evidence. ~~Such a~~A judgment on partial findings must~~shall~~ be supported by findings of fact and conclusions of law as required by ~~subdivision~~ Rule 52(a) ~~of this Rule~~.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 52*, as amended in 2007 and 2009, but maintains the following local distinctions in subsection (a)(1): 1) the parties can expressly waive the requirement that the court state its findings of fact and conclusions of law in a nonjury action; 2) the phrase "after the close of evidence" has been deleted to permit the court to make partial findings and conclusions as the case progresses; and 3) the findings and conclusions need only state the controlling grounds for the decision.

Consistent with the federal rule, the 10-day deadline for parties to file post-judgment motions has been expanded to 28 days. This was necessitated by the Rule 6(b) prohibition on an extension of this deadline. The change is intended to give parties more time to prepare a satisfactory post-judgment motion while maintaining certainty in appeal times.

COMMENT

Identical to *Federal Rule of Civil Procedure 52* except that section (a) has been revised to eliminate the requirement of stating findings of facts and conclusions of law in non-jury actions where the necessity of making the same is expressly waived by the parties and to indicate that such findings and conclusions may be written or oral and need only state the controlling grounds of decision. These provisions are necessitated by the time demands of a massive volume of litigation and are designed to insure that all litigants who desire it receive a fair and adequate statement of the grounds of decision applied in their case while at the same time making clear that such statements of fact and law need not be unduly lengthy nor presented in written form if the Court prefers to dictate them from the bench.

Rule 53. Masters.

(a) AppointmentPPOINTMENT.

(1) *Definition.* The term "master" also refers to the Auditor-Master as established by D.C. Code § 11-1724 (2012 Repl.), et seq. unless otherwise noted.

(2) *Scope.* Unless a statute provides otherwise, thea 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 addressed by an available judge or magistrate judge.

(3) *Disqualification.* A master must not have a relationship to the parties, counselattorneys, action, or court that would require disqualification of a judge under Civil Rule 63-I, unless the parties, consent with the court's approval, consent to the appointment of a particular person after the master disclosures of any potential grounds for disqualification.

(4) *Possible Expense or Delay.* 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 A MASTERrder appointing master.

(1) *Notice*. Before appointing a master, Tthe court must give the parties notice and an opportunity to be heard before appointing a master. Any party may suggest candidates for appointment.

(2) *Contents*. The appointing 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(gh).

(3) *Entry of OrderIssuing*. The court may enter issue the order appointing a master only after:

(A) the master has filedds an affidavit disclosing whether there is any ground for disqualification under Civil Rule 63-I; and,

(B) if a ground for disqualification is disclosed, after the parties, have consented with the court's approval, to waive the disqualification.

(4) *Amendingment*. 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~~aster's authority~~.
(1) *In General*. Unless the appointing order ~~expressly~~ directs otherwise, a master ~~has authority to~~may:
(A) regulate all proceedings;
(B) ~~and~~ take all appropriate measures to perform ~~fairly and efficiently~~ the assigned duties fairly and efficiently; and
(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.
(2) *Sanctions*. The master may by order impose ~~up~~on 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~~d) MASTER'S ORDERS~~aster's orders~~. A master who ~~makes~~ issues an order must file ~~the order~~it and promptly serve a copy on each party. The clerk must enter the order on the docket.
(~~e~~f) MASTER'S REPORTS~~aster's reports~~. A master must report to the court as required by the appointing order ~~of appointment~~. The master must file the report and promptly serve a copy ~~of the report~~ on each party, unless the court ~~directs~~ orders otherwise.
(~~f~~g) ACTION ON THE MASTER'S ORDER, REPORT, OR RECOMMENDATIONS~~ction on master's order, report, or recommendations~~.
(1) *Opportunity for a Hearing; Action in General*.
In acting on a master's order, report, or recommendations, the court must ~~afford~~ give the parties notice and 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 ~~T~~to Object or Move to Adopt or Modify*. A party may file objections to—or a motion to adopt or modify—the master's order, report, or recommendations no later than 21~~0~~ days ~~from the time the master's order, report, or recommendations~~after a copy is ~~are~~ served, unless the court sets a different time.
(3) *Reviewing Factual Findings*. The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, 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)(2)(A) or (C) will be final.
(4) *Reviewing Legal Conclusions*. The court must decide de novo all objections to conclusions of law made or recommended by a master.
(5) *Reviewing Procedural Matters*. Unless the appointing 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.
(g~~h~~) COMPENSATION~~ompensation~~.
(1) *Fixing Compensation*. Before or after judgment, ~~T~~the court must fix the master's compensation~~, including recovery of costs, before or after judgment~~ on the basis and terms stated in the appointing order ~~of appointment~~, but the court may set a new basis

and terms after giving notice and an opportunity to be heard.
__(2) *Auditor-Master Costs.* The Auditor-Master ~~shall~~may not be compensated, but ~~shall be~~is entitled to recover costs.
__(3) *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) *Allocati*ng~~on~~ *Payment*. The court must allocate payment ~~of the master's compensation~~ among the parties after considering the nature and amount of the controversy, the parties' 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.
(h~~i~~) APPOINTING A MAGISTRATE JUDGE~~ppointment of magistrate judge~~. A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge ~~expressly provides~~states that the reference is made under this rule.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 53*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) section (a) indicates that the rule is applicable to the Auditor-Master; 2) subsection (g)(2) allows the Auditor-Master to recover costs; and 3) references to *28 U.S.C. § 455* are replaced by references to Rule 63-I.

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.

TITLE VII. JUDGMENTudgment.

Rule 54. Judgments; cCosts.

(a) DEFINITION; FORMefinition; form. "Judgment" as used in these Rrules includes a decree and any order from which an appeal lies. A judgment shouldall not includecontain a recitals of pleadings, the report of a master's report, or athe record of prior proceedings.

(b) JUDGMENT ON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIESudgment upon multiple claims or involving multiple parties. When an action presents more than 1one claim for relief— is presented in an action, whether as a claim, counterclaim, cross-claim, or 3third-party claim—, or when multiple parties are involved, the Ccourt may direct the entry of a final judgment as to 1one or more, but fewer than all, of the claims or parties only if the courtupon an expressly determinesation that there is no just reason for delay and upon an express direction for the entry of judgment. Otherwise, In the absence of such determination and direction, any order or other form of decision, however designated, which that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties doesshall not terminate end the action as to any of the claims or parties, and may bethe order or other form of decision is subject to revisedion at any time before the entry of a judgment adjudicating all the claims and all the parties'the rights and liabilities of all the parties.

(c) DEMAND FOR JUDGMENT; RELIEF TO BE GRANTEDemand for judgment. A default judgment by default shall must not be different in kind from, or exceed in amount, what is demanded in the pleadingsthat prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, eEvery other final judgment shouldall grant the relief to which eachthe party in whose favor it is rendered is entitled, even if the party has not demanded thatsuch relief in the party'sits pleadings.

(d) COSTSosts; ATTORNEY'S FEESattorneys' fees.

(1) *Costs oOther tThan aAttorneys' fFees*. Unless Except when express provision therefor is made either in an applicable statute, or in these Rrules, or a court order provides otherwise, costs— other than attorney's' fees— shouldall be allowed as of course to the prevailing party. unless the Court otherwise directs; bBut costs against the United States, the District of Columbia, or officers and agencies of either shallmay be imposed only to the extent allowedpermitted by law. The clerk Such costs may be taxed costs by the Clerk on 14one day's' notice. On motion served within the next five7 days thereafter, the court may review the clerk's action of the Clerk may be reviewed by the Court.

(2) *Attorneys' fFees*.

(A) *Claims to Be by Motion*. A Cclaims for attorney's' fees and related nontaxable expenses shall must be made by motion unless the substantive law requires thosegoverning the action provides for the recovery of such fees as an element of damages to be proved at trial as an element of damages.

(B) *Timing and Contents of the Motion.* Unless otherwise provided by a statute or a court order provides otherwise of the Court, the motion must:

(i) be filed and served no later than 14 days after the entry of judgment;

(ii) must specify the judgment and the statute, rule, or other grounds entitling the movanting party to the award;

(iii) ~~and must~~ state the amount sought or provide a fair estimate of it;~~the amount sought.~~ and

(iv) ~~If directed by the Court, the motion shall also~~ disclose, if the court so orders, the terms of any agreement ~~with respect to~~about fees ~~to be paid~~ for the services for which the claim is made.

(C) *Proceedings*. ~~On request of a party or class member,~~ Subject to Rule 23(h), the ~~C~~court must~~shall~~, on a party's request, ~~afford~~give an opportunity for adversary submissions ~~with respect to~~on the motion in accordance with Rule 12-I or 43(~~f~~e). The ~~C~~court may ~~determine~~ decide issues of liability for fees before receiving submissions ~~bearing on issues of evaluation~~on the value of services ~~for which liability is imposed by the Court~~. The ~~C~~court ~~shall~~must find the facts and state its conclusions of law as provided in Rule 52(a)~~, and a judgment shall be set forth in a separate document as provided in Rule 58~~.

(D) *Reference to a Magistrate Judge or a Master*. The following rules govern reference to a magistrate judge or a master: ~~The Court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings~~

(i) The Chief Judge may refer a motion for attorney's fees to a magistrate judge under Rule 73 as if it were a dispositive pretrial matter.

(ii) ~~In addition, t~~The ~~C~~court may refer issues concerning~~relating to~~ the value of services to a special master under Rule 53 without regard to the ~~provisions~~ limitations of Rule 53(a)(2)~~ and may refer a motion for attorney's fees to a magistrate judge as if it were a dispositive pretrial matter~~.

(E) *Exceptions*. ~~The provisions of subparagraphs~~Rule 54(d)(2)(A)~~ through~~ (D) do not apply to claims for fees and expenses as sanctions for violating~~ons of~~ these rules.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 54*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) in subsection (d)(1), "applicable statute" has been substituted for "federal statute" and a reference to District of Columbia and its officers or agencies has been added; 2) in subsection (d)(2)(C), the reference to Rule 78 has been replaced with a reference to Rule 12-I; 3) subsection (d)(2)(D) has been modified to reflect local practice; and 4) in subsection (d)(2)(E), the reference to *28 U.S.C. § 1927* has been omitted.

Rule 55. Default; Default Judgment.

(a) ENTERING A DEFAULT *Entry*.

(1) *In General.* When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules, the Cclerk or the Ccourt shallmust enter the party's default.

(2) *Effective Date of Default; Motion by Defendant.* Any order of default entered on the court's or the clerk's own initiativesua sponte, including a default for failure to respond to the complaint within the time prescribed in Rule 12(a), shall will not take effect until fourteen (14) days after the date on which it is docketed and shall must be vacated if the court upon the grantsing of a motion filed by defendant within such the 14- -day period showing good cause why the default should not be entered.

(3) *Extension of Time to Plead or Otherwise Defend.* Before an order of default is issued, the time to plead or otherwise defend may be extended by one of the following:

(A1) Aan order granting a motion, which shows good cause for such the an extension;- or

(B2) Aa praecipe, signed by the plaintiff(s) and defendant(s) in question parties or their representatives, attorneys of record and filed with the Ccourt, which provides for a one-time extension of not more than 210 days within which to plead or otherwise respond.

(b) ENTERING A DEFAULT JUDGMENT. *Judgment*. Judgment by default may be entered as follows:

(1) *By the Clerk*. WhenIf the plaintiff's claim against a defendant is for a sum certain or for a sum which that can be made certain by computation be made certain, the clerk—on the plaintiff's request—must enter judgment for that amount and costs against a defendant who has been defaulted for not responding as provided in Rule 12 if:

(A) and the plaintiff shall have filed and served a verified complaint verified by the plaintiff or by the plaintiff's agent, or shall have thereafter filed and served on the defendant in the manner prescribed in Rule 5 an affidavit executed by the plaintiff or the plaintiff's agent verifying the complaint at least 21 days prior to the request for judgment;

(B), and such the verified complaint or affidavit shall have sets out the sum claimed to be due, exclusive of all set-offs and just grounds of defenses;, and a copy of said verified complaint or affidavit shall have been served upon the defendant at least 20 days prior to the request for judgment, the Clerk, upon

(C) the request for judgment of the plaintiff or the plaintiff's attorneyis made no more than 60 days after default is entered;, shall enter judgment for that amount and costs against the defendant if the defendant is in default for failure to appear as provided in Rule 12, and

(D) if the plaintiff or the plaintiff's attorney, at the time of requesting the judgment, shall haveproperly filed, for each defendant who is an individual, a Civil Action Form CA 114 that complies with the Servicemembers Civil Relief Act (2003) (*50 U.S.C. App. §§ 501 et seq.3901-4043*).; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or such representative who has appeared therein. The plaintiff's failure to comply with the provisions of this paragraph shall result in the dismissal without prejudice of the complaint. If the Form CA 114 filed by the plaintiff indicates that the defendant is in the military or that his or her military status is unknown, the Court shall

follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 521).

(2) *By the Court*. In all other cases, and no more than 60 days after default is entered, the party entitled to a judgment by default shallmust apply to the court for a default judgment either by motion or by praecipe, served on all parties, requesting the setting of an ex parte proof hearing.to the Court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein.

(A) *Notice of Motion*. If the party against whom a default judgment by default is sought has appeared in the action, the party (or, if appearing personally or by a representative, that the party's or its representative) shall must be served with written notice of the application motion for judgment at least 37 days prior tobefore the hearing on such application.

(B) *Servicemembers Civil Relief Act Affidavit*. If the party against whom a default judgment is sought has not appeared in the action, a Civil Action Form 114 that complies with the Servicemembers Civil Relief Act (*50 U.S.C. §§ 3901-4043*), must be filed for each defendant who is an individual before the court may enter a default judgment.

(C) *Hearings or Referrals*. The court may conduct hearings or make referrals—preserving any applicable statutory right to a jury trial—when, If, in order to enable the Court to enter or effectuate judgment or to carry it into effect, it is necessaryneeds to:

(i) conducttake an accounting;

(ii) or to determine the amount of damages;

(iii) or to establish the truth of any allegationverment by evidence; or

(iv) to make an investigateion of any other matter., the Court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any applicable statute. If the party against whom judgment by default is sought has not appeared in the action, a Form CA 114 that complies with the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.), must be filed for each defendant who is an individual before judgment by default may be entered by the Court.

(3) *Minors and Incompetents*. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, committee, conservator, or other like fiduciary who has appeared.

(4) *Members of the Military; Military Status Unknown*. If the Civil Action Form CA 114 filed by the plaintiff under Rule 55(b)(1) or (2) indicates that the defendant is in the military or that his or her military status is unknown, the Ccourt shallmust follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (2003) (*50 U.S.C. App. § 5213931*).

(5) *Dismissal*. A plaintiff's failure to comply with Rule 55(b)(1) or (2) will result in the dismissal without prejudice of the complaint.

(c) *Setting aside default*SETTING ASIDE A DEFAULT OR A DEFAULT JUDGMENT.

(1) *By the Clerk.* The clerk may set aside an entry of default or a default judgment by consent pursuant to Rule 55-III.

(2) *By the Court.* The court may set aside an entry of default ~~F~~for good cause ~~shown, and upon~~ the filing of a verified answer setting up a defense sufficient, if proved, to bar the claim in whole or in part~~, the Court may set aside an entry of default~~. The movant does not need to file an~~No~~ answer ~~need be filed~~ if ~~the movant accompanies~~ the motion is accompanied by ~~with~~ a settlement agreement or a proposed consent judgment signed by both parties. In addition, an answer ~~shall~~ is not ~~be~~ required when the movant asserts a lack of subject-matter or personal jurisdiction or when the default was entered after the movant had filed an answer. The court may set aside a final default judgment under Rule 60(b).

~~(d) *Plaintiffs, counterclaimants, cross-claimants*.~~

~~The provisions of this Rule apply whether the party entitled to the judgment by default is a plaintiff, a 3rd-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).~~

(~~e~~d) JUDGMENT AGAINST THE UNITED STATES OR THE DISTRICT OF COLUMBIA~~udgment against the United States or the District of Columbia~~. A default~~No~~ judgment ~~by default shall~~may be entered against the United States, ~~or~~ the District of Columbia, or an officer or agency of either~~, unless~~ only if the claimant establishes a claim or right to relief by evidence that satisfies~~actory to~~ the ~~C~~court.

COMMENT TO 2017 AMENDMENTS

This rule continues to differ substantially from *Federal Rule of Civil Procedure 55*. However, this rule has been amended consistent with the 2007 stylistic changes to the federal rule, and it incorporates other 2007, 2009, and 2015 federal amendments. Specifically, in accordance with the 2007 federal amendments, former section (d) was eliminated. It included two provisions—one stating that Rule 55 applied to the described claimants, which was an incomplete list, and one reminding parties that Rule 54(c) limited the relief available for a default judgment. Also, time periods were revised in accordance with the 2009 federal amendments. Finally, consistent with 2015 amendments to the federal rule, the word "final" was added to the provision in subsection (c)(2) that indicated the court "may set aside a final default judgment under Rule 60(b)." This amendment helped to clarify the difference between a final default judgment that could be reviewed under Rule 60(b) and a default judgment that does not dispose of all of the claims. The latter is not final until the court directs entry under Rule 54.

