

Rule 109. Transfer Hearing

(a) Examination of records. Upon request to the clerk of the Family Court, the Office of the Attorney General ("OAG") and counsel for the respondent shall have opportunity to examine and copy all case and social records pertaining to the respondent as defined in D.C. Code §§ 16-2331 and 16-2332.

(b) Filing of written materials. Counsel may submit any written materials which might be helpful to the judicial officer in making the transfer decision. Such materials must be filed with the clerk of the Family Court no later than three days prior to the scheduled date of the transfer hearing.

(c) Evidence. Evidence which is material and relevant shall be admissible at the transfer hearing. Except as provided by D.C. Code § 16-2307(e-2), the OAG shall have the burden of showing by a preponderance of the evidence that it is in the interest of the public welfare and protection of the public security that the respondent be transferred for criminal prosecution and that there are no reasonable prospects for rehabilitating the respondent within the jurisdiction of the Family Court prior to the respondent's majority.

(d) Presence of parties. The respondent and the respondent's parent, guardian, or custodian shall be present throughout the transfer hearing, unless the judicial officer makes a written finding that the presence of the parent, guardian, or custodian is not possible, except that the judicial officer may temporarily exclude the respondent if the judicial officer finds such exclusion to be in the respondent's best interest.

(e) Presence of non-parties. Victims and eyewitnesses, and the immediate family members and custodians of the victims and eyewitnesses, shall have a right to attend the transfer hearing, subject to the rule on witnesses.

COMMENT

Paragraph (a) reflects D.C. Code § 16-2307(f), which requires that the transfer report and all other relevant social records of the respondent be made available to both sides at least three days prior to the hearing. The first sentence of paragraph (c) reflects D.C. Code § 16-2316(b) and makes clear that evidence need not be competent to be admissible at the transfer hearing. The second sentence of paragraph (c) resolves an ambiguity in D.C. Code § 16-2307(d) by putting the burden of proof on the Corporation Counsel to show that it is in the interest of the public welfare and protection of the public security that the respondent be transferred for criminal prosecution, and that there are no reasonable prospects for rehabilitating the respondent prior to the respondent's majority. The burden is thus logically placed on the movant.