

## **Rule 32.1. Revoking or Modifying Probation**

### **(a) Revocation.**

#### **(1) Preliminary Hearing.**

(A) In General. If a person is in custody for violating a condition of probation, the court must, within the time limits set forth in Rule 32.1(a)(3), conduct a hearing to determine whether there is probable cause to believe that a violation occurred. The person may waive the hearing.

(B) Requirements. The hearing must be recorded by a court reporter or by a suitable recording device. The court must give the person:

(i) notice of the hearing and its purpose, the alleged violation, and the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel;

(ii) an opportunity to appear at the hearing and present evidence; and

(iii) upon request, an opportunity to question any adverse witness.

Whenever the alleged violation of probation is based on an arrest for a criminal offense allegedly committed while on probation, a preliminary hearing held pursuant to Rule 5.1 may serve as the preliminary revocation hearing required by this subparagraph if the provisions of this subparagraph have been fully satisfied.

(C) Finding. The finding of probable cause may be based upon hearsay evidence in whole or in part. If the court finds probable cause, the court may release or detain the person under D.C. Code § 23-1325 (b) (2012 Repl.), and must conduct a revocation hearing. If the court does not find probable cause, the court must dismiss the proceeding.

(2) Revocation Hearing. Unless waived by the person, the court must hold the revocation hearing within the time limits set forth in Rule 32.1(a)(3). The person is entitled to:

(A) written notice of the alleged violation;

(B) disclosure of the evidence against the person;

(C) an opportunity to appear, present evidence, and question any adverse witness unless the court determines that the interest of justice does not require the witness to appear; and

(D) notice of the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; and

(E) an opportunity to make a statement and present any information in mitigation.

#### **(3) Time Limits.**

(A) Whenever the person is held in custody pending the final revocation hearing, the court must hold the final revocation hearing and decide whether to revoke probation no later than 60 days after the preliminary revocation hearing.

(B) Whenever the alleged violation of probation is based on an offense allegedly committed while on probation, which is also the subject of criminal charges against the person, the person shall have the right to have the final revocation hearing postponed beyond the 60-day time limit pending final disposition of the criminal charges. Any such postponement at the person's request shall have the effect of tolling the computation of time under this subparagraph. If the person exercises the right to postpone the final revocation hearing pending final disposition of the criminal charges, a final revocation

hearing shall be held and the court shall decide whether to revoke probation no later than 20 days after judgment or other final disposition of the criminal charges.

(C) The time limits set forth in this subparagraph may be extended for good cause. If, within these time limits, or within any extension previously granted by the court, the court does not decide whether probation should be revoked, the person may not be further detained by reason of the alleged probation violation pending the court's decision.

(b) Modification.

(1) In General. Before modifying the conditions of probation, the court must hold a hearing, at which the person has the right to counsel and an opportunity to make a statement and present any information in mitigation.

(2) Exceptions. A hearing is not required if:

(A) the person waives the hearing; or

(B) the relief sought is favorable to the person and does not extend the term of probation; and

(C) an attorney for the government has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so.

(c) Producing a Statement. Rule 26.2(a)-(d) and (f) applies at a hearing under this rule. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

## COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraphs (a) and (d) of the federal rule, entitled "Initial Appearance" and "Disposition of the Case," are omitted as locally inapplicable.

Paragraph (a) of this rule, which corresponds to paragraph (b) of the federal rule, differs in the following respects.

First, subparagraph (a)(1)(B) provides that a preliminary hearing under Rule 5.1 may serve also as a preliminary revocation hearing under this rule if certain conditions are met.

Second, subparagraph (a)(1)(C) retains a provision expressly stating that a probable cause finding may be based on hearsay evidence.

Finally, subparagraph (a)(3), which has no federal counterpart, sets time limits within which the court must act. It differs from the former rule only as to organization; no difference in substance is intended.

The phrase "charged by complaint" in subparagraph (a)(1) of the former Superior Court rule is omitted in this rule to recognize that alleged violations of probation may be based on arrests for offenses charged by information as well as complaint.

Consistent with the 2002 amendments to the federal rule, this rule now provides in subparagraph (a)(2)(C) that a defendant's right to cross-examine adverse witnesses at a final revocation hearing is qualified. See *Young v. United States*, 863 A.2d 804 (D.C. 2004).

In 2005, the federal rule was amended to provide that a defendant has a right to allocute at a revocation hearing or a hearing on modification of probation. Subparagraphs (a)(2)(E) and (b)(1) of this rule reflect those changes.