

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 09-06

(Amend SCR Probate 311, 321, 322, 324, 325, and 350)

WHEREAS, pursuant to D.C. Code § 11-946, the Board of Judges of the Superior Court approved amendments to Superior Court Rules of the Probate Division 311, 321, 322, 324, 325 and 350; and

WHEREAS, these rules do not modify the Federal Rules of Criminal or Civil Procedure; it is

ORDERED that Superior Court Rules of the Probate Division 311, 321, 322, 324, 325 and 350 are amended as set forth below; and it is further

ORDERED that the above enumerated amendments shall take effect January 4, 2010 and govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

SCR PROBATE 311

SERVICE OF PETITION AND NOTICE

(a) Initial Proceeding. Notice of a petition for appointment of a guardian, petition for appointment of a conservator or for a protective order, or a petition for termination of a guardianship, conservatorship or protective arrangement; and the notice of hearing on any such petition, must be given as follows:

(1) Manner of Service:

(A) A petition for appointment of a guardian must be mailed to the subject of the petition, by first class mail, postage prepaid, within three days of its filing.

(B) The petition, and the notice of hearing, must be personally served on the subject of the proceeding and any other person required to be served who is a resident of the District of Columbia. The petition, and the notice of hearing, must be served on all other persons by certified or first class mail, addressed to the person's place of residence or office.

(C) The petition, and the notice of hearing, must be served at least 14 days before the date of the hearing, if personally served, or at least 17 days before the date of the hearing, if mailed.

(D) If the subject of a petition for appointment of a conservator or for a protective order has disappeared, has been detained by a foreign power, or is being held hostage by someone other than a foreign power, the notice of hearing on the petition must be published in a newspaper of general circulation in the District of Columbia at least once a week for 3 consecutive weeks, with the first publication being at least 40 days before the date set for the hearing.

(E) For good cause shown, the Court may provide for a different method or time of giving notice.

(2) Who May Serve: Service may be made by the petitioner's counsel or other adult agent, but not by the petitioner.

(3) Proof of Service: Proof of service must be given by affidavit filed not later than the date of the hearing.

(4) The subject of the proceeding may not waive notice. Any other person may waive notice by filing a written waiver.

(b) Proceedings under D.C. Code §21-2068. A petition or a petition filed under D.C. Code §21-2068, and notice of hearing on that petition, must be served on those persons listed in that section. Service must be made as provided in subsection (a), above.

(c) All other proceedings.

(1) A petition, and any notice of hearing, must be served on the incapacitated person, the attorney of record for each party or person entitled to participate or, if not represented by counsel, the party or person entitled to participate, and any person who has filed an effective request for notice pursuant to SCR-PD 304.

(2) A petition, and any notice of hearing, must be served personally or by certified or first class mail addressed to the person's place of residence or office.

(3) Notice of a hearing must be served:

(A) at least 14 days before the date of the hearing, if personally served;

(B) at least 17 days before the date of the hearing, if mailed; or

(C) if the incapacitated individual has disappeared, has been detained by a foreign power, or is being held hostage by someone other than a foreign power, the notice of hearing on the petition must be published in a newspaper of general circulation in the District of Columbia at least once a week for 3

consecutive weeks, with the first publication being at least 40 days before the date set for the hearing.

For good cause shown, the Court may provide for a different method or time of serving notice.

(4) Proof of service.

(A) Proof of service of a petition must be given by certificate of service or by affidavit.

(B) Proof of service of a notice of hearing must be given by affidavit filed not later than the date of the hearing.

(5) The incapacitated person may not waive service or notice. Any other person may waive notice by filing a written waiver.

Comment

This rule consolidates the requirements for service of petitions and notices of hearings into one rule. The requirements for service of an initial petition for a general proceedings; or a petition for termination of a guardianship, conservatorship and protective proceeding; and service of the notice of hearing required by law, are set out in Paragraph (a). Paragraph (c) sets out the procedures for serving all other petitions in intervention matters, except for petitions filed under D.C. Code §21-2068 (dealing with conflict of interest transactions), for which specific service provisions are provided in Paragraph (b). Paragraph (c) also governs service of any notice of hearing on a petition filed after the initial petition. Implementing the procedures of Rule 322, this Rule distinguishes between service of petitions filed after the initial petition and service of a notice of hearing on such petitions.

SCR PROBATE 321

INITIAL PROCEDURES IN FOR A PETITION FOR A GENERAL INTERVENTION PROCEEDINGS OR FOR TERMINATION OF GUARDIANSHIP OR CONSERVATORSHIP.

(a) [unchanged]

(b) ~~Notice of a Hearing. Subsequent to~~ Upon the filing of a petition, the Court shall must schedule a hearing. ~~Notice of the hearing shall be given pursuant to SCR-PD 325.~~

(c) Service of the petition and notice of hearing. Unless the petitioner is the

subject of the petition, the petition and notice of hearing must ~~shall~~ be served by first class mail upon the subject of the petition and his or her counsel if known; and on all other persons entitled to notice under D.C. Code §§ 21-2042 and 21-2053, within 3 days of the filing of the petition. ~~Proof of service is to be by certificate of service pursuant to SCR Probate 311(e)(6) or affidavit (Form I-K-2).~~ upon those persons listed in Rule 325 and in accordance with Rule 311(a).

