

Rule 1. Scope; Purpose; Title; Applicability of Civil Rules; Other Proceedings Assigned to the Domestic Violence Unit

(a) SCOPE. These rules govern the procedure in all civil protection order proceedings filed under D.C. Code §§ 16-1001 to -1006 (2012 Repl. & 2017 Supp.).

(b) PURPOSE. These rules should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every civil protection order proceeding and to effectuate the statutory intent of eliminating domestic and family violence.

(c) TITLE. These rules may be known as the Rules Governing Proceedings in the Domestic Violence Unit and may be cited as “Super. Ct. Dom. Vio. R. ____.”

(d) APPLICABILITY OF CIVIL RULES. Except when inconsistent with these rules or with the expeditious nature of civil protection order proceedings, the following Superior Court Rules of Civil Procedure are deemed applicable to civil protection order proceedings: 6, 9, 9-I, 11 (except that a party does not have to provide the party’s address, phone number, or e-mail address if doing so poses safety concerns), 43, 43-I, 44, 44-I, 44.1, 46, 59, 61, 63, 63-I, 77(c)(1), 79, 79-I, 80, 82, 86, 101, 102, 103, 104, 201, and 203.

(e) OTHER PROCEEDINGS ASSIGNED TO THE DOMESTIC VIOLENCE UNIT.

Criminal proceedings assigned to the Domestic Violence Unit are governed by the Superior Court Rules of Criminal Procedure. Except when inconsistent with these rules or federal law, domestic relations proceedings assigned to the Domestic Violence Unit are governed by the General Rules of the Family Division and the Rules Governing Domestic Relations Proceedings.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. The provision regarding clerk’s office hours has been replaced by a reference to Civil Rule 77(c)(1). Also, the provision regarding the effect of institution of a criminal charge was deleted as unnecessary because this is addressed in D.C. Code § 16-1002 (2012 Repl.).

COMMENT

The second to last section of this rule is derived in part from D.C. Code § 16-1002 (c). Should the respondent face contempt proceedings based upon conduct occurring after a temporary protection order or civil protection order has been entered, which conduct may also be subject to the institution of criminal proceedings, the Court may wish to provide notice of the conduct and/or the contempt hearing to the United States Attorney’s Office in order for that office to determine whether to proceed on the criminal charge.

Rule 2. Commencing an Action; Amending or Supplementing Petition; Related Cases

(a) **COMMENCEMENT OF ACTION.** A person may commence a civil protection order proceeding by filing a petition in accordance with D.C. Code § 16-1003 (2012 Repl.).

(1) *Content of Petition.* The petition must be signed under oath and must state:

(A) the facts and circumstances on which the petitioner(s) believe(s) that the respondent has committed or threatened to commit one or more criminal offenses against the petitioner(s);

(B) the jurisdictional basis for the requested order; and

(C) if a temporary protection order is requested, the factual basis for the temporary protection order.

(2) *Notice of Hearing and Order to Appear.*

(A) *Issuance.* At the time the petition is filed, the clerk must issue a notice of hearing and order to appear.

(B) *Content.* The notice of hearing and order to appear must:

(i) name the court and the parties;

(ii) be directed to the respondent;

(iii) state the date and time that the respondent must appear for the trial;

(iv) notify the respondent that failure to appear may result in the issuance of a default civil protection order against the respondent and a warrant for the respondent's arrest;

(v) be signed by the clerk; and

(vi) bear the court's seal.

(b) **AMENDING OR SUPPLEMENTING PETITION.** The petition may be amended or supplemented at any time prior to the conclusion of the trial on the merits. An amendment or supplementation must be under oath.

(1) *Amended or Supplemental Petition in Writing.* An amended or supplemental petition filed prior to the day of trial must be in writing and must be served under Rule 5.

(2) *Oral Motion to Amend or Supplement.* On the day of trial, a petitioner may make an oral motion to amend or supplement a petition. An oral motion to amend or supplement the petition made on the day of the trial must be granted in the absence of a showing of prejudice to the respondent. When prejudice is shown, the court may grant the motion but allow the respondent additional time to prepare a defense.

(c) **RELATED CASES.**

(1) *In General.* On the filing of a petition for civil protection order, the clerk must identify the following related cases on the docket unless the related case is sealed or confidential:

(A) any criminal case involving either party; and

(B) any other civil, family, probate, or civil protection order case involving the same parties.