COMMENT

Paragraph (b)(1) has been revised to conform to the prior practice in the Court of General Sessions of requiring a verified complaint or affidavit stating the amount due before entry of default by the Clerk. Paragraph (b)(1) has been modified to add the requirement that plaintiff provide a proposed order with the request for judgment within 60 days after default is entered. A Form CA 114 in compliance with the Servicemembers Civil Relief Act (2003) (*50 U.S.C. App. § 501 et seq.*) must be filed in all cases, whether the default judgment is to be entered by the clerk or the Court, where

defendant has failed to appear. A request for judgment under paragraph (b)(2) must now be made by way of a motion. Moreover, paragraph (c) has also been revised to conform to the prior practice in the Court of General Sessions of requiring a verified and sufficient answer before setting aside a default except in those cases in which the parties have entered into a settlement agreement or consent judgment or where either the movant asserts a lack of subject matter or personal jurisdiction or when the default was entered after the movant has filed an answer. In addition, paragraph (e) has been revised to reflect reference to the District of Columbia as well as the United States and paragraph (b)(2) has been revised to refer to any "applicable statute" in place of "statute of the United States".

Rule 55-I. Withdrawal of ~~j~~Jury ~~d~~Demand ~~a~~After ~~d~~Default~~.~~

If a default is entered against a~~ny~~ party, an~~y~~ opposing party may withdraw ~~the opposing party's~~its jury demand.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 55-II. Ex Pparte pProof by Motion of pPecuniary lLosses; dDeficiency jJudgment.

(a) EX PARTE PROOF OF PECUNIARY LOSSES *Ex parte proof of pecuniary losses*.

(1) *Procedural Requirements; Motion and Affidavit*. In any action in which a default has been entered and the only remaining claims are for property damage or other pecuniary losses or any action in which there is filed a praecipe withdrawing all claims other than those for such property damage or such pecuniary losses, wherein a default has been noted, judgment may be entered upon the filingif, within 60 days of the default, of a motion for judgment is filed along with an affidavit meeting the requirements of Rule 56(ce)(4) and setting forth:

(1A) Tthe specific pecuniary loss sustained;,

(2B) its causal relationship to the factual situation set forth in the complaint; and

(3C) that a copy of the motion was sent to the defendant at the defendant's last known address notifying the defendant that any objections thereto the motion must be received by the Cclerk within 210 days.

(2) *Supporting Papers*. The affidavit provided with the motion shall must be accompanied by:

(1A) a paid bill for the work done or an estimate of value from a person, firm or company regularly engaged in the business of doing such work or in the event of total loss, regularly engaged in the estimation of such losses;, or

(B) a sworn statement from plaintiff's employer setting forth plaintiff's rate of compensation and the days and hours plaintiff was unable to work on account of the matters alleged in the complaint;, or

(C) a statement of account from a health care provider or facility setting forth the reasonable and necessary charges incurred by plaintiff for treatment of injuries received as a result of the occurrence alleged in the complaint., and

(3) *Compliance with Servicemembers Civil Relief Act.* wWhere applicable, the filing party must attach (2) a Civil Action Form CA 114 that complies with the Servicemembers Civil Relief Act (2003) (*50 U.S.C. App. §§ 501 et seq.3901-4043*).

(4) *Judicial Action*. Thirty days after the filing of such motion, the Clerk shall forward to the judge assigned to the case the motion, the affidavit, supporting papers, and any objection received by the Clerk. The judge or magistrate judge may enter judgment for the amount alleged in the affidavit or for such lesser sum as may be warranted by all materials of record, including defendant's objection, if any, or may schedule the matter for an ex parte proof hearing, as appropriate. If the Civil Action Form CA 114 indicates that the defendant is in the military or that his or her military status is unknown, the Ccourt shall must follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (2003) (*50 U.S.C. App. § 5213931*).

(b) DEFICIENCY JUDGMENT *Deficiency judgment*. A deficiency judgment after repossession of personal property may be granted as provided in paragraph (a) of this Rule 55-II(a). However, the motion, affidavit, and supporting documents, or the proof presented at an ex parte proof hearing, must set forth a basis on which the Ccourt can reasonably conclude that said the plaintiff complied with applicable law and that said the property was resold for a fair and reasonable price.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

Rule 55-II provides an optional method for proving the amount of pecuniary losses in cases of defaults governed by Rule 55(b)(2). In cases to which Rule 55-II is applicable, plaintiff may elect to proceed under that Rule or may await the scheduling of an ex parte proof hearing in the normal course. Since the reach of Rule 55-II has been expanded to cover not only property damage claims but also claims involving other types of pecuniary losses (e.g. wage losses, medical bills, deficiency judgments, repair costs incurred to make good work improperly performed by a home repairman or contractor), the time for defendant to object to plaintiff's affidavit of loss has been enlarged from 10 to 20 days. This amendment also makes Rule 55-II consistent with amended Rule 55(b) which effectively affords defendants 20 days to object to any newly filed affidavit concerning the sum to be entered in a default judgment pursuant to that Rule.

Rule 55-III. Vacating ~~d~~Default or Default Judgment by ~~c~~Consent~~.~~

The ~~C~~clerk may vacate a default or default judgment, within 60 days ~~of~~after its entry, if the claimant and the defaulted party, or their attorneys, ~~upon~~ file~~ing of~~ a signed praecipe ~~signed by the claimant and the defaulted party, or their attorneys, if such praecipe,~~so requesting and bearing~~s~~ evidence of its service on all parties that have appeared. When required by Rule 55(c), ~~and~~ the praecipe must be~~is~~ accompanied by a verified answer ~~when required by Rule 55(c)~~.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

Rule 55-III provides a procedure, alternative to that of a Rule 55(c) motion, for vacating defaults by consent in specified situations. The procedure is applicable to a default or default judgment entered on any claim, whether that claim is contained in a complaint, counterclaim, cross-claim, or 3rd-party claim.

Rule 56. Summary ~~j~~Judgment~~.~~

(a) ~~For claimant~~MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying~~seeking to recover upon a~~ each claim or defense—or the part of each claim or defense—on which summary judgment is sought.~~, a counterclaim, or cross-claim or to obtain a declaratory judgment may, after the expiration of 20 days from service of a pleading on the adverse party or after service of a motion for summary judgment by the adverse party, but within the time prescribed by Court order, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof~~ The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) TIME TO FILE A MOTION; FORMAT~~For defending party~~.

(1) *Time to File.* Unless the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery ~~A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, within the time prescribed by Court order, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof~~.

(2) *Format: Parties' Statements of Fact*.

(A) *Movant's Statement*. In addition to the points and authorities required by Rule 12-I(d)(2), the movant must file a statement of the material facts that the movant contends are not genuinely disputed. Each material fact must be stated in a separate numbered paragraph.

(B) *Opponent's Statement*. A party opposing the motion must file a statement of the material facts that the opponent contends are genuinely disputed. The disputed material facts must be stated in separate numbered paragraphs that correspond to the extent possible with the numbering of the paragraphs in the movant's statement.

(c) ~~Motion and proceedings thereon~~PROCEDURES.

(1) *Supporting Factual Positions*. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: ~~The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings,~~

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, ~~answers to interrogatories, and admissions on file, together with the~~ affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a ~~if any, show that there is no genuine~~ genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

~~issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.~~

(d) WHEN FACTS ARE UNAVAILABLE TO THE NONMOVANT~~Case not fully adjudicated on motion~~. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) FAILING TO PROPERLY SUPPORT OR ADDRESS A FACT. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) JUDGMENT INDEPENDENT OF THE MOTION. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) FAILING TO GRANT ALL THE REQUESTED RELIEF. If ~~on motion under this Rule judgment is not rendered upon the whole case or for all~~the court does not grant all the relief requested by the motion~~asked and a trial is necessary~~, ~~the Court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall~~it may enter ~~thereupon make~~ an order ~~specifying the~~stating any material fact~~s~~—including an item of damages or other relief—that is not genuinely in dispute and ~~appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed~~treating the fact as established in the case~~, and the trial shall be conducted accordingly~~.

~~(e) Form of affidavits; further testimony; defense required.~~

~~Supporting and opposing 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 may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When affidavits are unavailable.

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(gh) AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITHffidavits made in bad faith. If Should it appear to the satisfiedaction of the Court at any time that any of that thean affidavits or declaration under presented pursuant to this Rrule are presentedis submitted in bad faith or solely for the purpose of delay, the Ccourt—after notice and a reasonable time to respond— shall forthwithmay order the submitting party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, it incurred as a result. Anand any offending party or attorney may also be adjudged guilty ofheld in contempt or subjected to other appropriate sanctions.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 56*, as amended in 2010, except that 1) a reference to local district court rules is omitted from the language in subsection (b)(1) and 2) subsection (b)(2), which is unique to the Superior Court rule, requires parties to submit statements of material facts with each material fact stated in a separate, numbered paragraph (a requirement previously found in Rule 12-I(k)). In 2010, the federal rule underwent substantial revisions in order to improve the procedures for presenting and deciding summary judgment motions, but the standard for granting summary judgment remained unchanged. Parties and counsel should refer to the Federal Rules of Civil Procedure Advisory Committee Notes for a detailed explanation of these amendments.

COMMENT

Identical to *Federal Rule of Civil Procedure 56* except for the provision in paragraphs (a) and (b) of Rule 56 that the time period for filing the motion shall be set by Court order. For further requirements with respect to summary judgment procedure, see Rule 12-I(k).

Rule 57. Declaratory Jjudgments.

These rules govern the procedure for obtaining a declaratory judgment pursuant to Titleunder *28 U.S.C. § 2201* or otherwise. shall be in accordance with these Rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment for declaratory relief in cases where itthat is otherwise appropriate. The Ccourt may order a speedy hearing of an action for a declaratory judgment action and may advance it on the calendar.

COMMENT TO 2017 AMENDMENTS

Rule 57 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 57*. One local distinction has been retained—the language "or otherwise" follows *28 U.S.C. § 2201*.

COMMENT

Identical to *Federal Rule of Civil Procedure 57* except for addition of the words "or otherwise" following reference to *28 U.S.C. § 2201* so as to comprehend also authority for issuance of declaratory judgments founded on the Congressional grant to the Superior Court of general equity powers and the related prescription that the Court conduct its business according to the Federal Rules of Civil Procedure wherever possible. *See* D.C. Code §§ 11-921 and 11-946 (1973 Ed.). Note, however, that a declaratory judgment, like any other remedy, may only be granted in cases properly within the Court's jurisdiction.

Rule 58. Entering of jJudgment.

(a) SEPARATE DOCUMENT. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

(1) for judgment under Rule 50(b);

(2) to amend or make additional findings under Rule 52(b);

(3) for attorney's fees under Rule 54;

(4) for a new trial, or to alter or amend the judgment, under Rule 59; or

(5) for relief under Rule 60.

(b) ENTERING JUDGMENT.

(1) *Without the Court's Direction.* Subject to the provisions of Rule 54(b): and unless the court or administrative order requires otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter judgment when:

(1A) Upon athe jury returns a general verdict; of a jury, or upon a decision by

(B) the Ccourt awardsthat a party shall recover only costs or a sum certain; or costs or

(C) the court denies that all relief. shall be denied, the Clerk, unless the Court or Administrative Order otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the Court;

(2) *Court's Approval Required*. Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(A) upon a decision by the Court granting other relief, or uponthe jury returns a special verdict or a general verdict accompanied bywith answers to interrogatoriesquestions; or

(B) the court grants other relief not described in Rule 58(b), the Court shall promptly approve the form of the judgment, and the Clerk or as otherwise directed by administrative order shall thereupon enter it.

(c) TIME OF ENTRY. For purposes of these rules, judgment is entered at the following times:

(1) Every judgment shall be set forth on if a separate document is not required,. A judgment is effective only when the judgment is entered in the civil docket underso set forth and when entered as provided in Rule 79(a); or

(2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:

(A) it is set out in a separate document; or

(B) 150 days have run from the entry in the civil docket.

(d) REQUEST FOR ENTRY. A party may request that judgment be set out in a separate document as required by Rule 58(a).

(e) COST OR FEE AWARDS. Ordinarily, the Eentry of the judgment shall may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But, except that, when if a timely motion for attorney's' fees is made under Rule 54(d)(2), the Ccourt, may act before a notice of appeal has been filed and has become effective, may to order that the motion have the same effect under Rule 4(a)(4) of the District of Columbia Court of Appeals Rule 4(a)(4) as a timely motion under Rule 59. Attorneys shall not submit forms of judgment except upon direction of the Court, and these directions shall not be given as a matter of course.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 58*, as amended in 2007, except that subsection (b)(1) references administrative orders and section (e) references the District of Columbia Court of Appeals rule.

COMMENT

Identical to *Federal Rule of Civil Procedure 58*.

Rule 59. New ~~t~~Trial~~s~~; Altering or ~~a~~Amending~~ment of~~ a ~~j~~Judgment~~s.~~

(a) IN GENERAL~~Grounds~~.

(1) *Grounds for New Trial*. The court may, on motion, grant ~~A~~a new trial ~~may be granted to~~on all or ~~any of the parties and on all or part~~some of the issues—and to any party—as follows:

(~~1~~A) ~~in an action in which there has been~~ after a ~~trial by~~ jury trial, for any ~~of the~~ reason~~s~~ for which a new trial~~s~~ ha~~s~~ve heretofore been granted in an action~~s~~ at law in ~~the courts of the United States~~ federal court or ~~of the~~ District of Columbia courts; or~~and~~

(~~2~~B) ~~in an action tried without a~~after a nonjury trial, for any ~~of the~~ reason~~s~~ for which a rehearing~~s~~ ha~~s~~ve heretofore been granted in a suit~~s~~ in equity in ~~the~~federal court ~~of the United States~~ or ~~of the~~ District of Columbia courts.

(2) *Further Action After a Nonjury Trial.* After ~~On a motion for a new trial in an action tried without~~ a nonjury trial, the ~~C~~court may, on motion for a new trial:

(A) open the judgment if one has been entered;~~,~~

(B) take additional testimony~~,~~;

(C) amend findings of fact and conclusions of law or make new ~~findings and conclusions~~ones~~,~~; and

(D) direct the entry of a new judgment.

(b) TIME TO FILE A MOTION FOR A NEW TRIAL~~Time for motion~~. A~~ny~~ motion for a new trial ~~shall~~ must be filed no later than 28~~10~~ days after the entry of ~~the~~ judgment.

(c) TIME TO SERVE AFFIDAVITS~~ime for serving affidavits~~. When a motion for a new trial is based on affidavits, they ~~shall~~ must be filed with the motion. The opposing party has 1~~4~~0 days after being served~~ice~~ to file opposing affidavits~~, but that period may be extended for up to 20 days, either by the cCourt for good cause or by the parties' written stipulation~~. The c~~C~~ourt may permit reply affidavits.

(d) NEW TRIAL ON THE COURT'S INITIATIVE OR FOR REASONS NOT IN THE MOTION~~On Court's initiative; notice; specifying grounds~~. No later than 28~~10~~ days after the entry of judgment, the ~~C~~court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the ~~C~~court may grant a timely motion for a new trial for a reason not stated in the motion. ~~When granting a new trial on its own initiative or for a reason not stated in a motion~~In either event, the ~~C~~court ~~shall~~ must specify the ~~grounds~~ reasons in its order.

(e) MOTION TO ALTER OR AMEND A JUDGMENT~~otion to alter or amend judgment~~. A~~ny~~ motion to alter or amend a judgment ~~shall~~ must be filed no later than ~~10~~ 28 days after the entry of the judgment.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 59*, as amended in 2007 and 2009, except that subsection (a)(1) references District of Columbia courts and subsection (a)(2) is divided into smaller subsections so that it is easier to read. Consistent with the federal rule, the 10-day deadline for parties to file post-judgment motions has been expanded to 28 days. This was necessitated by the Rule 6(b) prohibition on an extension of this deadline. The change is intended to give parties more

time to prepare a satisfactory post-judgment motion while maintaining certainty in appeal times.

COMMENT

Identical to *Federal Rule of Civil Procedure 59* except for insertion in section (a) thereof of reference to courts of the District of Columbia as well as courts of the United States.

Rule 60. Relief from a Jjudgment or Oorder.

(a) CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONSlerical mistakes. The court may correct a Cclerical mistakes or a mistake arising from oversight or omission whenever one is found in ain judgments, orders, or other parts of the record. and errors therein arising from oversight or omission may be corrected by tThe cCourt may do so on motionat any time of or on its own, with or without notice initiative or on the motion of any party and after such notice, if any, as the Court orders. But after During the pendency of an appeal has been, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appealit is pending, such a mistake may be so corrected only with leave of the appellate court's leave.

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER OR PROCEEDINGMistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon suchjust terms as are just, the Ccourt may relieve a party or a party'its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mmistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which that, withby due reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether heretofore denominatedpreviously called intrinsic or extrinsic), misrepresentation, or other misconduct of by an adverse opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged;, or a prior judgment upon which it is based on an earlier judgment that has been reversed or otherwise vacated;, or applying it prospectivelyit is no longer equitable that the judgment should have prospective application; or

(6) any other reason that justifies justifying relief from the operation of the judgment.

