

Rule 8C. Limited Discovery in Commitment Proceedings Pursuant to D.C. Code § 7-1304.06a (2003 Supp.)

(a) Discovery generally. These rules are intended to provide for the exchange of information between the parties to effectuate an efficient, fair, and complete commitment trial. To this end the parties shall engage in informal exchange of information to obtain information in addition to that which is required to be disclosed pursuant to statute or these rules. Upon a showing of exceptional circumstances, the Court may allow interrogatories, requests for production, requests for admission, and depositions.

(b) Expert witnesses. Each party shall make available the following regarding any expert witness whom the party intends to call at trial:

- (i) The name and qualifications of the witness;
- (ii) A written summary of the witness's opinions and the bases for those opinions for any witness whose opinion is not set forth in the records that have been or are being produced;
- (iii) Any report, record, or other document upon which the expert relied in forming the opinions about which he or she will testify, for inspection and copying to the extent not produced informally; and
- (iv) Upon request, the test data and test materials created, used, or relied on by the other party's expert in forming the opinions about which he or she will testify at trial. This information shall be disclosed only to the party's expert witness, if any, and attorney, and the disclosure shall be limited to use in these proceedings absent further order of the Court. Upon conclusion of these proceedings, all test data and test material shall be returned to the party who produced it.

(c) Notification of incidents by petitioner. The petitioner shall provide written notification to the respondent of the incidents on which the petitioner intends to rely at trial to establish a likelihood that the respondent will cause injury to others as a result of mental retardation if allowed to be at liberty. The notification shall be limited to a description of the incident, including the date, time, and place, to the extent that this information is known to the petitioner. The Court may, for good cause shown, allow the petitioner to rely at trial on an incident not previously identified in the petitioner's notification.

(d) Response to notification of incidents. Upon receipt of petitioner's notification of incidents, the respondent shall provide written notification to the petitioner of whether the incidents or any part of them will be disputed at trial. In the event of any dispute, respondent's counsel shall specify what point is disputed. The Court may, for good cause shown, allow the respondent to dispute a matter at trial not previously noted in respondent's notification.

(e) Disclosure of information in underlying criminal case. The petitioner shall comply with Rule 16 of the Superior Court Rules of Criminal Procedure when the petitioner intends to rely at trial on the conduct for which the respondent was charged in the criminal case in which the respondent was found incompetent to stand trial.

(f) Timing and supplementation of discovery. Time limitations for completion of discovery will be set by order of the Court. A party who has made a disclosure under this rule is under a duty to supplement or correct the disclosure to include information thereafter acquired consistent with Rule 26 of the Superior Court Rules of Civil

Procedure.

COMMENT

The reference to "statute" in subsection 8C(a) includes D.C. Code § 7-1305.12 (2003 Supp.), which provides for access to mental retardation records, as well as D.C. Code § 21-562 (2003 Supp.), and D.C. Code § 7-1201.01 et seq. (2003 Supp.), which provides access to mental health records.

In general, formal discovery as to all medical records is not needed. The rule is written with the expectation that parties will continue the informal discovery practice that is already in place. In this practice, petitioners make available to the respondent for inspection and copying the records relating to the respondent.

Rule 8C does not address pre-trial hearings because Rule 4B(d) provides that the Court may set pre-trial hearings to resolve any pre-trial issues.