

Rule 3. Admission to a Mental Retardation Facility

(a) Filing of director's certification of admission. If an individual has been admitted to a mental retardation facility pursuant to D.C. Code § 7-1303.02 (2003 Supp.), within 10 days after such admission, the director of the facility shall file with the Court, on a Court-approved form, notice of the name, date of birth, and address of the individual and the date of the individual's admission. In addition, the director shall certify on the form that a comprehensive evaluation report shall be completed and an individual habilitation plan developed within 30 days after the admission. The date of filing shall be indicated on the certification. Promptly thereafter, the Court shall send a completed copy of the notification and certification form to the individual seeking admission and, if admission to a government facility is sought, the Office of the Attorney General.

(b) Appointment of officer. Upon receipt of the notification and certification form, the Court shall appoint an advocate and send the advocate and the Office of the Attorney General, if admission to a government facility is sought, a copy of the notification and certification. The Court shall thereafter appoint an officer, to determine whether, pursuant to D.C. Code § 7-1303.02(c) (2003 Supp.), the individual is competent to admit himself or herself to the facility and whether the admission is voluntary. This determination may be made after an interview with the individual seeking admission, which, upon request of the officer, shall be arranged by the director. If the officer determines that there is no substantial question regarding either the voluntariness of the admission or the competence of the individual to seek admission, the officer shall so inform the Court in writing. The Court shall thereafter send notice of the officer's determination to the admittee, the Department of Human Services Mental Retardation and Developmental Disabilities Administration, the director of the facility, and when appropriate, the Office of the Attorney General.

(c) Scheduling of hearing by the Court. If the officer determines that there is a substantial question as to the voluntariness of the admission or the competence of the individual to seek admission, the officer shall promptly inform the Court in writing. The officer shall provide a factual basis for this determination. The Court shall thereafter appoint counsel for the individual (unless counsel has been retained previously), schedule a hearing to take place promptly after receipt of the officer's determination, and send notice thereof to the director of the facility, the individual seeking admission, the individual's attorney and advocate, and, if admission to a government facility is sought, to the Department of Human Services Mental Retardation and Developmental Disabilities Administration and to the Office of the Attorney General.

(d) Hearing before the Court. At the hearing, the Court shall determine whether the individual seeking admission is competent to admit himself or herself and, if so, whether the admission is voluntary. At the conclusion of the hearing, the Court shall enter one of the following orders, to be supported by findings of fact:

(1) That the individual be discharged from the facility if the Court has determined that the individual is not competent to seek admission and discharge is in the individual's best interest; or

(2) That a guardian ad litem be appointed to represent the individual in a subsequent hearing to determine the appropriate placement, if any, of the individual, if the Court has determined that the individual is not competent to admit himself or herself; or

(3) That the individual be discharged from the facility if the Court has determined that

the admission is not voluntary; or

(4) That the individual's admission be approved, if the Court has determined that the individual is competent and that the admission is voluntary.

(e) Transmittal of order. A copy of the Court's order shall be sent to the director of the facility, the individual seeking admission, the individual's attorney and advocate, and, if admission to a government facility is sought, to the Department of Human Services Mental Retardation and Developmental Disabilities Administration and to the Office of the Attorney General.

COMMENT

The provision of subsection (b) of this rule that the officer appointed by the Court "may be a hearing commissioner" has been deleted. It is no longer necessary in light of the statutory authority accorded to magistrate judges, previously hearing commissioners, pursuant to D.C. Code § 11-1732 and § 11-1732A (2003 Supp.). In practice, for many years, hearing commissioners, now magistrate judges, have typically performed the functions of both the "officer" and the "Court." The rule preserves the option for the Court to appoint another officer, to carry out the duties set forth in the rule.

Whether an individual's attorney can also serve as the guardian ad litem pursuant to paragraph (d)(2) should be determined on a case by case basis.