

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**RULE PROMULGATION ORDER 17-03**

(Amending Super. Ct. Civ. R. 54-II, 62-III, 69-I, 72, and 83-I)

**WHEREAS**, pursuant to D.C. Code § 11-946, the Board of Judges of the Superior Court approved the amendments to Superior Court Rules of Civil Procedure 54-II, 62-III, 69-I, 72, and 83-I; and

**WHEREAS**, these amendments do not modify the Federal Rules of Civil Procedure; it is

**ORDERED**, that Superior Court Rules of Civil Procedure 54-II, 62-III, 69-I, 72, and 83-I are hereby enacted and amended as set forth below; and it is further

**ORDERED**, that the above enumerated amendments shall take effect September 5, 2017, and shall govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

## **Rule 54-II. Waiver of Costs, Fees, or Security.**

(a) ~~IN GENERAL~~General. The court may waive the prepayment of costs, fees, or security or the payment of costs, fees, or security accruing during any action ~~upon~~ the presentation of Civil Action Form 106A (Application to Proceed Without Prepayment of Costs, Fees, or Security) and a finding that the party is unable to pay such costs, fees, or security without substantial hardship to the applicant or the applicant's family. The court ~~shall~~must not deny ~~such~~ an Application solely because the applicant is at or above the federal poverty guidelines. ~~Such a~~An Application may be submitted at any point in the proceedings. Unless the court orders otherwise, the Application need not be served on the other parties and will be resolved ex parte. When an Application is granted in whole or in part, a notation will be made ~~in~~ the record ~~in of said that~~ action.

(b) ~~PUBLIC~~Public ~~BENEFIT~~Benefits. If an applicant receives Temporary Assistance for Needy Families (~~TANF~~), General Assistance for Children (~~GAC~~), Program on Work, Employment and Responsibility (~~POWER~~), or Supplemental Security Income (~~SSI~~), the court must grant the Application without requiring additional information from the applicant.

(c) ~~HEALTH~~Health ~~CARE~~Care ~~BENEFIT~~Benefits. Consistent with Civil Action Form 106A, if an applicant receives Interim Disability Assistance (~~IDA~~), Medicaid, or the D.C. HealthCare Alliance, the court may grant the Application without requiring additional information from the applicant.

(d) ~~SIGNIFICANT~~Significant ~~COST~~Costs. In determining whether to waive the prepayment of costs, fees, or security, the court must take into account the likelihood that the matter may entail significant costs to the litigant, such as the costs of e-filing.

(e) ~~MERIT~~Merit ~~OF~~Of ~~UNDERLYING~~Underlying ~~ACTION~~Action. The court may not refuse to waive the prepayment of costs, fees, or security based ~~upon~~ the perceived lack of merit of the underlying action.

(f) ~~DISMISSING~~Dismiss ~~ACTION~~Setions; ~~ENJOINING~~Enjoin ~~REPEAT~~Repeat ~~FILERS~~Filers ~~OF~~Of ~~FRIVOLOUS~~Frivolous ~~MATTERS~~Matters. Nothing in this rule should be construed to limit the authority of courts to dismiss actions or to enjoin repeat filers of frivolous matters from filing future cases without prior approval of the court.

(g) ~~REQUIRING~~Requiring ~~ADDITIONAL~~Additional ~~INFORMATION~~Information. If there is good cause to believe the information contained in Civil Action Form 106A is inaccurate or misleading, or that the applicant has undergone a change of circumstances or submitted an incomplete Application, the court may require additional evidence in support of the request to waive prepayment of costs, fees, or security accruing during any action.

(h) ~~DECLARATION~~Declaration. The Application must include the signed ~~D~~dclaration in Civil Action Form 106A. Notarization is not required.

(i) ~~Service of Process and Witness Fees~~SERVICE OF COMPLAINT; SERVICE ON MINOR OR INCOMPETENT PERSON; SERVICE OF WITNESS SUBPOENA; WITNESS FEES. Where an requestapplication to proceed without prepayment of costs, fees, or security is granted, the following provisions apply~~the officers of the court will issue and serve all process and perform all duties in such cases~~.