(d) [unchanged]

(e) [unchanged]

(f) [unchanged]

(g) *Hearing.* (1) At the hearing, each party or person granted permission to participate may present evidence in support of the relief sought by that party or participant. Unless the proceeding can be resolved at the hearing, the Court ~~shall set a trial date and a date for a pretrial conference, if~~ may enter an order for such further proceedings as may be necessary.

(2) If the Court sets a pretrial conference, P pretrial statements substantially in the format set forth in PD Form II-I shall be filed and served by all parties not later than 5 days before the pretrial conference. The Court may order the parties to file a joint pretrial statement.

(2 h) Temporary relief. ~~If the proceeding is not resolved at the initial hearing~~ While a petition for the appointment of a conservator or for other protective order is pending, and after preliminary hearing and without notice to others, the Court may enter an order to preserve and apply the property of the individual to be protected as may be required for the support of that individual or his or her dependents.

(i) Petition to terminate a guardianship or conservatorship. The procedures set out in this rule shall apply to a petition to terminate a guardianship or conservatorship.

SCR-PD 322

PROCEDURES IN GENERAL INTERVENTION PROCEEDINGS SUBSEQUENT TO THE APPOINTMENT OF A GUARDIAN OR CONSERVATOR AND FOR RESOLUTION OF DISPUTES

(a) [unchanged]

(b) *Initiation of proceeding.* Except as provided in SCR-PD 309, a proceeding subsequent to the appointment of a guardian or conservator ~~shall~~ must be

initiated by filing a petition for the proceeding on Form II-Q or a format substantially consistent with that form ~~together with a notice (Form I J) in accordance with SCR PD 311.~~ The petition shall must state with specificity the grounds for the request. The petition must be accompanied by a notice of the right to respond to the petition or request an oral hearing on the petition or both.

~~(e) — *Hearing date.* Upon the filing of a petition in a proceeding subsequent to the appointment of a guardian or conservator, the Court shall schedule a hearing.~~

~~(d c) *Service.* In accordance with D.C. Code §21-2031 and SCR PD 311, t~~ The petitioner must serve a copy of the petition and the notice ~~of a hearing on the petition required by Paragraph (b) upon each of the following and any other person upon whom service is required by statute or order of the Court:~~

- (1) The incapacitated person;
- (2) The attorney of record for each party or person entitled to participate, or the party or person entitled to participate if not represented by an attorney;
- (3) Any person who has filed an effective request for notice pursuant to SCR-PD 304.

~~(e) — *Objections*~~ (d) *Response to Petition.* Any party or person entitled to participate who objects to the relief requested, or who desires an oral hearing, shall file and serve a statement in opposition must file a response to the petition or request for an oral hearing, or both, and must include in the response the reasons therefor. The response must be filed within 10 days of the personal service of the petition and notice or 13 days if the petition and this notice has been mailed. The response must be served as provided in Paragraph (c).

(e) — *Hearing.*

(1) — *Oral Hearing.*

The Court in its discretion may schedule an oral hearing. If so, the Court must issue a notice of such hearing, which must be served by the petitioner as provided in Rule 311(c).

(2) — *Hearing Through Written Submission.*

The Court in its discretion may rule on the petition without requiring all parties to appear before the Court, with the hearing held through written submission.

Comment

This Rule allows the Court to conduct a hearing on a petition by written submission when the Court reasonably concludes that an oral hearing would be unnecessary. See *In re Greene*, 829 A.2d 506, 508 (D.C. 2003). (“[W]hile a hearing is required, a hearing need not inevitably be an oral one. Rather a hearing in certain circumstances may be held through written submission.”)

SCR PROBATE 324

PROCEDURES FOR APPOINTMENT OF A SUCCESSOR CONSERVATOR

~~A successor conservator shall be appointed in accordance with the procedures set forth in SCR PD 321, except that the Court need not appoint counsel. Form II A may be used as modified by this Rule. (This rule is deleted).~~

SCR PROBATE 325

NOTICE OF ~~INITIAL~~ HEARING ON PETITION FOR A GENERAL PROCEEDING OR PETITION FOR TERMINATION.

(a) *Notice of hearing on ~~initial~~ petition for a general proceeding or petition for termination.* In proceedings for appointment of a permanent, limited or general guardian, a or successor to either guardian, a conservator ; limited or special, ; or entry of a protective order ; ; or for termination of appointment of any of the above a guardianship, conservatorship or protective arrangement, a the petition and notice in accordance with the procedures of SCR PD 311 of hearing must shall be served upon:

[the rest of the rule remains unchanged]

SCR PROBATE 350

PROCEDURES IN PROCEEDINGS FOR APPOINTMENT OF CONSERVATOR FOR A MISSING, DISAPPEARED OR DETAINED PERSON

(a) [unchanged]

(b) *Notice of hearing.* Upon the filing of a petition, the ~~Clerk shall~~ Court must schedule a hearing. The petition and nNotice of the hearing shall must be given pursuant to SCR PD 325 on Form IV B. served upon those persons listed in Rule 325 and in accordance with Rule 311(a).

[The rest of the rule remains unchanged.]

By the Court:

Date: October 19, 2009

/s/ Lee F. Satterfield
Lee F. Satterfield
Chief Judge

Copies to:

All Judges
All Magistrate Judges
Library
David Luria, Attorney Advisor