(2) *Consolidation.*

(A) *Related Family Court Case.* On request of a party or on its own initiative, the court may consolidate a civil protection order case with a related case pending in the Family Court. The judges assigned to the cases or the presiding judges of the Domestic Violence Unit and the Family Court must confer and decide whether the cases should be consolidated and, if consolidated, to whom the cases will be assigned. When deciding whether to consolidate, the judges must consider:

- (i) each judge's familiarity with the parties;
- (ii) the effect on each judge's calendar; and
- (iii) the need to resolve expeditiously the civil protection order case.

(B) *Other Related Cases*. Cases from any other division may be consolidated with a civil protection order case and assigned to a judge in the Domestic Violence Unit, but a civil protection order case may not be assigned to a judge outside of the Family Court.

(C) *Fees*. If cases are consolidated, the court may not charge a fee for filings made in the civil protection order case.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. Section (c) was also amended to clarify when and how related cases could be consolidated. As required by D.C. Code §§ 11-1101 and -1104 (2012 Repl.), civil protection order cases must remain in the Domestic Violence Unit or Family Court.

COMMENT

The phrase "signed under oath" as used in these rules means either signed before a notary or other appropriate officer or signed under the penalty of perjury.

Rule 3. Pleadings Allowed; Form of Pleadings, Motions, and Other Documents

(a) PLEADINGS. Only these pleadings are allowed:

- (1) a petition;
- (2) an answer to a petition; and
- (3) an amended or supplemental of either.

(b) CAPTION; NAME OF PARTIES.

(1) *In General*. Every pleading and motion must have a caption with the court's name, the parties' names, the case number, and the title of the pleading or motion. Except as provided in Rule 3(b)(2) and (3), the caption of the petition must include the parties' names and full residence addresses, if known.

(2) *Substituted Address*. The petitioner is not required to state his or her residence address if the petitioner substitutes the name and residence or other address of his or her attorney or a third person willing to accept service copies for the petitioner. The petitioner must indicate on the petition that a substituted address has been used.

(3) *Confidential Address*. If no substituted address is available, a petitioner may file a confidential address under seal on a form maintained by the clerk. When filing a confidential address form, the petitioner must authorize the clerk to accept service of all documents filed in the case. The clerk must immediately send all documents, by first-class mail, to the petitioner's confidential address.

(c) STATIONERY. Pleadings and motions may be filed on court forms or on plain white paper, approximately 11 inches long and 8 1/2 inches wide. A party may type or handwrite a pleading or motion, but the pleading or motion must be legible to the clerk.

(d) NONCONFORMANCE WITH ABOVE. A pleading or other document not conforming to the requirements of this rule will not be accepted for filing.

COMMENT TO 2017 AMENDMENTS

Formerly Rule 6, this rule has been renumbered as Rule 3. The rule has been amended consistent with the stylistic changes to the civil rules. Also, the provision permitting a petitioner to file an address under seal was updated to include a process for serving the petitioner. Subsection (b)(3) requires a petitioner who files an address under seal to authorize the clerk to accept service.

Rule 4. Privacy Protection for Filings Made with the Court

(a) REDACTED FILINGS.

(1) *Required Redactions.* Unless the court orders otherwise, a party or nonparty must redact, in an electronic or paper filing with the court, an individual's social-security number and taxpayer-identification number and a financial-account number, except that a party or nonparty making the filing may include the following:

(A) the acronym "SS#" where the individual's social-security number would have been included;

(B) the acronym "TID#" where the individual's taxpayer-identification number would have been included; and

(C) the last four digits of the financial-account number.

(2) *Permitted Redactions.* Unless the court orders otherwise, a party or non-party, in an electronic or paper filing with the court, may use a minor's initials in place of the minor's name.

(b) **FILINGS MADE UNDER SEAL.** The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(c) **PROTECTIVE ORDERS.** For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(d) **MOTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL.** A person who makes a redacted filing and wishes to file an additional unredacted copy must file a motion to file an unredacted copy under seal. If granted, the court must retain the unredacted copy as part of the record.

(e) **WAIVER OF PROTECTION OF IDENTIFIERS.** A person waives the protection of Rule 4(a) as to the person's own information by filing it without redaction and not under seal. If a person includes his or her own information by mistake, the court may permit the person to withdraw the filing and replace it with a redacted version.

(f) **RESPONSIBILITY TO REDACT.** The responsibility for redacting these personal identifiers rests solely with the person making the filing.

COMMENT TO 2017 AMENDMENTS

The privacy protections for filings were previously addressed by Civil Rule 5(f), which was made applicable to civil protection order proceedings by former Rule 1. New Rule 4 is modeled after the civil rule, but it has been modified to reflect the unique nature of civil protection order proceedings, where minors' names and dates of birth are often necessary to provide the respondent with notice of the allegations or requested relief.