(1) Service of Complaint. The clerk will attempt to serve a defendant—other than a minor or incompetent person—with the materials listed in Rule 4(c)(1) by:

(A) registered or certified mail, return receipt requested, under Rule 4(c)(4);

- (B) first-class mail with notice and acknowledgment under Rule 4(c)(5); or  
(C) both methods listed in Rule 54-II(i)(1)(A) and (B).
- (2) Service on Minor or Incompetent Person. Where the defendant is a minor or incompetent person within the meaning of D.C. Code §§ 13-332 and -333 (2012 Repl.), the court may, on motion, appoint a person to serve the materials listed in Rule 4(c)(1) by the methods described in Rule 4(g).
- (3) Service of Witness Subpoena; Witness Fees. On motion, the court may in its discretion appoint a person to serve witness subpoenas. Witnesses will be subpoenaed without prepayment of witness fees, and the same remedies will be available as are provided for by law in other cases.
- (j) ~~RULING~~Guling ~~IN~~In ~~WRITING~~riting ~~OR~~er ~~ON~~On ~~THE~~the ~~RECORD~~Record. If the court denies the ~~Application for a waiver of the~~to proceed without prepayment of costs, fees, or security, the court must state its reason(s) for ~~such ruling~~denial in writing or on the record in the presence of the applicant or his or her counsel.
- (k) ~~MOTION~~otion ~~FOR~~for ~~FREE~~free ~~TRANSCRIPTS~~ranscripts. An applicant who has received a waiver of the prepayment of costs, fees, or security may file a motion requesting that free transcripts be prepared for appeal and explaining the basis for the motion. The court may not refuse to provide free transcripts unless the appeal is frivolous. In making this determination, the court must resolve doubt about the merits of the appeal in favor of the applicant. The court may order that only those portions of the trial proceedings necessary to resolution of the appeal be transcribed.

#### COMMENT TO 2017 AMENDMENTS

Section (i) has been amended to clarify and limit the types of service that the court is required to undertake on behalf of *in forma pauperis* litigants. Generally, the court will attempt service of the complaint and related materials by registered or certified mail, return receipt requested, or by first-class mail with notice and acknowledgment. By motion, the court may appoint a process server to serve witness subpoenas or to serve a complaint and related materials on an incompetent or minor defendant as required by statute.

By limiting the types of service and reducing corresponding costs, the court also helps to limit the *in forma pauperis* litigant's potential liability where "[c]osts may be assessed against a party proceeding *in forma pauperis* at the conclusion of an unsuccessful suit." *Robinson v. Howard University*, 455 A.2d 1363, 1367 (D.C. 1983). Additionally, these amendments address a concern first raised in *Atherton v. Brooks*, 728 A.2d 1195 (D.C. 1999), in which the District of Columbia Court of Appeals opined that the language in Rule 54-II related to the waiver of prepayment of witness fees could be interpreted as imposing a corresponding obligation on the trial court to serve witness subpoenas—"an administrative burden" that might not have been considered when the rule was adopted.

#### COMMENT

D.C. Code § 15-712 governs *in forma pauperis* applications. There is no Federal Rule of Civil Procedure addressing such applications, but 28 U.S.C. § 1915 does. The

