

### **Rule 108. Transfer for Criminal Prosecution**

(a) Request for transfer. A motion requesting the transfer of a child for criminal prosecution filed by the Office of the Attorney General ("OAG") pursuant to D.C. Code § 16-2307 shall allege that the transfer is in the interest of the public welfare and protection of the public security and there are no reasonable prospects for rehabilitating the child prior to his majority. The motion shall contain a statement of facts supporting this allegation under the factors enumerated in D.C. Code § 16-2307(e) and showing the child's eligibility for transfer under D.C. Code § 16-2307(a). Copies of the motion shall be served on the Director of Social Services and on counsel for the child.

(b) Notice of transfer hearing. Following the filing of the motion, summonses shall be issued to the child and his spouse (if any) and to his parent, guardian, or custodian, in accordance with D.C. Code § 16-2307(b) and SCR-Juvenile 9. The summons shall be accompanied by a copy of the petition if the parties have not already received a copy. The summons shall contain a brief description of the offense which is the subject of the transfer proceedings and a statement that jurisdiction over the offense may be transferred to the Criminal Division unless the judge finds at the transfer hearing that there are reasonable prospects for rehabilitating the child prior to his 21st birthday. The summons shall also advise the parties that the child will be represented by counsel at the transfer hearing, and that the Family Court will appoint counsel for him if counsel is not retained.

(c) Mental examination. Upon receipt of the motion requesting transfer, the Director of Social Services shall arrange for an immediate psychological or psychiatric examination of the child, unless the child has had a psychological or psychiatric examination within the past year. The report of the examination should state whether there are reasonable grounds to believe the child is incompetent. If on the basis of the examination and other evidence the Family Court determines there are reasonable grounds to believe the child is incompetent, it shall stay the proceedings for the purpose of obtaining a psychiatric examination and shall proceed according to D.C. Code § 16-2307(c). If, as a result of the mental examination the Family Court determines that the child is incompetent, it shall proceed according to D.C. Code §§ 16-2307(c) and 16-2315(c).

(d) Time to conduct the transfer hearing and enter an order on motion to transfer. Except in cases in which there is an issue pertaining to the child's competency as provided in D.C. Code § 16-2307(c), the Family Court shall conduct a hearing on a transfer motion within 30 days (excluding Sundays and legal holidays) of the filing of the transfer motion. Upon the motion of the child or the OAG, for good cause shown, the hearing may be continued for an additional period not to exceed 30 days (excluding Sundays and legal holidays). If the hearing commences more than 60 days (excluding Sundays and legal holidays) after the filing of the motion for transfer, the Family Court must state in the order the extraordinary circumstances for the delay. The order deciding the motion to transfer shall be entered within 30 days (excluding Sundays and legal holidays) of the conclusion of the transfer hearing. The Family Court may extend the time to enter its order deciding the motion to transfer, for good cause shown, for an additional period not to exceed 30 days (excluding Sundays and legal holidays).

(e) The transfer order. If the motion is granted by the Family Court, a statement of its reasons for ordering the transfer shall accompany the transfer order. The court's findings with respect to each of the factors set forth in D.C. Code § 16-2307(e) relating to the public welfare and protection of the public security shall be included in the statement of reasons.

The statement shall be available upon request to any court in which the transfer is challenged, but shall not be available to the trier of fact of the criminal charge prior to verdict.

#### COMMENT

This rule sets forth procedures for adjudicating motions to transfer a child and specific procedures in cases where there is reason to believe the child may be incompetent.