Requests for continuance are now addressed in Rule 7.

Rule 5. Serving a Petition or Other Filing

(a) SERVING A PETITION.

(1) *In General.* A petition for civil protection order must be served with a copy of the notice of hearing and order to appear and any temporary protection order issued by the court. The petitioner is responsible for arranging service on the respondent.

(2) *By Whom.* Any person who is at least 18 years of age and not a party or witness may serve the petition, notice of hearing and order to appear, and any temporary protection order issued by the court. The petitioner may request that the clerk provide the documents to a law enforcement officer for service.

(3) Manner of Service.

(A) *In General.* An individual—other than a minor or an incompetent person—may be served by:

(i) personally delivering to the individual a copy of the petition, notice of hearing and order to appear, and any temporary protection order issued by the court; or

(ii) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there.

(B) *Serving a Minor.* A minor must be served by following District of Columbia law (D.C. Code § 13-332 (2012 Repl.)) or the state law for serving like process on such a respondent in an action brought in the courts of general jurisdiction of the state where service is made. A minor respondent's custodial parent, guardian, or custodian must also be served with a copy of the petition, notice of hearing and order to appear, and any temporary protection order issued by the court.

(C) *Serving an Incompetent Person.* An incompetent person must be served by following District of Columbia law (D.C. Code § 13-333 (2012 Repl.)) or the state law for serving like process on such a respondent in an action brought in the courts of general jurisdiction of the state where service is made.

(D) *Alternative Service.* If at the time of the hearing, the court determines that, after diligent effort, a petitioner has been unable to accomplish service by a method listed in Rule 5(a)(3)(A), the court may permit an alternative method of service reasonably calculated to give actual notice of the action to the respondent. Alternative methods of service include, but are not limited to:

(i) delivering a copy to the individual's employer by leaving it at the individual's place of employment with a clerk or person in charge;

(ii) mailing a copy to the individual by registered or certified mail, return receipt requested;

(iii) transmitting a copy to the individual by electronic means; or

(iv) any other manner that the court deems just and reasonable.

(4) Sending Notice When Petitioner Is a Minor.

(A) *In General.* Unless the court determines that sending notice would be contrary to the best interests of the minor, the court must send a copy of any temporary protection order issued, along with the notice of the hearing and order to appear, to the parent, guardian, or custodian with whom the minor resides if the minor:

(i) files a petition for civil protection without a parent, guardian, or custodian; and

(ii) is residing with a parent, guardian, or custodian.

(B) *Notice to Other Person.* If the court does not send notice to the parent, guardian, or custodian with whom the minor resides, the court may send notice to any other parent,

guardian, custodian, or other appropriate adult.

(b) SERVING OTHER FILINGS.

(1) *In General*. Any motion or other document filed after the original petition must be served, on the other party, along with any notice of hearing and order to appear issued by the clerk at the time of filing. Except as provided in Rule 5(b)(4), the motion or other document and any notice of hearing and order to appear may be served:

(A) by first class mail;

(B) in the manner provided in Rule 5(a)(3) for service of a petition; or

(C) by e-mail in accordance with Rule 5(b)(3).

(2) *Serving an Attorney*. If a party is represented by an attorney, service under Rule 5(b) must be made on the attorney unless the court orders service on the party.

(3) *E-mail Service*.

(A) *Attorney*. An attorney may consent to accepting service by e-mail by sending an e-mail indicating consent to the other party or the other party's attorney from the e-mail address to be used for service. An attorney may revoke consent through written or e-mail notice to the other party or the other party's attorney.

(B) *Self-Represented Party*. If a self-represented party consents to receive service by e-mail, the party must file a notice with the clerk's office stating the e-mail address to be used for service. The consent is effective only for the case in which the notice of consent is filed. A self-represented party may revoke consent to e-mail service by filing a notice with the clerk's office and sending notice to the other party.

(4) *Personal Service Required*. The following motions and other documents filed after the original petition must be served in the manner provided in Rule 5(a)(3) for service of a petition:

(A) a written amended or supplemental petition;

(B) a reinstated petition;

(C) a motion to set aside default order; and

(D) a motion for contempt.

(c) PROVING SERVICE.

(1) *Personal Service*.

(A) *In General*. Except as provided in Rule 5(c)(1)(C), proof of service for documents served in accordance with Rule 5(a)(3) must be by the server's affidavit.