District of Columbia statute, unlike the federal statute, does not provide the court with discretion to deny an application for in forma pauperis based upon the merit of the underlying action. *Compare* D.C. Code § 15-712 with 28 U.S.C. § 1915\_(e)(2); see *In re Turkowski*, 741 A.2d 406, 407 (D.C. 1999) (per curiam) (“the court must grant the request for in forma pauperis status if a proper application is made, and, having done so, thereafter treat the case as any other, including, of course, any appropriate dispositive actions”); accord *Lewis v. Fulwood*, 569 A.2d 594, 595 (D.C. 1990) (per curiam). The Rule requires applicants seeking in forma pauperis status to submit their request utilizing Form 106A (Application to Proceed Without Prepayment of Costs, Fees or Security), which includes citations to pertinent statutes and case law. Subsection (k) sets forth the standards for ruling upon a motion for free transcripts. See, e.g., *P.F. v. N.C.*, 953 A.2d 1107, 1119 (D.C. 2008) (noting that an appellant proceeding in forma pauperis is entitled to a free transcript “if the trial judge ... certifies that the appeal is not frivolous” and that “[d]oubts about [the] substantiality of the questions on appeal and the need for a transcript to explore them should be resolved in favor of the petitioner”) (internal quotation marks and citations omitted); *Hancock v. Mut. of Omaha Ins. Co.*, 472 A.2d 867 (D.C. 1984), as discussed in *P.F.*, 953 A.2d at 1119.



**Rule 762-III. Enforcing eement of Fforeign jJudgments.; Recognizing Foreign-Country Money Judgments**

**(a) FOREIGN JUDGMENTS ENTITLED TO FULL FAITH AND CREDIT.**

(1) Filing Requirements. A copy of a judgment, decree or order of a court of the United States, or of any other court entitled to full faith and credit in the District of Columbia, may be filed with the cClerk by the judgment creditor or the judgment creditor's lawyer only if:

(A) ~~T~~the judgment is sought to be filed shall be authenticated in accordance with District of Columbia law;

(B) ~~T~~the judgment is accompanied by a completed version of Civil Action Form 112, "Request to File Foreign Judgment"; and

(C) creditor or counsel shall accompany the filing with the information called for in SCR Civil Action Form 112, "Request to File Foreign Judgment", and shall pay the filing fee established by the cCourt has been paid.

(2) Effect, Enforcement, and Satisfaction. A foreign judgment, decree, or order of a court of the United States or of any other court entitled to full faith and credit in the District of Columbia, which is filed with the cClerk, shall havehas the same effect and is be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner, subject to the provisions of the Uniform Enforcement of Foreign Judgments Act of 1990, D.C. Code §§ 15-351 tohrough 15-357 (2012 Repl.).

(b) FOREIGN-COUNTRY MONEY JUDGMENTS ENTITLED TO RECOGNITION. The judgment of a court of a foreign country may be entitled to recognition under the Uniform Foreign-Country Money Judgments Recognition Act of 2011, D.C. Code §§ 15-361 to -371 (2012 Repl.). Recognition may be sought in a pending action or as an original matter.

**COMMENT TO 2017 AMENDMENTS**

Former Superior Court Rule 72 has been renumbered as Rule 62-III in order to reflect that there is no Superior Court rule that corresponds to *Federal Rule of Civil Procedure 72*. This rule has been amended to conform with the 2007 restyling of the Federal Rules of Civil Procedure.

The rule was also amended to clarify that the procedures for foreign judgments entitled to full faith and credit differ from the procedures for foreign-country money judgments entitled to recognition.

**COMMENT**

Rule 72 is intended to implement the Uniform Enforcement of Foreign Judgments Act of 1990, (D.C. Code §§ 15-351 -- 15-357) which has been adopted by the District of Columbia. As a "Uniform Act," it should be construed to effectuate its general purpose to make consistent the law of all jurisdictions that enact it. Accordingly, where there are no interpretations of the Act's provisions in this jurisdiction, guidance may be found in the decisions of other jurisdictions that have adopted this Act. While the Act was intended to provide a simple and expeditious procedure to enforce a foreign judgment in

the District of Columbia, it does not impair the right of a judgment creditor to resort to the cumbersome prior practice of bringing suit to enforce a foreign judgment.