(c) TIMING AND EFFECT OF THE MOTION.

(1) *Timing*. TheA motion under Rule 60(b) mustshall be made within a reasonable time—, and for reasons (1), (2), and (3) not more than a1 year after the entry of the judgment, or order, or the date of the proceeding was entered or taken.

(2) *Effect on Finality*. AThe motion under this subdivision (b) does not affect the judgment's finality of a judgment or suspend its operation.

(d) OTHER POWERS TO GRANT RELIEF. This Rrule does not limit the power of a a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;, or

or to (2) set aside a judgment for fraud upon the court.

(e) BILLS AND WRITS ABOLISHED. The following are abolished: bills of review, bills in the nature of bills of review, and Wwrits of coram nobis, coram vobis, and audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these Rules or by an independent action.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 60*, as amended in 2007, except that the reference to relief under *28 U.S.C. § 1655* remains omitted.

COMMENT

Identical to *Federal Rule of Civil Procedure 60* except for deletion from section (b) of the inapplicable reference to *28 U.S.C. § 1655* dealing with lien actions in the United States District Courts. With respect to motions made under this Rule for reinstatement of actions previously dismissed through inexcusable neglect or dereliction of counsel, *see also* Rule 41-I. *See* Rule 55-III for procedure governing the vacating of defaults by consent.

Rule 61. Harmless Eerror.

Unless justice requires otherwise, Nno error in admittingeither the admission or texcludinghe exclusion of evidence—or any other error by the court or a party— and no error or defect in any ruling or order or in any thing done or omitted by the Court or by any of the parties is ground for granting a new trial, or for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order., unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court a At every stage of the proceeding, the court must disregard allany errors andor defects in the proceeding which that does not affect any party'sthe substantial rights of the parties.

COMMENT TO 2017 AMENDMENTS

Rule 61 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 61*.

COMMENT

Identical to *Federal Rule of Civil Procedure 61*.

Rule 62. Stay of ~~p~~Proceedings to ~~E~~enforce a ~~j~~Judgment~~.~~

(a) AUTOMATIC STAY~~utomatic stay~~; EXCEPTIONS~~exceptions --~~ FOR INJUNCTIONS~~njunctions,~~ AND RECEIVERSHIPS~~receiverships~~. Except as stated ~~here~~in this rule, no execution ~~shall~~ may issue ~~up~~on a judgment, nor ~~shall~~ may proceedings be taken ~~for its~~to enforce~~ment~~ it, until ~~the expiration of~~ 1~~40~~ days have passed after its entry. But ~~U~~unless ~~otherwise ordered by~~ the ~~C~~court orders otherwise, an interlocutory or final judgment in an action for an injunction or ~~in~~ a receivership ~~action shall~~ is not ~~be~~ stayed ~~during the period~~ after ~~its~~ being entered~~ry~~, even if ~~and until~~ an appeal is taken ~~or during the pendency of an appeal~~. ~~The provisions of subdivision (c) of this Rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.~~

(b) STAY PENDING THE DISPOSITION OF A MOTION~~tay on motion for new trial or for judgment~~. ~~In its discretion and on such conditions for the security of the adverse~~On appropriate terms for the opposing party's security ~~as are proper~~, the ~~C~~court may stay the execution of ~~or any proceedings to enforce~~ a judgment~~—~~or any proceedings to enforce it~~—~~ pending the disposition of any of the following motions:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or to alter or amend a judgment ~~made pursuant to Rule 59,~~; or

(4) under Rule 60, ~~of a motion~~ for relief from a judgment or order ~~made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b)~~.

(c) INJUNCTION PENDING AN APPEAL~~njunction pending appeal~~. While~~en~~ an appeal is pending~~taken~~ from an interlocutory order or final judgment that grant~~s~~ing, dissolve~~s~~ing, or deni~~es~~ying an injunction, the ~~C~~court ~~in its discretion~~ may suspend, modify, restore, or grant an injunction ~~during the pendency of the appeal upon such~~on terms ~~as to~~for bond or other~~wise~~ terms that secure the opposing party's ~~as it considers proper for the security of the~~ rights ~~of the adverse party~~.

(d) STAY WITH BOND ON APPEAL~~tay upon appeal~~. If~~When~~ an appeal is taken, the appellant ~~by giving a supersedeas bond~~ may obtain a stay by supersedeas bond, except ~~subject to the exceptions contained~~ in an action described in Rule 62(a) ~~subdivision (a) of this Rule~~. The bond may be given on~~at~~ or after ~~the time of~~ filing the notice of appeal or ~~of procuring~~after obtaining the order allowing the appeal~~, as the case may be~~. The stay ~~is~~ takes effect~~ive~~ when the ~~supersedeas bond is approved by the C~~court approves the bond.

(e) STAY WITHOUT BOND ON AN APPEAL BY THE UNITED STATES, THE DISTRICT OF COLUMBIA, OR AN OFFICER OR AGENCY OF EITHER~~tay in favor of the United States, the District of Columbia, or agency of either~~. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal~~When an appeal is taken~~ by the United States, ~~or~~ the District of Columbia, or an officer or agency of either or on an appeal directed by ~~direction of any governmental~~a department of either ~~and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant~~.

(f) [Deleted].

(g) APPELLATE COURT'S POWER NOT LIMITED~~Power of appellate court not limited~~. Thi~~s e provisions in this~~ ~~R~~rule do~~es~~ not limit ~~any~~ the power of ~~an~~ the appellate court or one of ~~a~~its judge~~s~~ or justice~~s:~~

(1) ~~thereof~~ to stay proceedings ~~during the pendency of an appeal~~ or ~~to~~ suspend, modify, restore, or grant an injunction ~~during the pendency of an~~while an appeal is pending; or

(2) to ~~make~~ issue an~~y~~ order ~~appropriate~~ to preserve the status quo or the effectiveness of the judgment ~~subsequently~~ to be entered.

(h) S~~TAY WITH MULTIPLE CLAIMS OR PARTIES~~~~tay of judgment as to multiple claims or multiple parties~~. ~~When a~~ A court ~~has ordered a final judgment under the conditions stated in Rule 54(b), the Court~~ may stay the enforcement of a final~~that~~ judgment entered under Rule 54(b) until it~~the~~ enters~~ing of~~ a ~~subsequent~~ later judgment or judgments, and may prescribe ~~such conditions as are~~terms necessary to secure the benefit ~~there~~of the stayed judgment for~~to~~ the party in whose favor ~~the judgment is~~it was entered.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 62*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) the addition of the District of Columbia to section (e), which exempts the government from the requirement of posting security to stay enforcement of a judgment on appeal; and 2) the deletion of inapplicable references to patent accountings, three judge District Court panels, and state law on stay of judgments in sections (a), (c) and (f) of the federal rule, respectively.

Rule 62-I. Supersedeas ~~b~~Bond~~.~~

(a) IN GENERAL.

(1) *Court Approval*. ~~Whenever a~~An appellant who is entitled to~~thereto desires~~ a stay on appeal~~, the appellant~~ may present a supersedeas bond or undertaking to the ~~C~~court for its approval~~. a supersedeas bond or an undertaking~~

(2) *Requirements*. The bond or undertaking~~which shall~~ must:

(A) have ~~such~~ a surety or sureties if~~as~~ the ~~C~~court ~~may~~ so requires; and~~.~~

(B) ~~The bond or undertaking shall~~ be conditioned ~~for the~~to satisfy~~action of~~ the judgment in full, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full ~~such~~ any modification of the judgment and ~~such~~ the costs, interest, and damages ~~as the~~awarded by the appellate court ~~may adjudge and award~~, if any.

(3) *Value of Bond or Undertaking*.

(A) *Unsecured Monetary Judgments*. When the judgment is for the recovery of money not otherwise secured, the amount of the bond or undertaking ~~shall~~ will be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the ~~C~~court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond.

(B) *Judgments Determining the Disposition of Property in Controversy*. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the marshal or when the proceeds of ~~such~~ the property or a bond for its value is in the custody or control of the ~~C~~court, the amount of the supersedeas bond or undertaking ~~shall~~ must be fixed at ~~such~~ a sum ~~only as~~ that will secure but not exceed the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay.

~~A separate supersedeas bond need not be given, unless otherwise ordered, when the appellant has already filed in the trial court security including the event of appeal, except for the difference in amount, if any.~~ When the defendant in an action to recover possession of real estate seeks ~~such~~ review, the undertaking ~~shall~~ must also provide for the payment of all intervening damages to the property sought to be recovered and compensation for its use and occupation from the date of the judgment to the date of the satisfaction ~~thereof~~ if the judgment is not reversed.

(4) *Supplementing a Bond or Undertaking*. Unless the court orders otherwise, when the appellant has already filed, in the trial court, security that was intended to include adequate security in the event of an appeal, a separate supersedeas bond need not be given, except for the difference in amount, if any.

(b) EVIDENCE OF FINANCIAL ABILITY. Before the ~~C~~court approves any ~~such~~ bond or undertaking, the party offering the bond or undertaking ~~shall~~ must furnish to the ~~C~~court ~~such~~ any evidence establishing the financial ability of the surety or sureties to discharge the financial obligations of the bond as might be required by the ~~C~~court.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

This Rule contemplates that although the party securing the bond must make diligent efforts to provide adequate security, the ultimate burden is on prevailing parties to assure themselves that the surety is solvent and to bring any issues to the Court's attention.

Rule 62-II. Application for ~~t~~Termination of ~~s~~Stay or for ~~e~~Entry of ~~j~~Judgment~~.~~
(a) PLAINTIFF'S APPLICATION. If either entry or execution of the judgment ~~or execution thereon~~ has been stayed ~~up~~on condition that the defendant make certain periodic payments to the plaintiff or perform other acts, and the defendant at any time fails to make ~~such~~ the payments or perform the~~such~~ acts, the plaintiff may apply for termination of the stay or entry of judgment by mailing to the defendant and the defendant's attorney, if any, a verified copy of Civil Action Form 110 ~~appropriately completed and verified by plaintiff under oath or by the plaintiff's attorney~~, accompanied by proof of service as provided ~~therein or~~ in Rule 5-I. ~~Upon failure of~~
(b) ACTION BY THE CLERK.
(1) *When the Defendant Fails to Respond*. If the defendant fails to oppose ~~such~~ the termination, the ~~C~~clerk may terminate the stay and issue execution or enter judgment in accordance with ~~said~~ the notice given by Civil Action Form 110, in the manner provided in Rule 55(b)(1) with respect to defaults.
(2) *When the Defendant Files an Opposition*. If the defendant files an opposition ~~is filed~~, the notice ~~shall~~ must be treated as an opposed motion pursuant to Rule 12.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 62.1. Indicative Ruling on a Motion for Relief That Is Barred by a Pending Appeal

(a) RELIEF PENDING APPEAL. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state that it would grant the motion if the District of Columbia Court of Appeals remands for that purpose.

(b) NOTICE TO THE COURT OF APPEALS. The movant must promptly notify the District of Columbia Court of Appeals under District of Columbia Court of Appeals Rule 4(f) if the trial court states that it would grant the motion.

(c) REMAND. The trial court may decide the motion if the District of Columbia Court of Appeals remands for that purpose.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 62.1*, which was introduced in 2009, but it contains two local differences—1) it references the District of Columbia Court of Appeals and its applicable rule; and 2) the language "or that the motion raises a substantial issue" has been omitted as inconsistent with local appellate rules.

Rule 63. Judge's or Magistrate Judge's Inability ~~of a judge~~ to ~~p~~Proceed~~.~~

If a judge or magistrate judge conducting a hearing or trial ~~or hearing has been commenced and the judge~~ is unable to proceed, any other judge or magistrate judge (if authorized by law) may proceed ~~with it~~ upon certifying familiarity with the record and determining that the ~~proceedings in the~~ case may be completed without prejudice to the parties. In a hearing or a nonjury trial ~~without a jury~~, the successor judge or magistrate judge must~~shall~~, at a party's~~the~~ request, ~~of a party~~ recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge or magistrate judge may also recall any other witness.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 63*, as amended in 2007, except for the addition of "magistrate judge."

Rule 63-I. Bias or Pprejudice of a Jjudge. or Magistrate Judge

(a) RECUSAL FOR BIAS OR PREJUDICE. Whenever a party to any proceeding makes and files a sufficient affidavit that the judge or magistrate judge before whom the matter is to be heard has a personal bias or prejudice either against the party or in favor of any adverse party, suchthe judge or magistrate judge shall must proceed no further therein, butand another judge or magistrate judge shall must be assigned, in accordance with Rule 40-I(b), to hear suchthe proceeding.

(b) CONTENT OF AFFIDAVIT; FILING. The affidavit shall must state the facts and the reasons for the belief that bias or prejudice exists and shall must be accompanied by a certificate of counsel of record stating that it is made in good faith. The affidavit must be filed at least 24 hours prior to the time set for hearing of such matter unless good cause is shown for the failure to file by such time.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

Rule 63-I is substantially identical to *28 U.S.C. § 144*.

TITLE VIII. PROVISIONALrovisional ANDand FINALinal REMEDIESemedies and Special Proceedings.

Rule 64. Seizingure of a pPerson or pProperty.

(a) IN GENERAL. At the commencement of and during the course ofthroughout an action, all every remedyies is available that, under District of Columbia law, providesing for seizingure of a person or property for the purpose ofto secureing satisfaction of the potential judgment.

(b) SPECIFIC KINDS OF REMEDIES. ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the District of Columbia existing at the time the remedy is sought, subject to the following qualifications: (1) Any existing statute of the United States governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted pursuant to these Rules. The remedies thus available under this rule include the following—however designated:

(1) arrest;,
(2) attachment;,
(3) garnishment;,
(4) replevin;,
(5) sequestration;, and
(6) other corresponding or equivalent remedies, however designated.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 64*, as amended in 2007, except for 1) substitution of "District of Columbia" for "state where the court is located" in section (a) 2) deletion of inapplicable phrases relating to state procedure and proceedings and federal statutes in sections (a) and (b); and 3) the use of numbers instead of bullets in section (b).

Rule 64-I. Attachment ~~b~~B~~B~~efore ~~j~~J~~J~~udgment~~.~~

(a) APPLICATION AND NOTICE TO DEFENDANT~~pplication and notice to defendant~~.

(1) *Requirements*. An application for a writ of attachment before judgment~~, shall~~ must be accompanied by:

(A) ~~set forth, by~~an affidavit~~,~~ setting forth specific facts meeting the requirements of D.C. Code §~~§~~ 16-501 (c) and (d) (~~198~~2012 Repl.);~~.~~

(B) ~~The application shall be accompanied by a prepared~~ a Notice to Defendant on a Civil Action Form 105~~; supplied by the Clerk.~~ and

(C) if the defendant's address is unknown, an affidavit setting forth the plaintiff's reasonable efforts to ascertain the defendant's mailing address.

(2) *Actions by the Clerk*. The ~~C~~clerk ~~shall~~ must:

(A) send ~~such~~ the notice to the defendant by first class mail at the address shown on the notice, or in the case of a foreign corporation, to its registered agent, if any;~~,~~ and

(B) ~~shall~~ note on the docket the date on which the notice is~~of such~~ mailed~~ing~~. ~~If defendant's address is listed on the notice as unknown, the plaintiff shall file with the notice an affidavit setting forth his reasonable efforts to ascertain defendant's current mailing address.~~

(b) ISSUANCE~~ssuance~~. An application for a writ of attachment before judgment ~~shall~~ must be submitted as provided in Rule 12-I(b) to the judge~~, , ,~~ who may approve or deny issuance or ~~may~~ direct ~~such~~ further hearings before issuance as deemed appropriate.

(c) GARNISHEE'S ANSWER; APPLICANT'S RESPONSE~~nswer of garnishee~~. Within 10 days after accepting service of the writ of attachment, ~~A~~a garnishee ~~shall~~ must file an ~~with the Clerk the~~ answer to the interrogatories with the clerk ~~accompanying the writ of attachment within 10 days after service of the writ upon him,~~ and ~~shall~~ serve a copy of the answer ~~up~~on the defendant and ~~upon~~ the party for whom~~at whose instance~~ the garnishment was issued. If within 1~~4~~0 days after service of the answer, ~~to the interrogatories~~ or ~~such~~ at a later time if~~as~~ the ~~C~~court ~~may~~ allows, the party ~~at whose instance~~for whom the garnishment was issued ~~shall not~~fails to contest the answer to the interrogatories ~~pursuant to~~under D.C. Code § 16-522 (~~198~~2012 Repl.), the garnishee's obligations under the attachment ~~shall~~ will be limited by his answer.

(d) HEARING~~earing~~. If a hearing is held as a result of the filing of a traversing affidavit by the defendant or the garnishee ~~pursuant to~~under D.C. Code § 16-506 (~~198~~2012 Repl.), the plaintiff must~~shall be required to~~ establish the validity or probable validity of the underlying claim and the existence of the ground for issuing the attachment.