(B) *Form and Content*. Proof of service may be provided on a return of service form maintained by the clerk. The return of service must be made under oath and must include:

(i) the court;

(ii) the caption and number of the case;

(iii) the server's name, residential or business address, and the fact that he or she is 18 years of age or older;

(iv) the documents served;

(v) the date, time, and place of service; and

(vi) if service was made by delivery to a person other than the party, then specific facts from which the court can determine that the person to whom the documents were delivered meets the appropriate qualifications for receipt of service under Rule 5(a)(3)(A)(ii) or (a)(3)(D)(i).

(C) *Law Enforcement Officer*. If a law enforcement officer serves the documents, the return of service need not be under oath and may be transmitted by facsimile copy.

(2) *Other Methods of Service*. Proof of service for motions and other documents served in accordance with Rule 5(b) must be by:

- (A) written acknowledgment;
- (B) the server's affidavit;
- (C) certificate of a member of the District of Columbia Bar; or
- (D) other proof satisfactory to the court.

(d) FAILURE TO MAKE PROOF; AMENDING PROOF. Failure to make proof will not affect the validity of service. The court may at any time allow the proof to be amended or supplied, unless it would result in material prejudice to a party.

COMMENT TO 2017 AMENDMENTS

Formerly Rule 3, this rule has been renumbered as Rule 5. The rule, which has been amended consistent with the stylistic changes to the civil rules, now includes procedures for service of filings after the original petition.

Rule 6. Temporary Protection Orders

(a) REQUESTING AND SCHEDULING HEARING. At the time of filing a petition for a civil protection order, or any time after, the petitioner may request a temporary protection order. The clerk must schedule a hearing on the request for the same day or the next business day.

(b) ISSUANCE.

(1) *In General*. If, after a hearing, the court determines that the respondent immediately endangers the safety or welfare of the petitioner or a household member, the court may issue a temporary protection order without the respondent present. The temporary protection order may include any of the remedies authorized with the issuance of a civil protection order.

(2) *Issuing Without Notice or Service*. The court may issue a temporary protection order without notice to the respondent and prior to service of the petition on the respondent.

(c) SERVICE. In accordance with Rule 5(a)(1), a temporary protection order issued on the day that the petition was filed must be served with the petition and the notice of hearing and order to appear. If a temporary protection order is issued on a later day, it may be served separately, but it must be served in the manner provided in Rule 5(a)(3) for service of a petition.

COMMENT TO 2017 AMENDMENTS

Formerly Rule 7A, this rule has been renumbered as Rule 6. The rule has been amended consistent with the stylistic changes to the civil rules.

Rule 7. Motions

(a) **FILING.** All written motions must be filed with the court. Motions may be written on forms maintained by the clerk.

(b) **NOTICE OF HEARING AND ORDER TO APPEAR.**

(1) *Issuance.* On the filing of a motion that requires a hearing, the clerk must issue a notice of hearing and order to appear.

(2) *Content.* The notice of hearing and order to appear must:

- (i) name the court and the parties;
- (ii) be directed to the nonmovant;
- (iii) state the date and time that the nonmovant must appear for the hearing;
- (iv) notify the nonmovant that failure to appear may result in the issuance of a default order and a warrant for the nonmovant's arrest;
- (v) be signed by the clerk; and
- (vi) bear the court's seal.

(c) **MOTION TO CONTINUE.**

(1) *In General.* Any party seeking a continuance must file a motion to continue 48 hours before the hearing. Under justifiable circumstances, the court may waive the 48-hour requirement or permit an oral motion.

(2) *Consent.* An attorney, who is filing a motion to continue and knows before filing that the other party is represented, must include in the motion that:

- (A) the adverse party consents to the continuance; or
- (B) despite diligent efforts, consent could not be obtained.

(3) *Extension of Temporary Protection Order.* If the court grants a continuance, the court may grant or extend a temporary protection order as allowed by law. The court may condition a continuance on the extension of a protection order as is justified under the circumstances to cover the continuance period. A respondent's motion for continuance must state whether the respondent consents to the extension of an existing protection order.

(d) **MOTION TO DISMISS.**

(1) *By Written Motion.* A respondent may file a written motion to dismiss a petition at any time prior to entry of a civil protection order. If made in writing prior to the entry of a civil protection order, the clerk must schedule the motion for a hearing on the date already set for the trial on the petition. At the request of the petitioner, the court may continue the hearing to allow the petitioner additional time to respond.

(2) *By Oral Motion.* A respondent may make an oral motion to dismiss a petition in open court at any hearing or trial prior to entry of a civil protection order. If the basis for the motion is anything other than petitioner's failure to proceed with the case, the court may direct the respondent to submit the motion in writing. At the request of the petitioner, the court may continue the hearing or trial to allow the petitioner additional time to respond.