**Rule 69-I. Attachment ~~A~~after ~~J~~judgment in general.**

(a) ~~DISCOVERY IN GENERAL~~~~discovery in general~~. All discovery procedures authorized by Rules 26-37 are available to the judgment creditor in the manner prescribed by those ~~r~~Rules, except that a subpoena ad testificandum addressed to a person other than the judgment debtor and a subpoena duces tecum ~~shall may~~ issue only ~~upon~~ order of the ~~c~~Court. The first subpoena ad testificandum or notice of deposition addressed to the judgment debtor may issue without ~~c~~Court order, but any subsequent subpoena or notice so addressed ~~shall may~~ issue only ~~upon~~ order of the ~~c~~Court. ~~Nothing contained herein shall be construed to require~~~~This rule does not require~~ that a party to the action be paid a witness fee for attendance.

(b) ~~ORAL EXAMINATION IN COURT~~~~oral examination in Court~~. The plaintiff may summon the defendant and, ~~upon~~ leave of court, any other person to appear in court on a date certain and submit to oral examination respecting execution of any judgment rendered. Any person so summoned may, ~~upon~~ leave of ~~C~~court, be required to produce papers, records, or other documents at the examination. Any person summoned to appear for oral examination ~~shall must~~ appear first in the ~~Office of the C~~lerk's office. If the person summoned was personally served but fails to appear, the ~~C~~court may, ~~upon~~ plaintiff's request, issue a bench warrant for the person's arrest. If the person summoned does appear, the ~~c~~Clerk ~~shall must~~ present all pleadings and other documents in the case to the ~~Court~~~~judge or magistrate judge~~ assigned to preside at the examination.

(c) ~~OTHER CLAIMS TO PROPERTY~~~~ther claims to property~~. Before the final disposition of the property attached or its proceeds—(except where it is real property)—~~any~~ person may file a motion and affidavit setting forth a claim ~~thereto or an~~ interest in, or lien ~~upon the same~~~~it~~. Without other pleadings, the ~~c~~Court ~~must shall~~ try the issues raised by ~~such the~~ claim and may make all orders necessary to protect any right of the claimant. Any party to ~~such the~~ proceeding may demand ~~a jury trial by jury~~ by filing ~~such a~~ demand within 57 days of the filing of ~~the such~~ motion and affidavit.

(d) ~~GARNISHEE'S ANSWER; APPLICANT'S RESPONSE~~~~answer of garnishee~~. ~~Within 10 days after accepting service of the writ of attachment, 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 the garnishee, and shall serve a copy of the answer upon the defendant and upon the party for whom at whose instance the garnishment was issued. If within 140 days after service of the answer, to the interrogatories or such at a later time if as the C court may allow s, 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 1973, § 16-522 (2012 Repl.), the garnishee's obligations under the attachment shall will be limited by his answer.~~

(e) ~~JUDGMENT AGAINST GARNISHEE~~~~udgment against garnishee~~. No judgment against a garnishee under D.C. Code 1973, §§ 16-556 or 16-575 (2012 Repl.) ~~shall will~~ be entered except by ~~court~~ order ~~of Court~~. Applications for a judgment ~~shall must~~ be filed:

—(1) within 4 weeks after answers to the interrogatories are due and not filed; ~~or~~

—(2) as to property other than "wages" as defined in D.C. Code 1973, § 16-571 (2012 Repl.), within 4 weeks after the garnishee has filed answers to the interrogatories; ~~or~~



(3) as to such "wages," within 15 weeks of the date on which a garnishee fails to make a payment due under the writ; or

  (4) within ~~such a~~ later time ~~as may be~~ authorized by the ~~c~~Court ~~up~~on a motion made within the applicable period.

(f) DISMISSAL OF GARNISHMENT AND ATTACHMENT. If no judgment of condemnation or of recovery has been applied for or entered within the time provided by this ~~r~~Rule, the garnishment and attachment ~~must~~shall stand~~be~~ dismissed. ~~Upo~~On oral or written request ~~therefor~~, the ~~c~~Clerk ~~shall~~must enter ~~such a~~ dismissal of the garnishment and attachment and ~~shall~~must furnish a certificate of ~~such~~the dismissal to the garnishee, the defendant, or any other person.