(e) PRIORITY OF LIENS~~riority of liens~~. For purposes of determining priority of successive liens, a writ of attachment issued under ~~section (b) of this~~ Rule 64-I(b) ~~shall~~ becomes effective ~~from~~ the date ~~of~~ it is deliver~~ed~~ed to the United States marshal or deputy marshal.

(f) EXPEDITING MOTIONS TO QUASH~~xpedition of motions to quash~~. The court must hear~~A~~ all motions to quash attachments ~~shall be heard by the Court~~ on an expedited basis. ~~Upo~~On at least ~~3~~5 days~~'~~ notice to all parties, the ~~C~~court may, in appropriate cases, order that the action in which the motion was filed be tried on the merits at the same time the motion is heard.

(g) DISCOVERY~~iscovery~~. For good cause ~~shown~~, the ~~C~~court may in its discretion permit discovery in attachment before judgment proceedings in the manner provided in Rule 69-I.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Also, some time periods were adjusted to reflect the new time computation method in Rule 6. However, the garnishee's time for filing answers to the interrogatories was not increased because it is statutory.

COMMENT

In connection with Rule 64-I, *see Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) and *Fuentes v. Shevin*, 407 U.S. 67 (1972).

Rule 64-II. Replevin ~~a~~Actions~~.~~

(a) NOTIFYING THE JUDGE. ~~Upo~~On filing any action in replevin and before process ~~therefor~~ is placed in the hands of the United~~.~~ States~~.~~ ~~M~~marshal or deputy marshal or other process server, the plaintiff, personally or by his attorney, will bring the action to the attention of the judge to whom the case is assigned ~~as provided in~~under Rule 12-I(b).

(b) HEARING ON APPLICATION FOR WRIT; ORDER TO PRESERVE PROPERTY.

(1) *Setting a Hearing.* ~~At that time~~ When notifying the judge of the action, the plaintiff may request that the judge set a date for a hearing at which the plaintiff will be required to establish the probable validity of his claim and the defendant will be given an opportunity to appear and be heard with respect to whether a writ of replevin should issue.

(2) *Order to Preserve Property.* If~~, upon such application,~~ the judge determines ~~that~~ the plaintiff has filed a verified complaint alleging th~~e~~at defendant is wrongfully detaining ~~certain~~ the specified property ~~which~~that the plaintiff is entitled to possess, he or she may issue an order:

(A) directing the defendant to preserve the property that~~which~~ is the subject of the action in his or her possession or under his or her control so as to keep it amenable to the process of the ~~C~~court pending further order of the ~~C~~court;~~.~~

(B) ~~The order will also~~ indicat~~e~~ing the date on which the plaintiff's application for a writ of replevin will be ~~brought on for~~ hear~~d~~ing~~;~~ and

(C)~~will~~ inform~~i~~ing the defendant that he or she may be heard at that time, with or without witnesses, on whether the writ should issue.

(~~c~~3) *Service of Process.* The order ~~shall~~must direct the plaintiff to ~~cause~~ serve a copy of the summons, complaint, and order ~~to be served up~~on the defendant at least 7~~5~~ ~~Court~~ days prior to the hearing date ~~set for the hearing~~. A~~If~~ plaintiff who does not effect service~~they are not served by that~~on time~~, the plaintiff shall~~ must apply to the judge to whom the case is assigned to set a later hearing date~~,~~ which will provide the defendant with sufficient time to ~~make~~ adequately prepar~~e~~ation therefor. ~~In any order entered under this Rule, t~~The ~~judge~~ order may require ~~include such requirements with respect to the method~~actions by the plaintiff~~ designed~~as~~ to accomplish prompt and expeditious notice to the defendant.

(~~d~~c) ISSUING THE WRIT; REQUIRING A SECURITY FROM THE DEFENDANT. At the conclusion of the hearing, the judge may authorize the issuance and execution of a writ of replevin or may, if it appears just, permit all or part of the property to remain in the possession of the defendant pending further order of the ~~C~~court. If the defendant remains in possession of the property~~n the latter event~~, the court may require the defendant to post an appropriate surety bond or other undertaking or may otherwise provide for the protection of the property ~~pursuant to~~under D.C. Code § 16-3708 (~~198~~2012 Repl.).

(~~e~~d) FILING REQUIREMENTS. The Civil Division will not accept for filing any action of replevin unless ~~said~~ the complaint is accompanied by an appropriate surety bond, approved by the ~~C~~clerk.

(~~f~~e) GOVERNMENT APPLICATIONS FOR WRITS OF REPLEVIN WITHOUT PRIOR ADVERSARY HEARING.

(1) *In General*. In ~~making the~~its initial application ~~to the judge to whom the case is assigned~~, counsel for a federal, District of Columbia, State or other governmental agency or official~~, upon showing (1) a direct necessity to secure an important governmental or general public interest and (2) a special need for prompt action under a specific statute or regulation authorizing seizure of property without opportunity for prior hearing,~~ may apply for issuance of the writ without prior adversary hearing on the ground that there is an immediate danger that the defendant will destroy or conceal the property in dispute or on any other ground set forth in D.C. Code § 16-501 (d)(2)~~, (3), (4), or~~ (5) (~~198~~20112 Repl.) as a basis for attachment before judgment

(2) *Filing Requirements*. The application must show:

(A) a direct necessity to secure an important governmental or general public interest; and

(B) a special need for prompt action under a specific statute or regulation authorizing seizure of property without opportunity for prior hearing.

(3) *Judicial Action*. ~~Upon such application, support by affidavit or sworn testimony reciting specific facts which tend to establish the grounds therefor, t~~The judge may~~, if deemed appropriate,~~ authorize the immediate issuance of the writ prior to the hearing only if the application is supported by affidavit or sworn testimony reciting specific facts that tend to establish the required grounds. If the ~~judicial officer~~judge authorizes ~~such~~ the issuance of the writ, ~~there shall be entered in the record~~ findings of fact and conclusions of law, which state the basis of the need for ~~such~~ immediate issuance must be entered on the record.

(4) *Vacating the Writ.* After at least 24 hours notice to the plaintiff, ~~T~~the defendant against whom a writ has been issued ~~in this manner~~without a hearing may~~, on not less than 24 hours notice to the plaintiff,~~ apply to the ~~C~~court to have the writ vacated. Regardless, ~~I~~if such writ issues, a hearing ~~shall~~ must take place on the 5th ~~Court~~ day after execution of the writ. It ~~shall be~~is the duty of plaintiff's counsel to notify the ~~Civil C~~clerk's ~~O~~office promptly of the execution of the writ.

(~~g~~f) EXPEDITED TRIAL. Trial of all actions in replevin, whether on the jury or nonjury calendar, must~~shall~~ be expedited.

(~~h~~g) TRIAL IN LIEU OF HEARING. If ~~By consent of~~ all of the parties consent, the judge conducting a hearing on the issuance vel non of a writ of replevin may try the entire proceeding on the merits in lieu of merely determining whether ~~or not~~ to issue the writ ~~should issue~~.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

See Fuentes v. Shevin, 407 U.S. 67 (1972).

Rule 65. Injunctions~~.~~ and Restraining Orders

(a) PRELIMINARY INJUNCTION~~reliminary injunction~~.

(1) *Notice*. The court may issue a~~No~~ preliminary injunction ~~shall be issued without~~only on notice to the adverse party.

(2) *Consolidati~~on~~ng ~~on~~ the~~of~~ h~~H~~earing with the t~~T~~rial on the m~~M~~erits*. Before or after ~~the commencement of~~beginning the hearing ~~of an application~~on a motion for a preliminary injunction, the C~~c~~ourt may advance~~order~~ the trial o~~f~~n the ~~action on the~~ merits ~~to be advanced~~ and consolidate~~d~~ it with the hearing ~~of the application~~. Even when ~~this~~ consolidation is not ordered, ~~any~~ evidence that is received ~~up~~on ~~an application for a preliminary injunction which~~the motion and that would be admissible ~~upon the~~at trial ~~on the merits~~ becomes part of the trial record ~~on the trial~~ and need not be repeated ~~upon the~~at trial. But the court must preserve~~This subdivision (a)(2) shall be so construed and applied as to save to the parties~~ any party's right~~s they may have~~ to a jury trial ~~by jury~~.

(b) TEMPORARY RESTRAINING ORDER~~emporary restraining order; notice; hearing; duration~~.

(1) *Issuing Without Notice*. The court may issue A~~a~~ temporary restraining order ~~may be granted~~ without written or oral notice to the adverse party or ~~that party's~~its attorney only if:

(~~1~~A) ~~it clearly appears from~~ specific facts ~~shown by~~in an affidavit or ~~by the~~ a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the ~~applicant~~ movant before the adverse party ~~or that party's attorney~~ can be heard in opposition~~,~~; and

(~~2~~B) the C~~c~~ourt finds that the ~~applicant~~ movant has made ~~all~~ reasonable efforts under the circumstances to furnish to the adverse party~~'~~ or its attorney, ~~if known, otherwise to the adverse party,~~ at the earliest practicable time prior to the hearing on the motion for such order, ~~(a)~~ actual notice of the hearing and ~~(b)~~ copies of all pleadings and other papers filed ~~to date~~ in the action or to be presented to the c~~C~~ourt at the hearing.

(2) *Contents; Expiration*. Every temporary restraining order ~~granted~~ issued without notice ~~shall be indorsed with~~must state the date and hour it was~~of~~ issue~~d~~ance; describe the injury and state why it is irrea~~p~~arable; state why the order was issued without notice; and be promptly~~shall be~~ filed ~~forthwith~~ in the C~~c~~lerk's O~~o~~ffice and entered ~~of~~ in the record.~~; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall~~The order expires ~~by its terms within such~~at the time after entry~~,~~ not to exceed 1~~4~~0 days~~, as~~that the C~~c~~ourt ~~fixes~~sets, unless ~~within the~~before that time ~~so fixed the order~~the court, for good cause ~~shown~~, ~~is~~ extend~~s~~ed it for a like period or ~~unless~~ the adverse party ~~against whom the order is directed~~ consents ~~that it may be extended for a~~ to a longer ~~period~~extension. The reasons for ~~the~~ an extension ~~shall~~ must be entered ~~of~~ in the record.

(3) *Expediting the Preliminary-Injunction Hearing.* I~~n case a temporary restraining order is granted~~f the order is issued without notice, the motion for a preliminary injunction ~~shall~~ must be set ~~down~~ for hearing at the earliest possible time~~, and~~ take precedence over ~~of~~ all other matters except hearings on older matters of the same character~~.~~; At the ~~and when the motion comes on for~~ hearing, the party who obtained the ~~temporary restraining~~ order ~~shall~~ must proceed with the ~~application~~ motion~~for a preliminary injunction and~~;~~,~~ if the party does not ~~do so~~, the C~~c~~ourt ~~shall~~ must dissolve

the ~~temporary restraining~~ order.

(4) *Motion to Dissolve*. On 2 days' notice to the party who obtained the ~~temporary restraining~~ order without notice—or on ~~such~~ shorter notice ~~to that party as~~set by the ~~C~~court ~~may prescribe,~~ the adverse party may appear and move ~~its dissolution or modification~~to dissolve or modify the order. ~~and in that event t~~The ~~C~~court ~~shall proceed to~~must then hear and de~~termine such~~cide the motion as ~~expeditiously~~ promptly as ~~the ends of~~ justice require~~s~~.

(c) S~~ECURITY~~ecurity. The court may issue a~~No restraining order or~~ preliminary injunction or a temporary restraining order only if ~~shall issue except upon~~ the movant give~~s~~ing ~~of~~ security ~~by the applicant,~~ in an amount ~~such sum as~~that the ~~C~~court ~~deems~~ considers proper~~, for the~~to pay~~ment of such~~ the costs and damages ~~as may be incurred or suffered~~sustained by any party ~~who is~~ found to have been wrongfully enjoined or restrained. ~~No such security shall be required of t~~The United States ~~or of~~, the District of Columbia, ~~or~~and ~~of an~~ officer~~s~~ or agenci~~es~~y of either are not required to give security. ~~The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this Rule.~~

(d) ~~Form and scope of injunction or restraining order~~CONTENTS AND SCOPE OF EVERY INJUNCTION AND RESTRAINING ORDER.

(1) *Contents*. Every order granting an injunction and every restraining order must:~~shall~~

(A) state ~~set forth~~ the reasons ~~for~~ why it~~s~~ issue~~d~~~~dance~~;

(B) state its ~~shall be specific in~~ terms specifically; and

(C) ~~shall~~ describe in reasonable detail—~~,~~ and not by refer~~ring~~~~ence~~ to the complaint or other document—~~,~~ the act or acts ~~sought to be~~ restrained or required.

(2) *Persons Bound*.~~;~~ The order~~and is~~ bind~~s~~~~ing~~ only the following who receive actual notice of it by personal service or otherwise:

(A)~~upon~~ the parties ~~to the action,~~;

(B) the~~ir~~ parties' officers, agents, servants, employees, and attorneys~~,~~; and

(C) ~~upon those~~other persons who are in active concert or participation with ~~them who receive actual notice of the order by personal service or otherwise~~anyone described in Rule 65(d)(2)(A) or (B).

(e) ~~Employer and employee~~OTHER LAWS NOT MODIFIED. These ~~R~~rules do not modify any applicable statute ~~of the United States~~ relating to temporary restraining orders ~~and~~or preliminary injunctions in actions affecting employer and employee.

(f) [Omitted].

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 65*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) in subsection (b)(1), the requirement for an attorney certification has been replaced with language requiring the court to find that the movant made reasonable efforts; 2) the District of Columbia has been added to the section exempting the government and its agents from posting security; 3) references to federal statutes have been omitted from section (e); and 4) section (f) of the federal rule has been omitted as inapplicable.

COMMENT

Identical to *Federal Rule of Civil Procedure 65* except for (1) revision of the 2nd prerequisite clause in section (b) so as to replace the attorney's written certificate with a Court finding and to require the applicant to make reasonable efforts to furnish to the adverse party's attorney not only notice of the hearing but also copies of any papers filed to date or to be presented to the Court at the hearing; (2) addition of the District of Columbia to the provision in section (c) exempting the government and its agents from the requirement of posting security in the course of obtaining any restraining order or preliminary injunction; and (3) deletion from section (e) thereof of inapplicable references to *28 U.S.C. §§ 2361* and 2384 and substitution therein of "applicable statute" for "statute of the United States [sic]".

The 1st change described above was prompted by experience in this jurisdiction with a substantial number of emergency applications for temporary restraining orders, particularly against the District of Columbia. In the case of any application for a temporary restraining order against the District of Columbia, an agency thereof, or an employee acting or purporting to act in his official capacity, the adverse party's attorney is, of course, the Corporation Counsel of the District of Columbia. Because it is most desirable to have the adverse party's attorney present, if possible, at the hearing on the motion for temporary restraining order, the revised 2nd prerequisite requires the applicant to make all reasonable efforts to notify the adverse party's attorney of the hearing and furnish him with appropriate papers; naturally, furnishing such notice and papers to the adverse party himself would be the next best step if the applicant does not know who the adverse party's attorney is.

It should be noted, however, that the furnishing of pleadings and other papers called for in section (b) does not supplant the jurisdictional requirement of service of process on the defendant in accordance with Rule 4.

Rule 65.1. ~~Security:~~ Proceedings ~~a~~Against a ~~s~~Surety~~ies.~~

Whenever these ~~R~~rules require or ~~permit~~ allow ~~the giving of security by a party~~a party to give security, and security is given ~~in the form of~~through a bond ~~or stipulation~~ or other undertaking with one~~1~~ or more sureties, each surety submits to the court's jurisdiction ~~of the Court~~ and irrevocably appoints the ~~Clerk of the Court~~court clerk as ~~the surety's~~its agent ~~upon whom any papers affecting the surety's liability on the bond or undertaking may be served~~for receiving service of any papers that affect its liability on the bond or undertaking. The surety's liability may be enforced on motion without ~~the necessity of~~ an independent action. The motion and ~~such~~ any notice ~~of the motion as~~ that the ~~C~~court ~~prescribes~~ orders may be served on the ~~Clerk of the Court~~court clerk, who ~~shall~~must ~~forthwith~~ promptly mail ~~copies~~ a copy of each to ~~the sureties if their addresses are known~~ every surety whose address is known.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 65.1*, as amended in 2007, except that it maintains one local distinction—the omission of a reference to the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

COMMENT

Identical to *Federal Rule of Civil Procedure 65.1* except for the deletion therefrom of the inapplicable reference to Supplemental Rules for Admiralty Cases in the federal District Courts.

Rule 66. Receivers ~~appointed by the Superior Court.~~

These rules govern ~~A~~an action ~~wherein~~ in which the appointment of a receiver is sought or a receiver sues or is sued. ~~has been appointed shall not be dismissed except by order of the Court.~~ But ~~T~~the practice in ~~the administrati~~~~ing~~administering ~~on of~~ an estate~~s~~ by a receiver~~s~~ or ~~by other~~a similar court-appointed officer~~s~~ ~~appointed by the Court shall be in~~ must accord~~ance~~ with the historical practice ~~heretofore followed~~ in the United States District Court for the District of Columbia ~~or as provided in Rules promulgated by~~and this ~~C~~court. ~~In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these Rules.~~ An action in which a receiver has been appointed may be dismissed only by court order.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 66*, but it maintains one local distinction—it references the historical practices of the Superior Court and the United States District Court for the District of Columbia.

