

Rule 5.1. Preliminary Hearing

(a) IN GENERAL. If a defendant is charged with a felony, the court must conduct a preliminary hearing unless:

- (1) the defendant waives the hearing;
- (2) the defendant is indicted;
- (3) the government files an information under Rule 7(b) charging the defendant with a felony; or

(4) the government files an information charging the defendant with a misdemeanor.

(b) SCHEDULING. Unless otherwise provided by statute, the court must hold the preliminary hearing within a reasonable time, but no later than 14 days after the initial appearance if the defendant is detained and no later than 21 days if the defendant is not detained.

(c) EXTENDING THE TIME. With the defendant's consent and upon a showing of good cause—taking into account the public interest in the prompt disposition of criminal cases—the court may extend the time limits in Rule 5.1(b) one or more times. If the defendant does not consent, the court may extend the time limits only on a showing that extraordinary circumstances exist and justice requires the delay.

(d) HEARING AND FINDING. At the preliminary hearing, the defendant must not be called upon to plead. The finding of probable cause may be based on hearsay evidence in whole or in part. The defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired. Motions to suppress must be made to the court as provided in Rules 12 and 47. The purpose of the preliminary hearing is not for discovery. If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the court must promptly require the defendant to appear for further proceedings.

(e) DISCHARGING THE DEFENDANT. If the court finds no probable cause to believe an offense has been committed or the defendant committed it, the court must dismiss the complaint and discharge the defendant. A discharge does not preclude the government from later prosecuting the defendant for the same offense.

(f) PRODUCING A STATEMENT.

(1) *In General.* Rule 26.2(a)-(d) and (f) applies at any hearing under this rule, unless the court for good cause rules otherwise in a particular case.

(2) *Sanctions for Not Producing a Statement.* If a party disobeys a Rule 26.2 order to deliver a statement to the moving party, the court must not consider the testimony of a witness whose statement is withheld.

COMMENT TO 2017 AMENDMENTS

In accordance with the 2009 amendments to the federal rule, the deadlines formerly set at 10 or 20 days have been revised to 14 or 21 days—an amendment that reflects the time-calculation changes made to Rule 45.

Section (f) is added to the rule. This section makes Rule 26.2 applicable to preliminary hearings. It is substantially identical to section (h) of the federal rule.

COMMENT TO 2016 AMENDMENTS

This rule consists of provisions previously found in paragraph (d) of former Superior Court Rule 5. This change conforms Rules 5 and 5.1 to their federal counterparts.

Paragraph (b) has been modified by the addition of the phrase “unless otherwise provided by statute” in recognition of D.C. Code §§ 23-1322, -1323, and -1329 (2012 Repl.), which address the scheduling of preventive detention hearings.

Paragraph (d) retains the language of the former rule regarding the use of hearsay to support probable cause. The language was removed from the federal rule as unnecessary, in part because this principle is addressed in *Federal Rule of Evidence 1101*. Because this jurisdiction has not adopted the Federal Rules of Evidence, the Superior Court rule did not follow this change.

Paragraph (g) of the federal rule (“Recording the Proceeding”) has been omitted from this rule as unnecessary in light of Superior Court Rule 36-1, which requires the recording of all court proceedings.

Paragraph (h) of the federal rule, which provides that Rule 26.2(a)-(d) and (f) applies at preliminary hearings, is not included because that paragraph was not adopted during prior reviews and amendments to the Superior Court rules.