

Rule 305. Counsel for the subject of an intervention proceeding.

(a) Duties of counsel.

Upon being retained by or appointed to represent the subject of an intervention proceeding, counsel shall:

(1) Ascertain whether the subject of the proceeding has received notice in accordance with *D.C. Code §§ 21-2031, 21-2042 or 21-2053*, as appropriate. An individual alleged to be incapacitated shall be present at the hearing unless good cause is shown for the absence.

(2) File a notice of appearance (Form I-D) in accordance with the provisions of SCR-PD 321(d) or 341(c), as appropriate.

(3) Conduct personal interviews with the subject of the proceeding or supervise the conduct of such interviews by another attorney. Unless by virtue of a language barrier or physical incapacity, the services of a translator or communicator are required, all interviews shall be conducted in private.

(4) Determine whether appointment of a guardian ad litem should be sought. If counsel determines that the subject of the proceeding cannot determine his or her own legitimate interests and has no guardian, counsel may apply for appointment of a guardian ad litem.

(5) Explain fully the nature of the proceeding for which the petition was filed and provide all information required pursuant to *D.C. Code § 21-2033(b)(2)*.

(6) Represent the subject at any hearing pursuant to *D.C. Code §§ 21-2041(h) or 21-2054(e)*. To the maximum extent possible the subject of the proceeding shall remain responsible for determining his or her legitimate interest. In cases where a guardian ad litem has been appointed because the subject is unconscious or otherwise wholly incapable of determining his or her interests, even with assistance, counsel shall follow the guardian ad litem's determination of the subject's interests. In all other cases, counsel shall to the maximum extent possible ascertain directly the subject's determination of his or her legitimate interest.

(7) No later than five days prior to the initial hearing/status conference, file on behalf of the subject responsive pleadings to the petition. Responsive pleadings shall include with specificity facts upon which they are based. Responsive pleadings shall be served on petitioner, petitioner's counsel, all parties, those entitled to participate, those who filed an effective request for notice and other interested persons entitled to notice under *D.C. Code §§ 21-2042 and 21-2053* by regular mail and shall have a certificate of service.

(8) Communicate with parties or their counsel to determine if a joint stipulation can be reached, or, absent stipulation, file with a responsive pleading the statements required by SCR-PD 321(f)(2).

(9) For any hearing other than the initial status conference, secure and present evidence to the Court concerning whether the petition should be granted and the terms, if any, on which orders should be entered; the nature of powers to be granted, modified or curtailed; and possible conflicts that may arise.

(10) File, as needed to represent the legitimate interests of the subject, petitions or motions pursuant to *D.C. Code §§ 21-2044(c), 21-2046, 21-2047(c), 21-2049, 21-2055 and 21-2062*. Notice shall be provided to the parties supported by the protected individual's estate in the manner prescribed by *D.C. Code §§ 21-2042 and 21-2053*.

(b) Counsel retained by the subject.

(1) An attorney retained for representation in the intervention proceeding by the subject of the petition subsequent to the appointment of counsel by the Court shall file a notice of appearance (Form I-D) as soon as practicable after being retained. The notice of appearance shall include a statement whether counsel was retained subsequent to appointment of counsel by the court. A copy of the notice of appearance shall be served on all persons entitled to notice, appointed counsel and any appointed guardian ad litem, visitor and/or examiner.

(2) The appearance of retained counsel shall become effective ten days after the date of the filing of the notice of appearance, or at the time of the next-scheduled hearing if held within ten days after the filing of the notice of appearance, unless objection to the notice of appearance is filed by any person entitled to notice, appointed counsel or any appointed guardian ad litem, visitor and/or examiner.

(3) If objection to the notice of appearance of retained counsel is filed, the Court shall as soon as practicable hold an ex parte hearing, attended only by the subject, appointed counsel, retained counsel, the person filing the objection and counsel representing such person, and any guardian ad litem, visitor and/or examiner appointed in the case.

(4) The Court may strike the appearance of counsel retained by the subject if, after the hearing provided for in this Rule, the Court finds that retained counsel has a conflict of interest which will prevent counsel from zealously representing the subject or if the Court finds that the entry of appearance of retained counsel would unduly delay trial of the case.

(5) The appearance of counsel for the subject appointed by the Court shall terminate when the notice of appearance of retained counsel becomes effective.

(c) Termination of appearance.

The appearance of counsel for the subject of an intervention proceeding shall terminate upon the disposition of the petition for which counsel's appearance was entered, unless otherwise ordered by the Court.

COMMENT:

D.C. Code § 21-2031 and this Rule require counsel to act as a zealous advocate for the subject and not as a guardian, independent investigator or objective finder of fact. Counsel should file a responsive pleading consistent with the requirements of this Rule, such memoranda as is needed to address unique issues or special circumstances, or any pleading requested by the Court, but should not file a "report" or a pleading consisting of a general discussion of the case. In representing the subject, counsel should remain free from the influence of persons whose interests conflict with the subject's physical, mental or financial well-being. Counsel for the subject is free to make decisions with respect to the conduct of the intervention proceeding or other litigation.