COMMENT

Identical to *Federal Rule of Civil Procedure 66* except for change in title and change in designation on prior practice to be followed. The insertion of reference to practice heretofore followed in the United States District Court for the District of Columbia is designed to insure maximum possible continuity in the handling of District of Columbia receivership matters.

Rule 67. Deposit into Court.

(a) DEPOSITING PROPERTY. In an action in which If any part of the relief sought is a money judgment for a sum of money or the disposition of a sum of money or the disposition of any some other deliverable thing capable of delivery, a party, upon notice to every other party, and by leave of Ccourt, may deposit with the Ccourt all or any part of such sum the money or thing, whether or not that party claims all or any part of the sum or thing any of it. The depositing party making the deposit shall must serve the order permitting deposit on deliver to the clerk of the Court a copy of the order permitting deposit.

(b) INVESTING AND WITHDRAWING FUNDS. Money paid into Ccourt under this Rrule shall must be deposited and withdrawn in accordance with the provisions of D.C. Code 1981, § 11-1723 (b)a)(2) (2012 Repl.) or any like statute.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 67*. The Superior Court rule retains two local distinctions—1) the applicable provision of the D.C. Code has been substituted for the federal statute; and 2) the requirement to deposit funds in an interest-bearing account has been omitted.

COMMENT

Substantially identical to *F. R. Civ. P. 67* except for the deletion of the requirement that all deposited funds be placed in an interest-bearing account or invested in an interest-bearing instrument. The decision to place funds in such an account or instrument and to disburse those funds with accrued interest is discretionary with the Court, after due consideration of the administrative burden imposed by the accounting of such funds.

Nothing in this rule is intended to restrict the authority of the Court, upon proper application, to appoint a trustee, escrow holder, or to establish some otherwise appropriate method to retain funds pendente lite.

Rule 67-I. Recording Mmoney Ppaid to or by Clerk.

The cClerk shall must receive and keep proper accounts of all moneys deposited or paid into or out of the Cclerk's office and make such reports concerning the same as may be required by law or court ordered by the Court.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 68. Offer of ~~j~~Judgment~~.~~

(a) MAKING AN OFFER; JUDGMENT ON AN ACCEPTED OFFER.~~At any time m~~ More ~~than~~ At least 1~~4~~40 days before the date set for trial ~~begins~~, a party defending against a claim may serve ~~up~~on ~~the adverse~~ an opposing party an offer to allow judgment ~~to be taken against the defending party for the money or property or to the effect specified in the offer~~ on specified terms, with the costs then accrued. If, within 1~~4~~40 days after ~~the service of the offer~~ being served, the ~~adverse~~ opposing party serves written notice ~~that the offer is~~ accept~~ed~~ing the offer, either party may then file the offer and notice of acceptance, ~~together with~~ plus proof of service. ~~thereof and thereupon t~~The ~~C~~clerk ~~shall~~ must then enter judgment.

(b) UNACCEPTED OFFER. An ~~offer not~~ unaccepted offer is considered ~~shall be deemed~~ withdrawn, but it does not preclude a later offer. ~~and e~~Evidence ~~thereof~~ of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) OFFER AFTER LIABILITY IS DETERMINED. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time—but at least 14 days—before the date set for a hearing to determine the extent of liability.

(d) PAYING COSTS AFTER AN UNACCEPTED OFFER. If the judgment ~~finally obtained by~~ that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after ~~the making of~~ the offer was made.

~~The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of eharings to determine the amount or extent of liability.~~

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 68*, as amended in 2007 and 2009.

Rule 68-I. Judgment by Cconfession or Cconsent.

(a) [Deleted]Entry by the Clerk.

The Clerk shall have authority to enter judgment by confession without judicial approval upon the filing of a praecipe or equivalent form signed by the defendant and the plaintiff's attorney.

(b) [Deleted]Certification.

Application for judgment by confession pursuant to subdivision (a) of this Rule shall constitute a certification by the plaintiff's attorney:

(1) That the confession of judgment was executed by the defendant after the complaint was filed;

(2) That said attorney explained to the defendant the nature and consequences of the defendant's act.

(c) CONSENT OF COUNSELonsent of counsel. Once a complaint is filed, Tthe Cclerk shall also haveis authorizedty to enter judgment by confession or consent without judicial approval by stipulation signed by the attorneys for all parties in any pending that cases.

(d) COURT APPROVALourt approval; motions.

(1) *When Required*. All other requests for entry of judgment by confession or consent shall must be submitted to the Court by praecipe for approval by the court after the complaint is filed.

(2) *Form of Praecipe*. The praecipe must be entitled "Rule 68-I Praecipe Requesting a Hearing." A copy of the proposed judgment, signed by all parties to that judgment, must be attached to the praecipe with a blank line at the bottom for the judge's signature.

(3) *Hearing*. If the praecipe meets the requirements of Rule 68-I(d)(2), the clerk will set a hearing. At the hearing, the judge or magistrate judge must ascertain to his or her satisfaction that all self-represented parties understand the nature and consequences of the judgment.

COMMENT TO 2017 AMENDMENTS

This rule has been redrafted to allow the clerk to approve judgments for confession only where all parties are represented by counsel and to require court inquiry prior to any approval in all cases where any party is not represented by counsel. Previous versions of this rule required opposing counsel to certify that he or she had explained the nature and consequences of the confessed judgment to any self-represented opposing party. Having the court perform this function provides greater protection to both self-represented litigants and opposing counsel, and it ensures that all aspects of confessed judgments, including any claimed entitlement to attorney's fees, are supported by law.

Parties seeking a judgment under this rule must fully comply with the requirements of Rule 3 by filing a complaint with the clerk's office before requesting a judgment.

Rule 69. Execution.

(a) *In general.* IN GENERAL.

(1) *Money Judgment; Applicant Procedure.* Process to enforce a judgment for the payment of A money judgment shall beis enforced by a writ of execution, unless the Ccourt directs otherwise. The procedure on execution, and in proceedings supplementary to and in aid of a judgment or execution must, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the District of Columbia, existing at the time the remedy is sought, except that any statute of the United Statesbut a federal statute governs to the extent that it is applicable.

(2) *Obtaining Discovery.* In aid of the judgment or execution, the judgment creditor or a successor in interest when thatwhose interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manneras provided in Rule 69-I.

(b) [Omitted].

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 69*.

COMMENT

[Moved from the comment to Rule 69-II.] Rule 69 is identical to *Federal Rule of Civil Procedure 69* except for the substitution in section (a) of "District of Columbia" for "state in which the district court is held", and modification of the last sentence of section (a) to indicate that discovery in aid of judgment or execution may be had as provided in Rule 69-I. The writ of execution referred to in Rule 69 includes, of course, the writ of fieri facias provided for in D.C. Code § 15-311 (1973 Ed.).

Rule 69-II. Particular Ppprovisions for Aattachments of wWages Aafter Jjudgment.

(a) APPLICABILITYpplicability. The provisions set forth inof this Rrule shall do not supersede or repeal any other Rrule of this cCourt unless in express conflict therewith and shall must apply only to attachments issued pursuant to D.C. Code (1967 Edition) §§ 16-5712 et seq.to -584 (2012 Repl.) and *15 U.S.C. § 1601 et seq.*

(b) REPORTING CREDITS AGAINST JUDGMENTeporting credits against judgment. It shall beis the duty of a judgment creditor who is receiving payments on account of the judgment from an employer-garnishee and who shall will receive credits upon said judgment from a source other than said employer-garnishee to notify said employer-garnishee and the cClerk in writing of such receipt within 140 days thereafter, including the date, amount, and source thereof.

(c) SCHEDULE AND RECEIPT FOR PAYMENTSchedule and receipt for payments. Every judgment creditor receiving payments from an employer-garnishee pursuant to the issuance of a wage attachment shall beis obligated to credit the payments first against the accrued interest on the unpaid balance of the judgment, if any, second upon the principal amount of the judgment, and third upon those attorney's fees and costs actually assessed in the cause, and shall must send a receipt to the garnishee within 57 days after such payment, which receipt shall must set forth the application of such payment pursuant to the schedule aforesaid above.

(d) NONCOMPLIANCEoncompliance. If any judgment creditor shall fails to comply with this Rrule or with the statutory provisions cited in section Rule 69-II(a) hereof, the Ccourt may in its discretion, on motion of any interested party:

(1) enter an order vacating and setting aside the attachment and continuing levy of said judgment creditor then in force and effect, but without prejudice to the refiling and serving of another attachment, which shall must follow prior attachment of wages of the judgment debtor in the hands of the same employer-garnishee;, and

(2) may enter a judgment of a reasonable attorney's fee and tax costs in favor of the party filing the motion to vacate and set aside the attachment.

(e) Garnishment docket card.

Each writ of attachment for wages shall be accompanied by a garnishment docket card prepared by the judgment creditor or the judgment creditor's attorney. The judgment creditor or the judgment creditor's attorney shall supply the Social Security number of the judgment debtor-employee, if known. The Clerk shall furnish the said garnishment docket card on a form approved by the Court.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Also, time periods were adjusted to reflect the new time computation method in Rule 6. Finally, the section regarding dockets cards has been eliminated as obsolete.

COMMENT

Rule 69-II contains certain specific provisions with respect to post judgment attachments.

Rule 70. Enforcing a Judgment for a sSpecific aActs: Vesting title.

(a) PARTY'S FAILURE TO ACT; ORDERING ANOTHER TO ACT. If a judgment directs requires a party to execute a conveyance of convey land, or to deliver a deeds or other document, s or to perform any other specific act and the party fails to comply within the time specified, the Ccourt may direct order the act to be done—at the cost of the disobedient party's expense——by some otheranother person appointed by the Ccourt. When done, and the act when so done has like the same effect as if done by the party.

(b) VESTING TITLE. If the real or personal property is within the District of Columbia, the court—instead of ordering a conveyance—may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) OBTAINING A WRIT OF ATTACHMENT OR SEQUESTRATION. On application of the by a party entitled to performance of an act, the Cclerk shall must issue a writ of attachment or sequestration against the disobedient party's property of the disobedient party to compel obedience to the judgment.

(d) OBTAINING A WRIT OF EXECUTION OR ASSISTANCE. On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) HOLDING IN CONTEMPT. The cCourt may also in proper cases adjudgehold the disobedient party in contempt. If real or personal property is within the District of Columbia, the Court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the Clerk.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 70*.

COMMENT

Identical to *Federal Rule of Civil Procedure 70* except for substitution of "District of Columbia" for "district".

**Rule 71. ~~Process in behalf of and~~ Enforcing Relief For or ~~a~~A~~gainst persons~~a ~~not p~~Nonpart~~y~~~~ies.~~

When an order ~~is made in favor of a person who is not~~grants relief for a nonparty ~~to the action, that person~~or may be enforce~~d obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced~~ against a ~~person who is not a~~ nonparty, ~~that person is liable to the same process~~the procedure for enforcing ~~obedience to~~ the order is the same as ~~if~~for a party.

COMMENT TO 2017 AMENDMENTS

Rule 71 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 71*.

COMMENT

Identical to Federal Rule of Civil Procedure 71.

TITLE IX. SPECIAL PROCEEDINGSAppeals.

Rule 71.1A. Condemningation Real or Personal of pProperty.

(a) APPLICABILITY OF OTHER RULESpplicability of other rules. These Superior Court Rrules of Civil Procedure govern the procedure for theproceedings to condemnation of real and personal property under the power ofby eminent domain, except as otherwise this rule provides otherwised in this Rule.

(b) JOINDER OF PROPERTIESoinder of properties. The plaintiff may join in the same action 1 or more separate pieces of property in a single action, no matter whether they are owned byin the same persons or different ownership and whether or not sought for the same use.

(c) COMPLAINTomplaint.

(1) *Caption*. The complaint shall must contain a caption as provided in Rule 10(a). except that tThe plaintiff shall must, however, name as defendants both the property—, designated generally by kind, quantity, and location—, and at least one of the owners of some part of or interest in the property.

(2) *Contents*. The complaint shall must contain a short and plain statement of the following:

(A) the authority for the taking;,

(B) the uses for which the property is to be taken;,

(C) a description of the property sufficient tofor its identifyication the property;,

(D) the interests to be acquired;, and

(E) as tofor each separate piece of property, a designation of the each defendants who haves been joined as an owners thereof or owner of some an interest thereinin it.

(3) *Parties*. Upon When the action commencesment of the action, the plaintiff need join as defendants only those persons who haveing or claiming an interest in the property and whose names are then known. , bBut prior tobefore any hearing involving theon compensation to be paid for a piece of property, the plaintiff shall must add as defendants all those persons who haveing or claiming an interest and in that property whose names have become known or can be ascertained found by a reasonably diligent search of the records, considering both the property's character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners."

(4) *Procedure*. Process shallNotice must be served on as provided in subdivision (d) of this Rule upon all defendants as provided in Rule 71.1(d), whether they were named as defendants at the time ofwhen the action the commencedment of the action or weresubsequently added later. , and aA defendant may answer as provided in subdivision (e) of this Rule 71.1(e). The Ccourt, meanwhile, may order such any distribution of a deposit as that the facts warrant.

(35) *Filing; Additional Copies*. In addition to filing the complaint with the Court, the plaintiff shall must furnish togive the clerk at least 1one copy thereof for the use of the defendants' use and additional copies at the request of the cClerk or of a defendant.

(d) PROCESSrocess.

(1) *Delivering Notice: Delivery to the Clerk*. UpoOn the filing of thea complaint, the plaintiff shall forthwithmust promptly deliver to the Cclerk joint or several notices

directed to the named defendants ~~named or designated in the complaint~~. When adding defendants, the plaintiff must deliver to the clerk ~~A~~additional notices directed to the new defendants ~~subsequently added shall be so delivered~~. ~~The delivery of the notice and its service have the same effect as the delivery and service of the summons under Rule 4.~~

(2) ~~Same: Form~~ *Contents of the Notice*.

(A) *Main Contents.* Each notice ~~shall state~~must name the ~~C~~court, the title of the action, and the ~~name of the~~ defendant to whom it is directed. It must describe~~, that the action is to condemn property, a description of~~ the ~~defendant's~~ property sufficiently to ~~for its~~ identify~~ication~~ it, but need not describe any property other than that to be taken from the named defendant. The notice must also state:

(i) that the action is to condemn property;

(ii) the interest to be taken;~~,~~

(iii) the authority for the taking;~~,~~

(iv) the uses for which the property is to be taken;~~,~~

(v) that the defendant may serve an answer~~up~~ on the plaintiff's attorney ~~an answer~~ within 21~~0~~ days after being served~~ice of~~ with the notice;~~,~~

(vi) ~~and~~ that the failure ~~so~~ to so serve an answer constitutes ~~a~~ consent to the taking and to the ~~authority of the C~~court's authority to proceed ~~to hear~~with the action and ~~to~~ fix the compensation; and

(vii) that a defendant who does not serve an answer may file notice of appearance.

(B) *Conclusion.* The notice ~~shall~~ must conclude with the name, telephone number, and e-mail address of the plaintiff's attorney and an address within the District of Columbia where the attorney may be served. ~~The notice need contain a description of no other property than that to be taken from the defendants to whim [whom] it is directed.~~

(3) *Serv~~ice~~ing ~~of~~the ~~n~~Notice*.

(A) *Personal ~~S~~service*. When ~~Personal service of the notice but without copies of the complaint shall be made in accordance with Rule 4 upon~~ a defendant whose ~~residence~~ address is known ~~and who~~ resides within the United States or a territory subject to the administrative or judicial jurisdiction of the United States, personal service of the notice (without a copy of the complaint) must be made in accordance with Rule 4.

(B) *Service by ~~p~~Publication*.

(i) A defendant may be served by publication only when the plaintiff's attorney~~Upon the~~ files~~ing of~~ a certificate ~~of the plaintiff's attorney~~ stating that the attorney believes ~~a~~the defendant cannot be personally served, because after diligent inquiry, the defendant's place of residence is still unknown ~~cannot be ascertained by the plaintiff~~ or, if ~~ascertained~~known, that it is beyond the territorial limits of personal service ~~as provided in this Rule.~~ ~~,~~ ~~s~~Service is then made ~~of the notice shall be made on this defendant~~ by publish~~ingcation~~ the notice—once a week for at least 3 successive weeks—~~-~~in a newspaper published in the District of Columbia~~,~~ or, if there is no such newspaper, ~~then~~ in a newspaper ~~having a~~with general circulation where the property is located~~, once a week for not less than 3 successive weeks~~. ~~Prior to~~Before the last publication, a copy of the notice ~~shall~~ must also be mailed to ~~a~~ every defendant who cannot be personally served ~~as provided in this Rule~~ but whose place of residence is

then known. Unknown owners may be served by publication in ~~like~~ the same manner by a notice addressed to "Unknown Owners".

