

#### **Rule 46. Release from Custody; Supervising Detention**

(a) Before Trial. The provisions of D.C. Code §§ 23-1321 to -1331 (2012 Repl.) govern pretrial release or detention.

(b) Pending Sentence or Appeal. The provisions of D.C. Code § 23-1325 (2012 Repl.) govern release or detention pending sentence or pending appeal.

(c) Material Witnesses. The provisions of D.C. Code § 23-1326 (2012 Repl.) govern release or detention of a material witness.

(d) Orders. Upon ordering release pursuant to D.C. Code § 23-1321 (2012 Repl.), the court must issue an order as provided in D.C. Code § 23-1321 (c)(1) (2012 Repl.). If the court orders detention of the defendant before trial pursuant to D.C. Code § 23-1322 (b) (2012 Repl.), it must issue an order as provided in D.C. Code § 23-1322 (g) (2012 Repl.).

(e) Supervising Detention. To eliminate unnecessary detention, the court, in cooperation with the District of Columbia Pretrial Services Agency acting pursuant to D.C. Code § 23-1303 (h)(6) (2012 Repl.), must supervise the detention of any defendants awaiting trial and any persons held as material witnesses.

(f) Producing a Statement.

(1) In General. Rule 26.2(a)-(d) and (f) applies at a detention hearing under D.C. Code §§ 23-1322, -1323, -1325 (a) and -1329 (2012 Repl.), unless the court for good cause rules otherwise.

(2) Sanctions for Not Producing a Statement. If a party disobeys a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony at the detention hearing.

#### **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)-(d) and (f) refer to the local statutes governing release and detention.

Paragraph (e) (Supervising Detention) differs from the corresponding paragraph (h) of the federal rule by retaining a reference to the role of the Pretrial Services Agency.

Paragraph (b) of the federal rule (governing release during trial) has not been adopted by the Superior Court.

This rule also omits paragraphs (e), (f), and (g) of the federal rule (governing sureties, bail forfeitures and exoneration). These matters are addressed in Superior Court Rule 116.

Paragraph (i) of the federal rule (Forfeiture of Property) is omitted as locally inapplicable.

In addition, paragraph (g) of the former rule (Definition of "Court") has been omitted. Definitions are now in Rule 1.