(e) **MOTION TO REINSTATE.**

(1) *By Written Motion.* A petitioner may file a written motion asking the court to reinstate a petition that was dismissed without prejudice. A written motion must be signed under oath and must show good cause to reinstate. On filing of a motion to reinstate, the clerk must schedule a hearing on the motion.

(2) *By Oral Motion*. A petitioner who is not present when the court dismisses his or her petition without prejudice may orally request reinstatement of a petition in open court the same day that the petition is dismissed.

(f) MOTION TO SET ASIDE A DEFAULT ORDER.

(1) *In General*. A motion to set aside a default order must be signed under oath and must show:

(A) good cause for the failure to appear; and

(B) grounds which, if proved, would be sufficient to prevent the issuance of the civil protection order in whole or in part.

(2) *Timing*. A motion to set aside a default order must be filed no later than 14 days after the respondent is personally served with the civil protection order.

(3) *Hearing*. On filing of a motion to set aside a default order, the clerk must schedule a hearing on the motion.

(g) MOTION TO MODIFY.

(1) *In General*. On motion of either party, the court may modify a protection order. A motion to modify may be written or oral. A motion to modify must be made before the protection order expires.

(2) *Hearing*. On filing of a written motion to modify, the clerk must schedule a hearing on the motion. The court may decide the motion without holding the hearing if the relief is favorable to the nonmovant.

(3) *Effect of Motion*. Filing a motion to modify does not change the protection order. Only the court can modify a protection order.

(h) MOTION TO EXTEND.

(1) *In General*. On motion of either party, the court may extend a civil protection order. A motion to extend may be written or oral. A motion to extend must be made before the civil protection order expires.

(2) *Hearing*. On filing of a written motion to extend, the clerk must schedule a hearing on the motion. If the hearing on the motion to extend is not held prior to the expiration of the civil protection order, the order will remain in effect until the court decides the motion.

(i) MOTION TO VACATE.

(1) *In General*. On motion of either party, the court may vacate a protection order. A motion to vacate may be written or oral.

(2) *Hearing*. On filing of a written motion to vacate, the clerk must schedule a hearing on the motion.

(3) *Effect of Motion*. Filing a motion to vacate does not vacate the protection order. Only the court can vacate a protection order.

(j) MOTION TO RECONSIDER.

(1) *Grounds*. On motion of either party, the court may reconsider its ruling, order, or judgment on the following grounds:

(A) the court's failure to consider a material fact or applicable law;

(B) newly discovered evidence that, with reasonable diligence, could not have been discovered prior to the court's ruling, order, or judgment;

(C) a change of law not previously brought to the court's attention;

(D) the absence of a stated reason for the court's order;

(E) fraud, misrepresentation, or other misconduct by the opposing party;

(F) mistake, inadvertence, surprise, or excusable neglect; or

(G) any other reason that justifies relief.

(2) *Timing*. A motion to reconsider must be filed no later than 28 days after entry of the ruling, order, or judgment.

(3) *Supporting Documentation*. A movant may submit documentation supporting the motion to reconsider.

(4) *Hearing*. The court may rule on a motion for reconsideration with or without a hearing.

(5) *Effect of Motion*. Filing a motion to reconsider does not change or suspend the ruling, order, or judgment.

(k) MOTION TO CORRECT. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a ruling, order, judgment or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(l) RESPONSES. Any response to a motion must be filed within 14 days after service of the motion or prior to the hearing on the motion, whichever is earlier.

COMMENT TO 2017 AMENDMENTS

This rule was rewritten and expanded to provide more detailed procedures to self-represented parties. Also, in order to be more easily understood by self-represented parties, section (i) uses the term “vacate” in place of the term “rescind,” which is used in D.C. Code § 16-1005 (d) (2017 Supp.). When the court is considering a motion to vacate in the absence of either party, the court should consider, among other things, the circumstances surrounding the case, the demeanor of the party, and safety factors in the particular case.

Sections (g) and (h), addressing motions to modify and to extend, now reflect the determination in *Adams v. Ferreira*, 741 A.2d 1046 (D.C. 1999) (explaining that, under D.C. Code § 16-1005, a civil protection order could only be extended, rescinded, or modified by motion of a party to the original proceeding, not on the court's own initiative).

Sections (j) and (k) are modeled after Civil Rule 60, but have been modified to reflect practice in the Domestic Violence Unit. Where these sections are substantially similar to the civil rule, case law interpreting the civil rule is expected to apply. Under District of Columbia Court of Appeals Rule 4, the timely filing of a motion to reconsider may impact the time for filing a notice of appeal.