(ii) Service by publication is complete ~~up~~on the date of the last publication. The plaintiff's attorney must prove~~Proof of~~ publication and mailing ~~shall be made~~ by a certificate ~~of the plaintiff's attorney~~, ~~to which shall be~~ attach~~ed~~ a printed copy of the published notice, and mark on the copy ~~with the name and dates of~~ the newspaper's name and the dates of publication ~~marked thereon~~.

(4) ~~Return; amendment~~*Effect of Delivery and Service*. Delivering the notice to the clerk and serving it have the same effect as serving a summons under Rule 4.

(5) *Proof of Service; Amending the Proof or Notice.* Rule 4(*l*) governs ~~P~~proof of service. The court may permit the ~~of the notice shall be made and amendment of the notice or~~ proof or the notice to be amended ~~of its service allowed in the manner provided for the return and amendment of the summons under Rule 4~~.

(e) APPEARANCE OR ANSWER~~ppearance or answer~~.

(1) *Notice of Appearance.* ~~If a~~A defendant that has no objection or defense to the taking of ~~the defendant's~~its property~~, the defendant~~ may serve a notice of appearance designating the property in which ~~the defendant~~it claims ~~to be~~an interest~~ed~~. ~~Thereafter t~~The defendant ~~shall~~ must then be given~~receive~~ notice of all later proceedings affecting ~~it~~the defendant.

(2) *Answer.* ~~If a~~A defendant that has an~~y~~ objection or defense to the taking ~~of the property, the defendant shall~~must serve an answer within 2~~1~~0 days after ~~the~~ being serve~~d~~d~~ice~~ with the~~of~~ notice ~~upon the defendant~~. The answer ~~shall~~must:

(A) identify the property in which the defendant claims ~~to have~~ an interest;~~,~~

(B) state the nature and extent of the interest ~~claimed,~~; and

(C) state all the defendant's objections and defenses to the taking ~~of the property~~.

(3) *Waiver of Other Objections and Defenses; Evidence on Compensation.* A defendant waives all ~~defenses~~ objections and ~~objections~~ defenses not ~~so presented~~stated in its answer.~~,~~ No other pleading or motion asserting an additional objection or defense is allowed. ~~b~~But at the trial ~~of the issue of just~~on compensation, a defendant—whether or not ~~the defendant~~it has previously appeared or answered—~~, the defendant~~ may present evidence ~~as to~~on the amount of ~~the~~ compensation to be paid ~~for the property,~~ and ~~the defendant~~ may share in the ~~distribution of the~~ award. ~~No other pleading or motion asserting any additional defense or objection shall be allowed.~~

(f) AMENDING PLEADINGS~~mendment of pleadings~~. Without leave of court, the plaintiff may—~~as often as it wants~~—amend the complaint at any time before the trial ~~of the issue of~~on compensation ~~and as many times as desired.~~~~,~~ ~~b~~But no amendment ~~shall~~ may be made ~~which will~~if it would result in a dismissal ~~forbidden by subdivision (i) of this~~inconsistent with Rule 71.1(i)(1) or (2). The plaintiff need not serve a copy of an amendment, but ~~shall~~ must serve notice of the filing, as provided in Rule 5(b), ~~up~~on ~~any party~~every affected party ~~thereby~~ who has appeared and, ~~in the manner~~as provided in ~~subdivision~~ Rule 71.1(d) ~~of this Rule~~, ~~up~~on ~~any party~~every affected party ~~thereby~~ who has not appeared. In addition, ~~T~~the plaintiff ~~shall~~ must ~~furnish to~~give the ~~C~~clerk ~~of the Court for the use of the defendants~~ at least one~~1~~ copy of each amendment for the defendants' use, and ~~shall furnish~~ additional copies ~~on~~ at the request of the c~~C~~lerk or ~~of~~ a defendant. A defendant may appear or answer ~~Within the time allowed by subdivision~~

(e) of this Rule a defendant may serve an answer to the amended pleading, in the form time and manner and with the same effect as there provided in Rule 71.1(e).
(g) SUBSTITUTING PARTIESubstitution of parties. If a defendant dies, or becomes incompetent, or transfers an interest after the defendant'sbeing joined, the Ccourt may, on motion and notice of hearing, order that substitution of the proper party be substituted upon motion and notice of hearing. Service of the motion and notice on a nonparty mustIf the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in subdivision (d)(3) of this Rule 71.1(d)(3).
(h) TRIAL OF THE ISSUESrial. The trial shall must be conducted pursuant to applicable statutes.
(i) DISMISSAL OF THE ACTION OR A DEFENDANTismissal of action.
(1) As of right *Dismissing the Action*.
(A) *By the Plaintiff*. If no hearing has begun to determine the compensation hearing on to be paid for a piece of property has begun, and if the plaintiff has not acquired the title or a lesser interest in or taken possession, the plaintiff may, without a court order, dismiss the action as to that property, without an order of the Court, by filing a notice of dismissal setting forth a briefly describingption of the property as to which the action is dismissed.
(2B) *By Sstipulation*. Before the entry of anya judgment is entered vesting the plaintiff with title or a lesser interest in or possession of property, the plaintiff and affected defendants may, without a court order, action may be dismissed the action in whole or in part, without an order of the Court, as to any property by filing a stipulation of dismissal, by the plaintiff and the defendant affected thereby; aAnd, if the parties so stipulate, the Ccourt may vacate any judgment that has beenalready entered.
(3C) *By Court oOrder* of the Court. Except as otherwise provided by applicable statute, aAt any time before compensation for a piece of property has been determined and paid, and the court may, after a motion and hearing, the Court may dismiss the action as to that a piece of property. ;But if except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has already taken title, or a lesser interest, or possession as to any part of it, the court must but shall award just compensation for the possession, title, or lesser interest, or possession so taken.
(2) *Dismissing a Defendant*. The Ccourt may at any time may dropdismiss a defendant who was unnecessarily or improperly joined.
(43) *Effect*. A dismissal is without prejudice unlessExcept as otherwise provided stated in the notice, or stipulation of dismissal, or court order of the Court, any dismissal is with-out prejudice.
(j) DEPOSIT AND ITS DISTRIBUTIONeposit and its distribution.
(1) *Deposit*. The plaintiff shall must deposit with the Ccourt any money required by law as a condition to the exercise of the power of eminent domain; and, although not so required, may make a deposit when permitted allowed by statute.
(2) *Distribution; Adjusting Distribution*. In such casesAfter a deposit, the Ccourt and attorneys shall must expedite the proceedings for theso as to distributeion of the money sothe deposited and for the ascertainmentto determine and payment of just compensation. If the compensation finally awarded to anydefendant exceeds the

amount ~~which has been paid~~distributed to that defendant ~~on distribution of the deposit~~, the ~~C~~court ~~shall~~ must enter judgment against the plaintiff ~~and in favor of that defendant~~ for the deficiency. If the compensation ~~finally~~ awarded to a~~ny~~ defendant is less than the amount ~~which has been paid~~distributed to that defendant, the c~~C~~ourt ~~shall~~ must enter judgment against that defendant ~~and in favor of the plaintiff~~ for the overpayment.
(k) [Omitted].
(l) COSTS~~osts~~. Costs are not subject to Rule 54(d).

COMMENT TO 2017 AMENDMENTS

Former Rule 71A has been redesignated as Rule 71.1 to conform to the renumbering in the federal rules. Rule 71.1 is substantially similar to *Federal Rule of Civil Procedure 71.1*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) a unique section (h); 2) the continued omission of section (k), which relates to a state's power of eminent domain; and 3) the references to the District of Columbia throughout the rule.

Rule 71.1A-I. Proceedings for Ff~~f~~orfeiture of Pp~~p~~roperty~~.~~

(a) LIBEL OF INFORMATION~~ibel of information~~. In all cases involving forfeiture of property for violation of any provision of the D.~~istrict of~~ C.~~olumbia~~ Code, the cause, unless otherwise provided by statute, must~~shall~~ be commenced by the filing of a libel of information that alleges:~~.~~

(1) ~~Said libel of information shall allege~~ a description of the property seized;

(2)~~,~~ the date and place of the seizure;

(3)~~,~~ the person or persons from whom the property was seized;~~,~~ and

(4) ~~that~~ the property was used, or was to be used, in violation of the D.~~istrict of~~ C.~~olumbia~~ Code, specifying the applicable section(s).

(b) PROCESS~~rocess~~. Process must~~shall~~ be issued only ~~up~~on the court's order ~~of Court~~. ~~Such~~ The order must~~shall~~ direct:

(1) the issuance of a warrant of arrest with a return date addressed to the Chief of the Metropolitan Police Department or the Chief's designee directing the Metropolitan Police Department to seize the property described in the libel of information;

(2)~~.~~ ~~It shall further direct that upon seizure,~~ the Metropolitan Police Department, upon seizure, to ~~shall cause~~publish public notice ~~there~~of the seizure and of the time assigned for return of ~~such~~ the process:

(A) ~~to be given once~~ in a legal newspaper or periodical of daily circulation as prescribed in ~~SCR Civil~~Rule 4-I; and

(B) in any other newspaper or periodical specifically designated by the c~~C~~ourt.

(c) RETURN OF PROCESS. The date of return of process ~~shall~~ must be at least 2~~1~~0 days from the date of publication. Publication ~~shall~~ must be provided by an affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the order as published.

(d) COPIES. The libellant must~~shall~~ send a copy of the libel of information and of the warrant issued ~~thereon~~ by fir~~1~~st class mail to:

(1) any lienholder of record;~~,~~

(2) ~~to~~ any person who has made written claim to the res to the office of the Attorney General of the District of Columbia;~~,~~ and

(3) ~~to~~ any other person who is known or in the exercise of reasonable diligence should be known to the Attorney General to have a right of claim to the res, at the person's last known address~~,~~. ~~Said~~The envelope containing this material ~~shall~~ must be marked "please forward to addressee."~~.~~

(e~~c~~) DEFAULT~~efault~~. If no answer or claim is filed upon the return of the process, a default decree of forfeiture ~~shall~~ must be entered against the property ~~before the Court~~, and the c~~C~~ourt must~~shall~~ order the condemnation and forfeiture of ~~said~~ the property.

(f~~d~~) INTERVENTION~~ntervention~~. The procedures ~~set forth~~ in Rule 24 ~~of these Rules shall~~ govern ~~in all cases~~ where there is a right to intervene in ~~the~~ a forfeiture action. ~~Where, h~~However, if all parties consent to the motion to intervene, ~~such~~ the court must grant the motion ~~motion shall be entered by the Court as granted~~ without formal hearing.

(g~~e~~) OTHER MATTERS~~ther matters~~. The Superior Court Rules of Civil Procedure govern ~~Except as hereinabove provided, the Civil Rules of this Court shall govern, so far as practicable,~~ actions for the forfeiture of property ~~as~~ not set forth in this r~~R~~ule.

COMMENT TO 2017 AMENDMENTS

Former Rule 71A-I has been redesignated as Rule 71.1-I based on the redesignation of former Rule 71A as Rule 71.1. Also, stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

The provisions regarding the authority of the District of Columbia to acquire property by eminent domain are now found in D.C. Code §§ 16-1311 to -1337 (2012 Repl.).

COMMENT

The authority of the District of Columbia to acquire property by eminent domain is found in Section 16-311 et seq. D.C. Code 1967 Edition (transferred to Superior Court by Section 11-921 (a)(3)(A)(ii) page 12 Public Law 91-358) and by Section 7-202 et seq. D.C. Code 1967 Edition (transferred to Superior Court by Section 155 (c)(1)(A) page 98 Public Law 91-358).

The practice of eminent domain in the District Court has followed these statutory requirements as implemented by the Federal Rules of Civil Procedure. Thus, in adapting Federal Rule 71A to use by the Superior Court, only minor editorial changes have been made in the language of that Rule.

Rule 73. ~~Hearing commissioners.~~ Magistrate Judges: Trial by Consent; Appeal

(a) TRIAL BY CONSENT; POWERS; PROCEDURE~~owers; procedure~~.

(1) *In General*. When authorized under D.C. Code § 11-1732 (a) and (j)(5) (2017 Supp.) and specifically designated to exercise such jurisdiction by the Chief Judge ~~of the Superior Court~~, a magistrate judge may, ~~and when~~if all parties consent ~~thereto~~, ~~a hearing commissioner may exercise the authority provided by *D.C. Code § 11-1732(a)* and (j)(5) (1987 Supp.) and may~~ conduct any or all uncontested or contested proceedings, determine nondispositive and dispositive pretrial matters, make findings and enter final judgments and orders in a civil case. Rule 62 applies to judgments entered by a magistrate judge. A record of the proceedings must be made in accordance with Rule 201.

(2) *Limitations on Power*. ~~, except that a~~A ~~hearing commissioner~~magistrate judge may not preside ~~at~~ over a jury trial or exercise the contempt power. ~~The provisions of Rule 62 shall apply to judgments entered by a hearing commissioner. A record of the proceedings shall be made in accordance with Rule 201.~~

(3) *Waiver of Consent*. A party who fails both to file an answer, if an answer is required, and to otherwise appear in an action, ~~shall be~~is deemed to have consented that a ~~hearing commissioner~~magistrate judge conduct all proceedings in the case.

(4) *Vacating a Referral*. On its own~~The Court~~ for good cause~~, shown on its own motion~~ or when a party shows~~under~~ extraordinary circumstances~~, shown by a party,~~the court may vacate a ~~reference of a civil matter~~referral to a ~~hearing commissioner~~magistrate judge under this ~~R~~rule.

(b) APPEALING A JUDGMENT~~Judicial review and appeal~~.

(1) *Initial Judicial Review*. Judicial review of a final order or judgment entered ~~up~~on the direction of a ~~hearing commissioner~~magistrate judge is available:

(~~1~~A) on motion of a party to the Superior Court judge designated by the Chief Judge to conduct such reviews; or

(~~2~~B) on the initiative of the judge so designated.

(2) *Further Appeal*. After the Superior Court judge completes ~~that~~ judicial review ~~has been completed~~, a party may appeal ~~may be taken~~ to the District of Columbia Court of Appeals.

(3) *Standard of Review*. The ~~standard of review by the~~ Superior Court judge reviewing ~~of~~ a ~~hearing commissioner~~magistrate judge's final order or judgment ~~shall~~ must ~~be the same as~~ appl~~y~~ied the same standard of review used by the District of Columbia Court of Appeals ~~on appeal of~~when reviewing a judgment or order of the Superior Court.

~~(c) Review of hearing commissioner's order or judgment.~~

(~~4~~1) *On ~~Upon m~~Motion*

(A) *Motion Requirements*. ~~A review of the hearing commissioner's final order or judgment, in whole or in part, shall be made by a judge designated by the Chief Judge upon motion of a party, which motion shall be filed and served within 10 days after entry of the order or judgment.~~ The motion for review ~~shall~~ must:

(i) be filed and served within 14 days after entry of the order or judgment;

(ii) designate the order or~~,~~ judgment, or part ~~thereof~~ of the order or judgment, for which review is sought;~~,~~ and

(iii) ~~shall~~ specify the grounds for objection to the ~~hearing commissioner~~magistrate judge's order or~~,~~ judgment, or part ~~thereof~~of the order or judgment.~~, and~~

(iv) shall include a written summary of any evidence presented before the hearing commissioner relating to the grounds for objection.

(B) *Answer to Motion.* Within 140 days after being served with said the motion for review, a party may file and serve a response, which shall describe any evidence or proceedings before the hearing commissioner which conflict with or expand upon the summary filed by the moving party.

(C) *Judicial Review*. The judge designated by the Chief Judge shall must review those portions of the hearing commissionermagistrate judge's order or judgment to which objection is made. The judge may decide the motion for review with or without a hearing and may affirm, reverse, modify, or remand, in whole or in part, the hearing commissionermagistrate judge's order or judgment.

(52) *Review on Iinitiative of the Court*. Not later than 30 days after entry of a hearing commissionermagistrate judge's final order or judgment, the judge designated by the Chief Judge may sua sponte review saidthe 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, with or without a hearing, may affirm, reverse, modify, or remand, in whole or in part, the hearing commissionermagistrate judge's order or judgment.

(36) *Termination of tTime for fFiling Mmotion for rReview*. The running of the time for filing a motion for review or for a judge to undertake review on the judge's own initiative is terminated as to all parties by the timely filing of any of the following motions with the hearing commissionermagistrate judge by any party, and the full time for review from the judgment entered by the hearing commissionermagistrate judge commences to run anew from entry of any of the following orders disposing of the last such remaining motion:

(1A) for judgment as a matter of lawGgranting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted;

(2B) to amend or make additional factual findings, whether or not granting the motion would alter the judgmentgranting or denying a motion under Rule 59 to alter or amend the judgment;

(3C) to vacate, alter, or amend the order or judgment; denying a motion for a new trial under Rule 59.

(D) for a new trial; or

(E) for relief from a judgment or order if the motion is filed no later than 14 days after the judgment is entered.

(74) *Interlocutory mMotion for rReview*. An interlocutory decision or order by a hearing commissionermagistrate judge, which, if made by a judge of this Ccourt, could be appealed under any provision of law, may be reviewed by the judge designated by the Chief Judge by filing a motion for review within 140 days after entry of the decision or order. Review of such interlocutory decisions or orders shall will not stay the proceedings before the hearing commissionermagistrate judge unless the hearing commissionermagistrate judge or the reviewing judge shall so orders.