(g) CONTENT OF WRIT OF ATTACHMENT ON NON-WAGES. The writ must:

(1) contain:

(A) the caption of the action;

(B) the name and last known address of the judgment debtor;

(C) the name and address of the judgment creditor; and

(D) the date of issuance;

(2) list the amount of the total balance due under the judgment;

(3) direct the garnishee to hold, subject to further proceedings, the non-exempt property of the judgment debtor up to the amount of the total balance due at the time of the issuance of the writ and which is in the possession or charge of the garnishee at the time of service of the writ;

(4) direct the garnishee not to hold, and to make available to the account holder, all funds from an account that consists solely of direct deposited benefits that are exempt:

(A) under federal law, including:

(i) Social Security benefits;

(ii) Supplemental Security Income;

(iii) Social Security disability benefits;

(iv) veterans' benefits;

(v) Civil Service Retirement System benefits;

(vi) Federal Employee Retirement System benefits;

(vii) Black Lung or Railroad Retirement benefits; or

(B) under District of Columbia law, including:

(i) disability or unemployment benefits;

(ii) public assistance/Temporary Assistance for Needy Families benefits; or

(iii) workers' compensation benefits;

(5) direct the garnishee, in any account that consists in part of benefits that are exempt under federal law, not to hold, and to make available to the account holder, an amount equal to the total amount of exempt funds deposited into the account in the two months prior to the service of a writ of attachment; and

(6) contain interrogatories to be answered by the garnishee regarding the nature of the property in possession of the garnishee and indebtedness of the garnishee to the judgment debtor.

(h) NOTICE TO THE JUDGMENT DEBTOR. The judgment creditor must mail to the judgment debtor at his or her last known address, by certified and first-class mail, a copy of the writ and the Notice to Debtor of Non-Wage Garnishment and Exemptions on



the form available in the clerk's office, no more than 3 days after service of the writ on the garnishee.

(i) FUNDS EXEMPT FROM ATTACHMENT.

(1) Motion Claiming Exemption. A party may raise a claim that funds are exempt from a writ of attachment by filing a motion with the Presiding Judge, or his or her designee, claiming an exemption and requesting a hearing.

(2) Hearing on Motion. On the filing of a motion, the clerk must set a hearing before the Presiding Judge of the Civil Division, or his or her designee, as soon as practicable, but no later than 7 days after the motion is filed unless:

(A) the moving party requests a later date; or

(B) the parties otherwise agree.

(3) Effect of Filing Motion. On the filing of a motion, any further action on the writ of attachment, including any condemnation of funds, must be stayed until a decision is made by the Presiding Judge, or his or her designee, on the merits of the motion.

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. Additionally, the rule now specifies the contents of the writ of attachment on non-wages, which includes a list of funds that are exempt from attachment. Finally, new section (i) establishes procedures for filing a motion claiming that funds are exempt from a writ of attachment.

COMMENT

[Moved from the comment to Rule 69-II.] Rule 69-I states the local attachment procedures available in the Superior Court and comprehended by the Rule 69 phrase "shall be in accordance with the practice and procedure of the District of Columbia". Section 69-I(a) modifies the broad authorization of unlimited discovery by providing that a subpoena duces tecum, a subpoena ad testificandum ad-dressed to a person other than the judgment debtor, or more than 1 subpoena ad testificandum or deposition notice ad-dressed to the judgment debtor may issue only upon order of the Court. This provision was based on extensive experience in the Court of General Sessions with execution proceedings and the desire to provide a safeguard against harassment of the judgment debtor and other persons, especially the judgment debtor's employer. Section (e) has been amended in order to conform to *Household Finance Corporation v. Training Research and Development, Inc.*, 316 A. 2d 850 (D.C. App. 1973) which held that the time period within which a judgment of recovery must be applied for should not be measured from any act or requirement relating to the answering of interrogatories when the attachment is an attachment on wages, salary or commissions and the judgment of recovery is being sought for failure to remit a payment due under the writ. The section now provides that in such cases the time period should begin from the time that a payment is due and not paid. The length of the time period in such cases was

made far longer than for other cases be-cause of the Advisory Committee's recognition that in attachments on wages, salary and commissions, there are frequently uncertain intervals during which the debtor is temporarily laid off or does not appear for work. See *D.C. Code § 16-576* (1973 Ed.).