Motions for contempt are addressed in Rule 14.

Rule 8. Discovery

(a) IN GENERAL. On motion of a party, the court, for good cause and with due regard for the summary nature of the proceedings, may authorize a party to proceed with the discovery permitted by this rule. A motion for discovery must:

(1) state whether there is a pending criminal case involving the same facts alleged in the civil protection order case; and

(2) be accompanied by the proposed interrogatories, requests for production, or requests for admission.

(b) TIMING.

(1) *Motion*. A motion for discovery must be filed no later than 7 days after the respondent was served with the petition or at such other time as the court may direct.

(2) *Opposition*. An opposition to the motion must be filed no later than 7 days after service of the motion or at such other time as the court may direct.

(c) LIMITATIONS AND SCOPE.

(1) *Written Interrogatories, Requests for Production, and Requests for Admission*. Discovery in civil protection order proceedings is limited to written interrogatories, requests for production, and requests for admission.

(2) *Discovery from Nonparty*. A motion for discovery may seek discovery from a nonparty.

(3) *Scope*. Unless otherwise authorized by the court, discovery is limited to matters directly relating to any incidents alleged in the petition, defenses to those allegations, medical treatment obtained as a result of the incidents, and any requests for relief.

(d) PROTECTIVE ORDER. On motion by a party or witness, the court may, for good cause, issue an order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) forbidding the discovery;

(2) specifying terms, including time and place or the allocation of expenses, for the discovery;

(3) forbidding inquiry into certain matters, or limiting the scope of discovery to certain matters.

(e) RESPONSE TO DISCOVERY. Once authorized by the court, a response to a discovery request must be served on the other party within the time frame ordered by the court. Responses to discovery must not be filed.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. Former section (b), which addressed discovery in criminal contempt proceedings, was eliminated because discovery in criminal cases is governed by the criminal rules.

COMMENT

This rule provides respondents charged with criminal contempt in the Unit the same access to discovery as is guaranteed criminal defendants under the Superior Court Rules of Criminal Procedure. There is a preference for publicly prosecuted criminal contempt charges. In such prosecutions the respondent is entitled to the discovery set forth in this

rule upon request of the prosecutor as in any other criminal case. In situations when a public prosecutor is not available and the Court appoints a private prosecutor, the Court shall approve discovery requests. This procedure is only meant to guard against a respondent's discovery requests overburdening a private prosecutor. This concern is greater when the petitioner is pro se and is prosecuting the contempt charge.

Rule 9. Subpoenas

(a) IN GENERAL.

(1) *Form and Content.* A subpoena must be written on a form maintained by the clerk. The subpoena must:

- (A) state the name of the court;
- (B) state the name of the parties and the case number;
- (C) command the person to whom it is directed to attend and give testimony at the time and place specified on the subpoena or to produce and permit inspection and copying of designated tangible evidence or documents in the possession, custody, or control of that person at a time and place specified in the subpoena; and
- (D) set out the text of Rule 9(d) and (e).

(2) *Issuance by Attorney.* Except as otherwise provided in Rule 9(b), an attorney authorized to practice in the District of Columbia may issue and sign a subpoena.

(3) *Issuance by Clerk or Court.* A self-represented party must submit a completed subpoena to the clerk for signature by the clerk or the court. The presiding judge may establish guidelines for signature by the clerk. If, based on the guidelines or Rule 9(b), the clerk cannot sign the subpoena, the clerk must forward the subpoena to the assigned judge.

(4) *Notice to Opposing Party.* If the subpoena commands the production of tangible evidence or documents before the hearing or trial, a notice and copy of the subpoena must be served on the opposing party in accordance with Rule 5(b) before the subpoena is served on the person to whom it is directed.

(b) CONFIDENTIAL COMMUNICATIONS OR INFORMATION; OPPOSING PARTY'S RECORDS.

(1) *Confidential Communications or Information.* Confidential communications to or confidential information acquired by a physician, a mental health professional as defined in D.C. Code § 7-1201.01 (11) (2012 Repl.), a domestic violence counselor as defined in D.C. Code § 14-310 (a)(2) (2012 Repl.), a human trafficking counselor as defined in D.C. Code § 14-311 (a)(2) (2012 Repl.), or a sexual assault victim advocate as defined in § 14-312 (a)(7) (2017 Supp.) may be obtained only with:

- (A) the consent of the subject of the records or his or her legal representative; or
- (B) a subpoena authorized and signed by a judge in accordance with applicable law.