(58) *Extension of Ttime to Ffile Mmotion for rReview*. UpoOn a showing of excusable neglect and notice to the parties, the judge designated by the Chief Judge may, before or after the time prescribed by subparagraph Rule 73(cb)(14)(A)(i) or (bc)(74) has expired, extend the time for filing a motion for review of a hearing

~~commissioner~~magistrate judge's order or judgment for a period not to exceed 2~~1~~10 days from the expiration of the time otherwise prescribed by this ~~R~~rule.

(~~9~~6) *Stay ~~P~~pending ~~r~~Review*. ~~Upo~~On a showing that the ~~hearing commissioner~~magistrate judge has refused or otherwise failed to stay the judgment pending review under this ~~R~~rule, the movant may, with reasonable notice to all parties, apply to the judge designated by the Chief Judge for a stay. The stay may be conditioned ~~up~~on the filing of a bond or other appropriate security.

(~~10~~7) *Dismissal*. For failure to comply with this ~~R~~rule or any other ~~R~~rule or order, the judge may take ~~such~~ any action as is deemed appropriate, including dismissal of the motion for review. The judge also may dismiss the motion for review ~~up~~on the filing of a stipulation signed by all parties, or ~~up~~on motion and notice by the movant.

(~~c~~d) CONTEMPT~~ontempt~~.

(1) *Show Cause Hearing*. A ~~hearing commissioner~~magistrate judge may order a person to show cause before the Presiding Judge of the Civil Division, or his or her designee, why the person should not be held in civil or criminal contempt for disobedience or resistance to any lawful order, process, or writ issued by the ~~hearing commissioner~~magistrate judge or for any other act or conduct committed before a ~~hearing commissioner~~magistrate judge, which if committed before a Superior Court judge would constitute contempt.

(2) *Show Cause Order Requirements*. An order to show cause why the person should not be held in contempt ~~shall~~ must:

(A) state the time and place of hearing, allowing a reasonable time for the preparation of the defense~~,~~; and

(B) ~~shall~~ state the essential facts constituting the contempt charged and describe it ~~as such~~.

(~~e~~d) O~~THER POWERS~~~~ther duties~~. The authority of a ~~hearing commissioner~~magistrate judge in the Civil Division ~~shall~~ include~~s~~ the power to:

(1) refer cases, where a jury demand is filed or a party does not consent to a magistrate judge, previously assigned to a ~~hearing commissioner~~magistrate judge's calendar to the ~~Civil C~~clerk's ~~O~~office for redistribution pursuant to Rule 40-I~~(b)~~;~~,~~

(2) ~~A hearing commissioner shall have the power to~~ issue or quash a bench warrant for parties who fail to appear in ~~C~~court on a ~~commissioner's~~ magistrate judge's calendar ~~and may quash such a bench warrant.~~;

(3) ~~Hearing commissioners shall also have the power to~~ conduct oral examinations; and

(4) ~~the power to~~ rule on the following motions in cases assigned to any ~~hearing commissioner~~magistrate judge's calendar:

(A) to continue trial or hearing dates;~~,~~

(B) to extend any period of time prescribed or allowed by these rules or by order of the ~~C~~court; and

(C) to enter or withdraw appearances.

(e) CERTIFICATION. In the interest of justice, the Presiding Judge may, on his or her own initiative or on the recommendation of the magistrate judge presiding over the case, certify a case for assignment to a judge in the Civil Division.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 73*, but the substance of the Superior Court rule continues to differ substantially from its federal counterpart. The Superior Court rule is based on the requirements of D.C. Code § 11-1732 (2017 Supp.).

Section (e), regarding the Presiding Judge's certification of a case from a magistrate judge to an associate judge, is new to this rule.

COMMENT

Although several of the provisions of this Rule are similar to provisions of *Federal Rules of Civil Procedure 73* and *74*, a number of changes have been made to this Court's Rule to reflect the requirements of D.C. Code § 11-1732 and the procedural variances in the use of hearing commissioners and magistrates. Pursuant to D.C. Code § 11-1732, this Rule is applicable to proceedings in all branches of the Civil Division.

Paragraph (a). This paragraph has been modified to reflect the statutory authority of hearing commissioners in the Civil Division of the Superior Court. Unlike magistrates, hearing commissioners may not conduct jury trials. The written consent procedures contained in *Federal Rule of Civil Procedure 73(b)* have not been incorporated into the Superior Court Rule. Under this Rule, a party who neither files an answer nor otherwise appears will be deemed to have consented to having the matter heard by a hearing commissioner.

Paragraph (b). This paragraph modifies *Federal Rule of Civil Procedure 73(c)* and (d) to reflect the availability of judicial review and appeal of a hearing commissioner's decision pursuant to D.C. Code § 11-1732 (k). As with appeals to a district judge from decisions of magistrates exercising consensual civil jurisdiction under *Federal Rule of Civil Procedure 73*, reviews of decisions of hearing commissioners to Superior Court judges are governed by the same standards that obtain in an appeal from a judgment of a judge to the Court of Appeals. *See Federal Rule of Civil Procedure 74*, Notes of Advisory Committee on Rules, subdivision (a); *28 U.S.C. § 636*(c)(4). In accordance with that standard, a hearing commissioner's findings of fact may not be set aside unless clearly erroneous; nor may the commissioner's judgment or order be set aside except for legal error or abuse of discretion. Paragraph (c). This paragraph describes the procedure for review of a hearing commissioner's order or judgment by a judge pursuant to D.C. Code § 11-1732 (k). Subparagraphs (c)(1) and (c)(2) replace the appeal procedure set forth in *Federal Rules of Civil Procedure 74(a)*, *74(b)*, *75*, and *76* with a procedure whereby review is conducted upon the motion of a party filed within 10 days of entry of the hearing commissioner's final order or judgment, or on the initiative of the reviewing judge within 30 days of entry of the hearing commissioner's final order or judgment. The term "final order or judgment" as used in this Rule embraces the final decision concept of D.C. Code § 11-721 (a) and permits review of a hearing commissioner's decisions by a Superior Court judge in those situations in which an appeal from this Court to the Court of Appeals would lie. In lieu of the federal provisions for transcripts and briefs, the Superior Court Rule provides that the motion for review shall designate the grounds for the objection to a hearing commissioner's order,

judgment, or part thereof, and shall include a written summary of any evidence presented before the hearing commissioner relating to the grounds for objection.

Subparagraphs (c)(3) and (4) modify the provisions for tolling of the time for appeal and interlocutory appeals contained in *Federal Rule of Civil Procedure 74(a)* to reflect their application to reviews of decisions of hearing commissioners by a judge upon motion of a party. Subparagraph (c)(4), permitting reviews of certain interlocutory orders, embraces the provisions of D.C. Code § 11-721 (d), providing for a certification procedure for otherwise unreviewable orders where "the ruling or order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate [review of the ruling or order] may materially advance the ultimate termination of the litigation...." Although no specific certification procedure is set forth, the Rule contemplates that a hearing com-missioner may certify such a motion for review, and the Superior Court judge, in the judge's discretion, may allow the review. In the interest of expediting the trial, interlocutory reviews of any kind will not stay the proceedings unless the hearing commissioner or the judge finds that the nature of the review sought or its relation to the remaining proceedings requires a stay.

Subparagraph (c)(5) modifies the provision for extension of time to file a notice of appeal in *Federal Rule of Civil Procedure 74(a)* to provide that the time to file motions for review may be extended for a period not to exceed 20 days from the date otherwise prescribed by the Rule.

Subparagraphs (c)(6) and (7) modify the stay and dismissal provisions of *Federal Rule of Civil Procedure 74(c)* and (d) to reflect their application to reviews of a hearing commissioner's decision by a judge designated by the Chief Judge.

Paragraph (d). This paragraph has been added to the Superior Court Rule to provide a procedure for the adjudication of contempts committed before a hearing commissioner. Similar to *28 U.S.C. § 636*(e), this provision allows a hearing commissioner to order a person to show cause before the Presiding Judge of the Civil Division, or his or her designee, why the person should not be held in contempt. For purposes of this Rule, the term "person" includes any person, corporation, or other entity.

Paragraph (e). D.C. Code § 11-1732 (a) authorizes hearing commissioners to perform functions incidental to their authorized duties. Paragraph (e) lists these incidental functions in the Civil Division. Consent of the parties is not required for the exercise of these functions.

Rule 74. [Omitted].

Rule 75. [Omitted].

Rule 76. [Omitted].

TITLE X. SUPERIORuperior COURTourt ANDand CLERKlerk.

Rule 77. Conducting Business; Clerk's Authority; Notice of an Order or JudgmentSuperior Court and Clerk.

(a) WHEN THE SUPERIOR COURT IS OPENuperior Court always open.
The Superior Court shall be deemedis considered always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making a motion, or entering an orderand directing all interlocutory motions, orders, and rules.

(b) PLACE FOR TRIAL AND OTHER PROCEEDINGSTrials and hearings; orders in chambers. EveryAll trials upon the merits mustshall be conducted in open court and, so far as convenient, in a regular court room. AnyAll other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the Cclerk or other Ccourt officials, and at any place either within or withoutanywhere inside or outside the District of Columbia.; bBut no hearing, other than one ex parte, shallmay be conducted outside the District of Columbia without the consent of unless all affected parties consent affected thereby.

(c) CLERK'S OFFICE HOURS; CLERK'S ORDERSlerk's Office and orders by Clerk.

(1) *Hours*. The Cclerk's Ooffice with athe Cclerk or a deputy on duty to assist the public in attendance shallmust be open during normal business hours as set by the Chief Judge. When practicable, those hours will comport with the hours of operation posted on the Superior Court's websiteon all days except Saturdays after 12:00 noon, Sundays, and legal holidays.

(2) *Orders*. Subject to the court's power to suspend, alter or rescind the clerk's action for good cause, the clerk may:

(A) All motions and applications in the Clerk's Office for issuing mesne process, for issueing final process;

(B) to enforce and execute judgments, for entering a default;

(C) enter a defaults or judgments under Rule 55(b)(1) by default,; and

(D) for other proceedingsact on any other matter that which does not require allowance or order of the Ccourt's action are grantable of course by the Clerk; but the Clerk's action may be suspended or altered or rescinded by the Court upon cause shown.

(d) SERVING NOTICE OF AN ORDER OR JUDGMENT.

(1) *Service*. Notice of orders or judgments. Immediately upon the entry of after entering an order or judgment, the clerk shall must serve a notice of the entry, as provided in the manner pro vided for in Rule 5(b), upon each party who is not in default for failingure to appear., and The clerk must shall make a noterecord the service on in the docket of the service. Any party also may in addition serve a notice of thesuch entry as provided in the manner provided in Rule 5(b) for the service of papers.

(2) *Time to Appeal Not Affected by Lack of Notice*. Lack of notice of the entry by the Clerk does not affect the time to for appeal or relieve or authorize the cCourt to relieve a party for failingure to appeal within the time allowed, except as permitted allowed by in the Rules for the District of Columbia Court of Appeals Rules.

(~~2~~3) *Who Can Perform the Clerk's Function*. Nothing in this rule ~~shall~~ precludes a judge or magistrate judge~~icial officer~~ or his or her authorized staff member from performing the function of the ~~C~~clerk prescribed in ~~paragraph~~ Rule 77(d) ~~of this rule~~.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure* 77, as amended in 2007, but maintains the following local distinctions: 1) "Superior Court" has been substituted for "district courts" and "District of Columbia" for "district" where appropriate; 2) the language in subsection (c)(1) has been modified to reflect local practice, including the Chief Judge's authority to set the hours of the clerk's office and the practice of posting the hours on the Superior Court's website; and 3) in section (d), "District of Columbia Court of Appeals Rules" has been substituted for "Federal Rule of Appellate Procedure (4)(a)." Also, the 2014 federal amendment that updated a cross-reference in subsection (c)(1) has not been incorporated because the cross-reference was previously omitted.

New subsection (c)(1) replaces Rule 77-I. The new language in subsection (c)(1) regarding the hours posted on the Superior Court's website allows some flexibility for the Chief Judge to change the hours of operation in case of emergency or otherwise.

COMMENT

[Moved from the comment to Rule 77-II.] Rule 77 identical to Federal Rule of Civil Procedure 77 except for; (1) substitution of "Superior Court" for "district courts" and "District of Columbia" for "district" where appropriate; (2) addition of the phrase "after 12:00 noon" to section (c) to reflect the fact that the Clerk's Office will be open Saturday mornings; (3) deletion of the authorization in section (c) for promulgation of local rules; (4) substitution in section (d) for reference to the Rules for the District of Columbia Court of Appeals in place of reference to the Federal Rules of Appellate Procedure; and (5) modification of the 1st sentence of section (d) to require the Clerk to mail notice of the entry of an order or judgment only when the same was signed or decided out of the presence of the parties or their counsel. This last modification is intended to save the Clerk substantial time by eliminating the needless administrative burden of mailing notice of orders or judgments to parties who are already aware of those orders or judgments by virtue of their presence at the time the same were made.

Rule 77-I. ~~**Business hours of the Clerk.**~~ [Deleted].
~~The Civil Division Clerk's Office shall be open for the transaction of business from 9:00 a.m. until 4:00 p.m. on all days except Sundays and legal holidays and from 9:00 a.m. to 12:00 noon on Saturdays~~

COMMENT TO 2017 AMENDMENTS

Rule 77-I has been deleted. New language has been added to Rule 77(c)(1) to replace this rule.

Rule 77-II. ~~Orders grantable by the Clerk.~~Uncontested Motions for Security for Costs

~~(a) Authority to enter. The Clerk is authorized to grant and enter the following orders without further direction by the Court, but the Clerk's action may be suspended, altered or rescinded by the Court for cause shown:~~

~~(1) [Deleted].~~

~~(2) To substitute attorneys. Orders on consent or substitution of attorneys.~~

~~(3) To approve bonds, etc. Orders approving bonds and undertakings, prepared on printed forms furnished by the Clerk, except supersedeas, and undertakings required by Title 40, Section 423, *District of Columbia* Code(1967) [§ 50-1301.07, 2001 Ed.], required in any action or proceeding, when the order is consented to or when the surety is a corporation holding authority from the Secretary of the Treasury to do business within the District of Columbia and having a process agent therein pursuant to *U.S.C.S., Title 6, §§ 6-13*, or any similar statute.~~

~~(4) If grantable under these Rules or statute. Any other orders grantable of course by the Clerk under the provisions of these Rules or any statute.~~

~~(b) Uncontested motions for security for costs.~~ The c~~C~~lerk ~~shall~~ has~~ve~~ authority to make appropriate entries granting uncontested motions for security for costs on the basis of $ 100 cash or $~~-~~200 bond where the amount claimed is $~~-~~5,000 or over; $~~-~~50 cash or $ 100 bond where the amount claimed is $~~-~~3,000 or more but less than $~~-~~5,000; $~~-~~25 cash or $~~-~~50 bond in all cases where the amount claimed is more than $~~-~~750 but less than $ 3,000. The c~~C~~lerk ~~shall~~ also has~~ve~~ authority to accept a praecipe confessing judgment for costs ~~in accordance therewith~~.

~~(c) Bonds under Motor Vehicle Owners' Financial Responsibility Act.~~

~~The Clerk shall also have authority to approve bonds required under the Motor Vehicle Owners' Financial Responsibility Act on the basis of $ 500 where the amount claimed in suit is $ 5,000 or over; $ 300 where the amount claimed in suit is $ 3,000 or more but less than $ 5,000; $ 100 in all cases where the amount claimed is more than $ 750 but less than $ 3,000.~~

COMMENT TO 2017 AMENDMENTS

Sections (a) and (c) were deleted, and the rule was renamed to reflect the substance of the remaining provision (formerly section (b)). Subsections (a)(2) and (3) were deleted because only a judge or magistrate judge has the authority to order substitution of attorneys or to approve/set the amount of supersedeas bonds or undertakings. Remaining subsection (a)(4) was deemed unnecessary as it did not give the clerk any additional authority beyond what was already addressed by other rules and statutes. Section (c) was deleted because the bond requirement for motor vehicle cases was eliminated when the Motor Vehicle Owners' Financial Responsibility Act was repealed in 1982. For the current requirements for proof of financial responsibility in motor vehicle cases, see D.C. Code §§ 50-1301.01 to -.86 (2014 Repl.). Stylistic changes were also made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 78. [~~Repealed~~Omitted].

Rule 78-I. [Deleted]~~Hearings on motions~~.

~~Hearings on motions shall be scheduled in accordance with Rule 12-I.~~

~~COMMENT~~

~~*Federal Rule of Civil Procedure 78* permitting District Courts to establish motions days has been replaced by a brief reference in Rule 78-I to the scheduling provisions set out in Rule 12-I which details the motions practice in this Court.~~

Rule 79. ~~Books and R~~records ~~k~~Kept by the Clerk ~~and entries therein.~~

(a) CIVIL DOCKET~~ivil docket~~.