## **Rule 72. [Deleted].**

### **Enforcement of foreign judgments.**

~~— A copy of a judgment, decree or order of a court of the United States, or of any other court entitled to full faith and credit in the District of Columbia, may be filed with the Clerk by the judgment creditor or the judgment creditor's lawyer. The judgment sought to be filed shall be authenticated in accordance with District of Columbia law. The judgment creditor or counsel shall accompany the filing with the information called for in SCR Civil Action Form 112, "Request to File Foreign Judgment", and shall pay the filing fee established by the Court. A foreign judgment filed with the Clerk shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner, subject to the provisions of the Uniform Enforcement of Foreign Judgments Act of 1990, *D.C. Code §§ 15-351 through 15-357*.~~

### **COMMENT TO 2017 AMENDMENTS**

The substance of former Superior Court Rule 72, which is unique to the Superior Court, has been moved to Rule 62-III so that the Superior Court rule numbers better align with the federal rules. Federal Rule 72, which addresses referral of pretrial matters to magistrate judges, is not incorporated.

### **COMMENT**

~~— Rule 72 is intended to implement the Uniform Enforcement of Foreign Judgments Act of 1990, (*D.C. Code §§ 15-351—15-357*) which has been adopted by the District of Columbia. As a "Uniform Act," it should be construed to effectuate its general purpose to make consistent the law of all jurisdictions that enact it. Accordingly, where there are no interpretations of the Act's provisions in this jurisdiction, guidance may be found in the decisions of other jurisdictions that have adopted this Act. While the Act was intended to provide a simple and expeditious procedure to enforce a foreign judgment in the District of Columbia, it does not impair the right of a judgment creditor to resort to the cumbersome prior practice of bringing suit to enforce a foreign judgment.~~

**Rule 83-I. Amendments of or ~~a~~Additions to Superior Court Rules of Civil Procedure.**

(a) EFFECT OF AMENDMENTS OR ADDITIONS TO FEDERAL RULES OF CIVIL PROCEDURE. Any amendments or additions to the Federal Rules of Civil Procedure promulgated after February 1, 1971, ~~will~~shall, ~~upon~~ their effective date, take effect as amendments of or additions to the Superior Court Rules of Civil Procedure unless the ~~Board of Judges~~Superior Court by action of a majority of judges thereof shall adopts a resolution modifying ~~such~~the Federal ~~R~~rule amendments or additions in whole or in part. ~~Any such~~The resolution ~~must~~shall be submitted to the District of Columbia Court of Appeals for approval.

(b) INITIATION BY THE SUPERIOR COURT OF AMENDMENTS OR ADDITIONS. In addition, the Superior Court by action of ~~the Board of Judges~~a majority of the judges thereof may, ~~on~~of its own initiative, adopt additional rules or amendments to existing Superior Court ~~R~~rules, provided that any ~~such~~ additions or amendments ~~that~~which modify the Federal Rules of Civil Procedure ~~shall be~~are submitted to the District of Columbia Court of Appeals for approval.

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

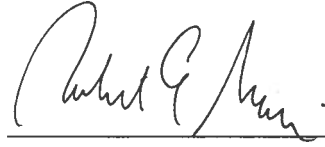
Federal Rule of Civil Procedure 83(a), which addresses the promulgation, amendment, and enforcement of local rules by district courts, has been deleted. Substituted therefor is Rule 83-I which prescribes the rulemaking procedure for subsequent rules in accordance with D.C. Code § 11-946.



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By the Court:

Date: 8/22/17

  
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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