(2) *Opposing Party's Records.* A subpoena for documents or tangible objects regarding the opposing party's personal or confidential information must be submitted for judicial authorization.

(c) SERVICE.

(1) *By Whom and How.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person.

(2) *Service in the District of Columbia.* Subject to Rule 9(d)(3)(A)(ii), a subpoena may be served at any place:

- (A) within the District of Columbia;
- (B) outside the District of Columbia but within 25 miles of the place specified for the hearing, trial, production, or inspection; or
- (C) that the court authorizes on motion and for good cause, if an applicable statute so provides.

(3) *Serving in a Foreign Country.* 28 U.S.C. § 1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country.

(4) *Proof of Service.* Proving service, when necessary, requires filing with the clerk a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(d) PROTECTING A PERSON SUBJECT TO A SUBPOENA; ENFORCEMENT.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce and Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce and permit inspection and copying of designated documents or tangible evidence need not appear in person at the place of production or inspection unless also commanded to appear for hearing or trial.

(B) *Objections.* A person commanded to produce and permit inspection and copying may serve on the party or attorney designated in the subpoena a written objection to inspection or copying of any or all of the designated materials. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is not a party from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court must quash or modify a subpoena that:

(i) fails to allow reasonable time to comply;

(ii) requires a person who is not a party to travel more than 25 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 9(d)(3)(B), the person may be commanded to attend a trial by traveling from any such place to the place of trial;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires a person who is not a party to incur substantial expense to travel more than 25 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstance described in Rule 9(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents*. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(2) *Claiming Privilege or Protection*.

(A) *Information Withheld*. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation materials must:

(i) expressly make the claim; and
(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced*. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) CONTEMPT. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 9(d)(3)(A)(ii).

COMMENT TO 2017 AMENDMENTS

This rule no longer incorporates Civil Rule 45 or Criminal Rule 17 by reference; instead the rule now includes many of the provisions found in Civil Rule 45. However, these provisions have been modified to reflect the unique nature of the civil protection order proceedings, including the need to protect parties from harassment.

COMMENT

SCR-Civil 45 and SCR-Criminal 17 have no restrictions regarding the Clerk distributing subpoenas to parties not represented by an attorney. SCR Dom Rel 45 states that a party not represented by an attorney may obtain from the Clerk and complete a blank subpoena, and submit it to the Clerk to be signed. That rule also provides that the Clerk may sign subpoena if it relates to a case in which action is pending; otherwise the Clerk shall refer the subpoena to a judicial officer for consideration. Section (b) of this rule requires judicial authorization before the Clerk issues a subpoena to a party not represented by an attorney. The purpose of this section is to prevent one party from harassing the other party through the subpoena process given the nature of the intrafamily proceedings before the court. This section is not intended to prevent any party from obtaining subpoenas for witnesses or other documents or records relevant to the proceeding. It is only intended to provide some judicial oversight in the issuance of subpoenas. Section (b) permits the presiding judge of the Unit to designate the Clerk or

Deputy Clerk or a court employee in the Clerk's Office to review requests for subpoenas based on guidelines established by the presiding judge of the Unit.

Rule 10. Dismissal of Petition

(a) VOLUNTARY DISMISSAL BY THE PETITIONER.

(1) *Without Appearing in Court.* The petitioner may dismiss a petition by filing a notice of dismissal at any time before the court begins taking testimony at the civil protection order trial unless the petitioner has previously dismissed or otherwise failed to proceed on the same petition. If the petitioner properly files a notice of dismissal, the clerk may close the case and remove it from the court's calendar.

(2) *By the Court.* A petition may be dismissed at the petitioner's request only by the court if:

(A) the petitioner has previously dismissed or otherwise failed to proceed on the same petition;

(B) the petitioner's request is made in open court on the day of the civil protection order trial; or

(C) the court has begun taking testimony at the civil protection order trial.

(b) INVOLUNTARY DISMISSAL BY THE COURT.

(1) *Failure to Proceed.* On motion or on its own initiative, the court may dismiss a petition if the petitioner fails to proceed with the case.

(2) *Failure to State a Claim or Lack of Jurisdiction.* At any time prior to entry of a civil protection order, the court, on motion or on its own initiative, may dismiss a petition for failure to state a claim or lack of jurisdiction. Before dismissing a petition for failure to state a claim or lack of jurisdiction, the court may give the petitioner an opportunity to amend or supplement the petition in accordance with Rule 2(b).

(c) TYPE OF DISMISSAL.

(1) *Without Prejudice.* Unless otherwise stated by the court, a dismissal will be without prejudice.

