

Rule 73. Magistrate Judges: Trial by Consent; Appeal

(a) TRIAL BY CONSENT; POWERS; 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, a magistrate judge may, if all parties consent, 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.* A magistrate judge may not preside over a jury trial or exercise the contempt power.

(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, is deemed to have consented that a magistrate judge conduct all proceedings in the case.

(4) *Vacating a Referral.* On its own for good cause—or when a party shows extraordinary circumstances—the court may vacate a referral to a magistrate judge under this rule.

(b) APPEALING A JUDGMENT.

(1) *Initial Judicial Review.* Judicial review of a final order or judgment entered on the direction of a magistrate judge is available:

(A) on motion of a party to the Superior Court judge designated by the Chief Judge to conduct such reviews; or

(B) on the initiative of the judge so designated.

(2) *Further Appeal.* After the Superior Court judge completes judicial review, a party may appeal to the District of Columbia Court of Appeals.

(3) *Standard of Review.* The Superior Court judge reviewing a magistrate judge's final order or judgment must apply the same standard of review used by the District of Columbia Court of Appeals when reviewing a judgment or order of the Superior Court.

(4) On Motion

(A) *Motion Requirements.* The motion for review must:

(i) be filed and served within 14 days after entry of the order or judgment;

(ii) designate the order or judgment, or part of the order or judgment, for which review is sought; and

(iii) specify the grounds for objection to the magistrate judge's order or judgment, or part of the order or judgment.

(B) *Answer to Motion.* Within 14 days after being served with the motion for review, a party may file and serve a response.

(C) *Judicial Review.* The judge designated by the Chief Judge must review those portions of the magistrate 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 magistrate judge's order or judgment.

(5) *Review on Initiative of the Court.* Not later than 30 days after entry of a magistrate judge's final order or judgment, the judge designated by the Chief Judge may sua sponte review the 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 magistrate judge's order or judgment.

(6) *Termination of Time for Filing Motion for Review.* 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 magistrate judge by any party, and the full time for review from the judgment entered by the magistrate judge commences to run anew from entry of the order disposing of the last such remaining motion:

(A) for judgment as a matter of law;

(B) to amend or make additional factual findings, whether or not granting the motion would alter the judgment;

(C) to vacate, alter, or amend the order or judgment;

(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.

(7) *Interlocutory Motion for Review.* An interlocutory decision or order by a magistrate judge, which, if made by a judge of this court, 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 14 days after entry of the decision or order. Review of such interlocutory decisions or orders will not stay the proceedings before the magistrate judge unless the magistrate judge or the reviewing judge so orders.

(8) *Extension of Time to File Motion for Review.* On 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 Rule 73(b)(4)(A)(i) or (b)(7) has expired, extend the time for filing a motion for review of a magistrate judge's order or judgment for a period not to exceed 21 days from the expiration of the time otherwise prescribed by this rule.

(9) *Stay Pending Review.* On a showing that the magistrate judge has refused or otherwise failed to stay the judgment pending review under this 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 on the filing of a bond or other appropriate security.

(10) *Dismissal.* For failure to comply with this rule or any other rule or order, the judge may take any action as is deemed appropriate, including dismissal of the motion for review. The judge also may dismiss the motion for review on the filing of a stipulation signed by all parties, or on motion and notice by the movant.

(c) CONTEMPT.

(1) *Show Cause Hearing.* A 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 magistrate judge or for any other act or conduct committed before a 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 must:

(A) state the time and place of hearing, allowing a reasonable time for the preparation of the defense; and

(B) state the essential facts constituting the contempt charged and describe it.
(d) OTHER POWERS. The authority of a magistrate judge in the Civil Division includes 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 magistrate judge's calendar to the clerk's office for redistribution pursuant to Rule 40-I;
- (2) issue or quash a bench warrant for parties who fail to appear in court on a magistrate judge's calendar;
- (3) conduct oral examinations; and
- (4) rule on the following motions in cases assigned to any 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 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 commissioner 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.