(1) *In General*. The c~~C~~lerk ~~shall~~ must keep a record known as the "civil docket" in the form and manner prescribed by the Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge. ~~and shall~~The clerk must enter ~~therein~~ each civil action in the docket~~to which these Rules are made applicable. The "civil docket" may be kept solely by computer or electronic means~~. Actions ~~shall~~must be assigned consecutive file numbers, which must ~~. The file number of each action shall~~ be noted ~~o~~in the docket where the first entry of the action is made.

(2) *Items to Be Entered*. The following items must be marked with the file number and entered chronologically in the docket:

(A) ~~All~~ papers filed with the ~~C~~clerk;~~,~~

(B) ~~all~~ process issued, and proofs of service or other returns ~~made thereon~~showing execution;~~,~~ and

(C) ~~all~~ appearances, orders, verdicts, and judgments ~~shall be entered chronologically on the civil docket assigned to the action and shall be marked with its file number~~.

(3) *Contents of Entries; Jury Trial Demanded*. Each entry must ~~These entries shall be~~ briefly ~~but shall~~ show the nature of ~~each~~ the paper filed or writ issued, ~~and~~ the substance of each proof of service or other return, and the substance and date of entry of each order ~~or~~and judgment ~~of the Court and of the returns showing execution of process~~. ~~The entry of an order or judgment shall show the date the entry is made.~~ When ~~in an action trial by~~a jury trial has been properly demanded or ordered, the ~~C~~clerk ~~shall~~ must enter the word "jury" ~~o~~on the docket.

(b) CIVIL JUDGMENTS AND ORDERS~~ivil judgments and orders~~. The c~~C~~lerk ~~shall~~ must keep~~,~~ a ~~correct~~ copy of every final judgment ~~or~~ and appealable order;~~,~~ of every~~or~~ order affecting title to or a lien ~~up~~on real or personal property~~,~~; and of any other order ~~which~~ that the c~~C~~ourt ~~may~~ direct~~s~~ to be kept. The Executive Officer of the District of Columbia Courts ~~shall~~will, subject to the supervision of the Chief Judge, prescribe the form and manner in which such copies ~~shall~~ must be kept.

(c) INDEXES; CALENDARS~~ndices; calendars~~. Under the court's direction, the clerk must:

(1) keep~~Suitable~~ ind~~ice~~exes of the ~~civil~~ docket and of ~~every civil~~the judgments and orders ~~referred to in subdivision (b) of this Rule shall be kept by the Clerk under the direction of the Court~~described in Rule 79(b); and

(2)~~. There shall be~~ prepared ~~under the direction of the court~~ calendars of all actions ready for trial, ~~which shall~~ distinguishing ~~"~~jury ~~actions"~~trials from nonjury trials~~"court actions."~~.

(d) OTHER RECORDS~~ther books and records of the Clerk~~. The ~~C~~clerk ~~shall~~ must also keep ~~such~~ any other ~~books and~~ records ~~as may be~~ required ~~from time to time~~ by the Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge.

(e) ENTRY ON DOCKET~~ntry on docket~~. Nothing in these r~~R~~ules ~~shall~~ precludes a judge or magistrate judge~~icial officer~~ or his or her authorized judicial staff member from making entries on the docket.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 79*, as amended in 2007, but maintains two local distinctions—1) references to "Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States" have been changed to "Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge"; and 2) section (e), allowing entries by judges or magistrate judges and their staff, has been added.

COMMENT

Rule 79 identical to *Federal Rule of Civil Procedure 79* except for substitution of local administrative references throughout and deletion of the requirement in section (a) that the civil docket be in the form of a book.

Rule 79-I. Copies and Ccustody of Filed Ppapers ~~filed.~~

(a) CERTIFIED COPIES~~ertified copies~~.

__(1) *In Person Filings*. ~~Upon~~ When a paper is received~~ing~~ and filed,~~ing any paper~~ the c~~C~~lerk ~~shall~~ must stamp the date of filing on the face of the paper next to the title of the cause and ~~shall~~ must also stamp the date of filing separately ~~up~~on any exhibit. If a~~ny~~ person filing a~~ny~~ paper requests a certification of such filing, a copy of the paper provided by ~~such~~the person ~~shall~~ must be marked to show the time and date of the filing and initialed by the person with whom the paper was filed. Such certified copy ~~shall be~~is prima facie evidence in any proceeding that the original of the paper was filed as shown by the certification.

__(2) *Electronic Filings*. Any filings made electronically, as permitted by these rules or by A~~a~~dministrative O~~o~~rder, ~~shall be~~is considered date stamped as specified by rule or A~~a~~dministrative O~~o~~rder.

(b) CUSTODY OF DOCUMENTS~~ustody of documents~~. The C~~c~~lerk ~~of the Civil Division~~ or ~~a~~ his or her designee ~~shall be~~is the custodian of all papers filed in all civil cases~~CA actions~~. No original paper, document, or record in any case ~~shall~~ may be removed from its place of filing or custody, except under the following conditions:

__(1) Except with approval of the c~~C~~ourt, no paper, document, or record may~~shall~~ be taken from the courthouse by any person other than the custodian of the paper, document, or record, who ~~shall~~ must retain possession of it~~thereof~~ and ~~shall~~ must return it to its place of filing immediately upon completion of the purpose for which it was removed.

__(2) When required for use before a division of the~~is~~ c~~C~~ourt or a person to whom the case has been referred for consideration, or when ordered by a~~1 of the~~ judge~~s~~ of the~~is~~ c~~C~~ourt, the custodian, the custodian's ~~assistant~~designee, any attorney or party to the case, or any person designated by a~~1 of the~~ judge~~s~~ may be permitted to remove such paper, document, or record for the use required or ordered.

__(3) In any case where the paper, document or record is removed by any person other than the custodian, or the custodian's ~~assistant~~designee, a receipt ~~shall~~ must be given to the custodian and the paper, document, or record, ~~shall~~ must be returned to its place of filing or custody immediately upon completion of the purposes for which it was removed.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 80. ~~Stenographer; s~~Stenographic or Digitally Recorded ~~report or t~~Transcript as ~~e~~Evidence~~.~~

~~(a), (b) [Vacant].~~

~~(c) Stenographic report or transcript as evidence.~~

If digitally recorded or stenographically reported testimony ~~Whenever the testimony of a witness~~ at a hearing~~trial~~ or trial~~hearing which was stenographically reported~~ is admissible in evidence at a later trial, ~~it~~ the testimony may be proved by ~~the~~ a transcript ~~thereof duly~~ certified in accordance with ~~SCR Civil~~Rule 201(c).

COMMENT TO 2017 AMENDMENTS

This rule is similar to *Federal Rule of Civil Procedure 80*, as amended in 2007, except that the Superior Court rule includes digitally recorded testimony as well as a reference to Rule 201.

COMMENT

Identical to *Federal Rule of Civil Procedure 80*, except for substitution of the word "vacant" in sections (a) and (b) in place of the titles and abrogation dates of those sections.

TITLE XI. GENERALeneral PROVISIONSrovisions.

Rule 81. Applicability of the Rules in Ggeneral.

(a) To what proceedings aAPPLICABILITY TO PARTICULAR PROCEEDINGSpplicable.

(1) [DeleOmitted].

(2) [Deleted].

(3) [Deleted].

(24) *Special Writs.* These rRules are applicable apply to proceedings for habeas corpus, and for quo warranto, to the extent that the practice in such those proceedings:

(A) is not set forthspecified in applicable statutes or the rRules gGoverning pProceedings uUnder D.C. Code § 23-110; and

(B) has heretofore previously conformed to the practice in civil actions. The writ of habeas corpus or order to show cause shall be directed to the person having custody of the person detained.

(53) *Proceedings Involving a Subpoena.* In proceedings relating to arbitration, these Rules apply only to the extent that matters of procedure are not provided for in applicable statutes. These Rrules apply to proceedings to compel the giving of testimony or the production of documents in accordance withthrough a subpoena issued by an officer or agency of then officer or agency of the United States or the of the District of Columbia under any applicable statute, except as otherwise provided by statute, or by rules of the applicable court, or by court order of the court in the proceedings.

(4) (6) *Other Proceedings.* In proceedings relating to arbitration, these rules apply only to the extent that matters of procedure are not provided for in applicable statutes.

[Vacant].

(7) [Vacant].

(b) SCIRE FACIAS AND MANDAMUSScire facias and mandamus. The writs of scire facias and mandamus are abolished. Relief heretofore previously available by mandamus or scire faciasthrough them may be obtained by appropriate action or by appropriate motion under the practice prescribed in these Rrules.

(c) [DeleOmitted].

(d) [Vacant].

(ed) LAW APPLICABLELaw applicable.

(1) *"State Law" Defined.* When these rules refer to state law, the term "law" includes the state's statutes and the state's judicial decisions.

(2) *"State" Defined.* When tThe termword "state" is used, it includes, ifwhere appropriate, the District of Columbia and any United States commonwealth or territory.

(3) *"Federal Statute" Defined.* When tThe term "federal statute of the United States" is used, it includesencompasses any aAct of Congress, including one that applies locally applicable to and in force into the District of Columbia. When the law of a state is referred to, the word "law" includes the statutes of that state and the state judicial decisions construing them.

(e) [Deleted].

(f) [Deleted].References to officer of the United States. Under any Rule in which reference is made to an officer or agency of the United States, the term "officer"

~~includes a district director of internal revenue, a former district director or collector of internal revenue, or the personal representative of a deceased district director or collector of internal revenue.~~

(g) [Deleted].~~Substitutions.~~

~~(1) Whenever the name "Corporation Counsel" appears, the name "Attorney General" shall be substituted therefor; and~~

~~(2) Whenever the name "hearing commissioner" appears, the name "magistrate judge" shall be substituted therefor.~~

COMMENT TO 2017 AMENDMENTS

This rule is similar to *Federal Rule of Civil Procedure 81*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) subsections (a)(1)-(3) have been omitted or deleted; 2) subsections (a)(4)-(6) have been amended to reference the District of Columbia and its local rules; 3) section (c) has been omitted; and 4) language in subsection (d)(3) has been adapted for the Superior Court rules.

COMMENT

Federal Rule of Civil Procedure 81 has been modified considerably because of differences in the jurisdictions of the Superior Court and the United States District Courts.

Section (a) describing the proceedings to which these Rules are applicable has been extensively revised.

Subsection (a)(1) relating to prize proceedings in admiralty, bankruptcy, copyright, and District of Columbia mental health proceedings has been deleted. The Rules governing mental health proceedings are found in the Superior Court Rules of Procedure for Mental Health.

Subsection (a)(2) is identical to the Federal Rule counterpart except that "applicable statutes" has been substituted for "statutes of the United States" and the reference to citizenship admissions has been deleted.

Subsection (a)(3) has been modified to reflect appropriate applicability to arbitration cases, but the inapplicable reference to Title 9, U.S.C. (governing cases in the courts of the United States arising out of disputes over arbitration agreements) has been deleted. Also deleted from the Federal Rule is reference to *45 U.S.C. § 159* which deals with railway labor cases in the United States District Courts. In conformity with these modifications, "those statutes" has been changed to "applicable statutes" in the 1st sentence of (a)(3). The 2nd sentence of subsection (a)(3) has been revised to comprehend all proceedings to compel whether based on a subpoena issued by a United States officer or agency or a District of Columbia officer or agency.

Subsection (a)(4) dealing with federal District Court review of orders of the Secretary of Agriculture, orders of the Secretary of the Interior, and orders of petroleum control boards is deleted.

Subsection (a)(5) dealing with proceedings in the federal District Courts for enforcement of National Labor Relations Board orders is deleted.

Subsection (a)(6) dealing with District Court proceedings under the Longshoremen's and Harbor Workers Compensation Act and provisions relative to cancellation of citizenship certificates is deleted.

Subsection (a)(7) of the Federal Rule has been abrogated and is thus left vacant in these Rules.

Section (b) of this rule is identical to *Federal Rule of Civil Procedure 81(b)*.

Section (c) of the Federal Rule dealing with the procedure in cases that have been removed from state courts to United States District Courts is thus inappropriate material for inclusion in Superior Court Rules and has been deleted.

Section (d) of the Federal Rule has been abrogated and that section is thus left vacant in these Rules.

Section (e) has been modified slightly in order to be appropriate for use in this Court. The 1st sentence of the Federal Rule section prescribes a principle of applicability for cases in the United States District Court for the District of Columbia and is thus deleted. (That applicability is, of course, properly secured by Rule 81 (e) of the Federal Rules as followed in the U.S. District Court for this District and is not affected by Rule 81 of the Superior Court.)The inclusive provision with respect to "statute of the United States" in the 2nd [3rd] sentence of the Federal Rule is made applicable to proceedings in the Superior Court by deletion of the phrase "so far as concerns proceedings in the United States District Court for the District of Columbia".

Section (f) is identical to *Federal Rule of Civil Procedure 81(f)*.

Rule 82. Jurisdiction Uunaffected.

These Rrules shalldo not be construed toextend or limit the jurisdiction of this Ccourt.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 82*, but references to venue and admiralty and maritime claims have been omitted.

COMMENT

Identical to Federal Rule of Civil Procedure 82 except for deletion of inapplicable references to venue and to admiralty and maritime claims.

Rule 83. Directives by ~~judicial officer~~ Judge or Magistrate Judge~~.~~

A judge or magistrate judge ~~judicial officer~~ may regulate practice in any manner consistent with applicable law, these ~~R~~rules, and ~~A~~administrative ~~O~~orders. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in applicable law or these ~~R~~rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 83*. However, it retains the following local distinctions: 1) section (a) of the federal rule has been omitted; and 2) references to federal law and local rules have been replaced by references to applicable law, these rules, and/or administrative orders.

COMMENT

This Rule is substantially similar to Federal Rule of Civil Procedure 83(b). Federal Rule of Civil Procedure 83(a), which addresses the promulgation, amendment, and enforcement of local rules by district courts, has been deleted. Substituted therefor is Rule 83-I which prescribes the rulemaking procedure for subsequent rules in accordance with D.C. Code § 11-946.

Rule 84. Forms.

The Fforms contained in the Appendix of Forms suffice are sufficient under these Rrules and illustrateare intended to indicate the simplicity and brevity of statement whichthat these Rrules contemplate.

COMMENT TO 2017 AMENDMENTS

In 2015, *Federal Rule of Civil Procedure 84* was abrogated because there were other sources for forms—including court websites and law libraries. Any necessary forms were directly incorporated into the relevant rule (for example, former federal Forms 5 and 6 were incorporated into Federal Rule 4). This approach was rejected as inconsistent with the needs and processes of the Superior Court.

COMMENT

Identical to Federal Rule of Civil Procedure 84

Rule 85. Title.

These Rrules may be citedknown as the "Super.ior Court. Rules of Civ.il R. ___." Procedure and may be cited as Superior Court Rules—Civil or as SCR-Civil.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 85*. The citation for the Superior Court Rules of Civil Procedure has been updated to conform to the District of Columbia Court of Appeals Citation and Style Guide.

COMMENT

Federal Rule of Civil Procedure 85 has been deleted and a rule substituted therefor which provides a convenient way of describing and citing these Rules.

Rule 86. Effective Dd~~d~~ates~~.~~

(a) ~~These Rules will take effect on February 1, 1971. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending when the Rules take effect would not be feasible or would work injustice, in which event the former procedure applies.~~ IN GENERAL. These rules and any amendments take effect at the time specified by the Chief Judge in promulgation orders. They govern:

(1) proceedings in an action commenced after their effective date; and

(2) proceedings after that date in an action then pending unless:

(A) the Chief Judge in the promulgation orders specifies otherwise; or

(B) the court determines that applying them in a particular action would be infeasible or work an injustice.

(b) ~~(c)~~ [~~Deleted~~Omitted.]~~.~~

COMMENT TO 2017 AMENDMENTS

This rule differs from the federal rule, as amended in 2007, by substituting the phrase “Chief Judge in the promulgation orders” for “Supreme Court.” Also, the statutory reference to the United States Code and section (b) of the federal rule are omitted as inapplicable.

Rule 86-I. [Deleted].~~**Effective date of Rule amendments or additions.**~~

~~Unless otherwise ordered by the Court, any amendments of or additions to these Rules take effect on their date of promulgation and govern all proceedings in actions brought thereafter and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending on such effective date would not be feasible or would work injustice, in which event the former procedure applies.~~

COMMENT TO 2017 AMENDMENTS

Rule 86-I has been deleted as it has been incorporated into Rule 86.

~~COMMENT~~

~~Rule 86(a) is identical to Federal Rule of Civil Procedure 86(a) except for substitution of the appropriate effective date and thus borrows the presumption of applicability to all proceedings except where such applicability is unfair or infeasible in cases filed prior to February 1, 1971. Sections (b)-(e) dealing with the effective date of various Federal Rule amendments have been deleted.~~

* * *

By the Court:

Date: 3/29/17

Robert E. Morin
Chief Judge

Copies to:

All Judges
All Magistrate Judges
All Senior Judges
Zabrina Dempson, Director, Civil Division
Library
Daily Washington Law Reporter
Laura Wait, Assistant General Counsel