(2) *With Prejudice.*

(A) *Previously Dismissed Petition.* After a petition has been dismissed once by the petitioner or for the petitioner's failure to proceed with the case, the court may dismiss the petition with prejudice. When dismissing with prejudice, the court may consider abuse of process or prejudice to the respondent.

(B) *After Testimony Begins.* After the court begins taking testimony at the civil protection order trial, if a petitioner requests dismissal or fails to proceed, the court may dismiss the petition with prejudice.

(C) *Effect on Future Claims.* The dismissal of a petition with prejudice bars a petitioner from obtaining a protection order based on the same incident(s).

(d) **EFFECT ON TEMPORARY PROTECTION ORDERS.** All temporary protection orders in a case become invalid when all petitions filed in the case are dismissed.

COMMENT TO 2017 AMENDMENTS

This rule has been expanded to include more detailed procedures for dismissals. Rule 7(d) addresses motions to dismiss by respondents.

COMMENT

Paragraph (a) of this rule permits the petitioner to dismiss the action at any time so long as there is no prejudice to the other party. In allowing dismissal, the Court may wish to inquire carefully about the voluntariness of the petitioner's actions and advise the petitioner of the right to refile the petition if all other statutory requirements are met. In appropriate circumstances, when the petition has been dismissed more than once, the Court may consider and decide whether the petition should be dismissed with prejudice.

Rule 11. Failure to Appear

(a) FAILURE OF RESPONDENT TO APPEAR AT TRIAL OR HEARING.

(1) *At Civil Protection Order Trial.*

(A) *Entry of Respondent's Default.* When the respondent fails to appear at the civil protection order trial, after being served in accordance with Rule 5 with the petition and notice of hearing and order directing appearance, or having signed a notice to return to court, the court may enter the respondent's default.

(B) *Ex Parte Hearing.* After a default has been entered in accordance with Rule 11(a)(1)(A), the court may conduct an ex parte evidentiary hearing. If, after the hearing, the court determines that the petitioner is entitled to relief, the court may enter a civil protection order by default.

(C) *Effect of Default Civil Protection Order.* A temporary protection order remains in effect until the respondent is personally served with the default civil protection order or until the default order expires, whichever occurs first. Once the respondent is personally served with the default civil protection order, the respondent must comply with it.

(2) *For Hearing on Petitioner's Motion.*

(A) *Ex Parte Hearing.* When the respondent fails to appear at a hearing on the petitioner's motion, after being served in accordance with Rule 5 with the motion and notice of hearing and order to appear, or having signed a notice to return to court, the court may conduct an ex parte evidentiary hearing. If, after the hearing, the court determines that the petitioner is entitled to relief, the court may grant the motion by default.

(B) *Effect of Default Modification or Extension.* Until the respondent is personally served with a modified or extended order, the respondent must comply with any active orders with which the respondent has been personally served. Once the respondent is personally served with the modified or extended order, the respondent must comply with it.

(3) *For Hearing on Respondent's Motion.* When the respondent fails to appear at a hearing on the respondent's own motion, the court may deny the motion for failure to proceed or continue the hearing for a later date.

(b) FAILURE OF PETITIONER TO APPEAR AT TRIAL OR HEARING.

(1) *At Civil Protection Order Trial.* When the petitioner fails to appear at the civil protection order trial, the court may dismiss the petition in accordance with Rule 10 or may continue the trial for a later date.

(2) *For Hearing on Petitioner's Motion.* When the petitioner fails to appear at a hearing on the petitioner's own motion, the court may deny the motion for failure to proceed or continue the hearing for a later date.

(3) *For Hearing on Respondent's Motion.*

(A) *Ex Parte Hearing.* When the petitioner fails to appear at a hearing on the respondent's motion, after being served in accordance with Rule 5 with the motion and notice of hearing and order to appear, or having signed a notice to return to court, the court may conduct an ex parte evidentiary hearing. If, after the hearing, the court determines that the respondent is entitled to relief, the court may grant the motion by default.

(B) *Effect of Default Modification.* Until the petitioner is personally served with a modified order, the petitioner must comply with any active orders with which the petitioner

has been personally served. Once the petitioner is personally served with the modified order, the petitioner must comply with it.

(c) BENCH WARRANT.

(1) *In General*. The court may issue a bench warrant without bond if any party fails to appear after:

(A) being personally served with a notice of hearing and order to appear in accordance with Rule 5;

(B) signing a notice to return to court; or

(C) the court sends an order to show cause to the party's last known address.

(2) *Hearing on Bench Warrant*. When a party with an outstanding bench warrant appears before the court, the court must:

(A) quash the bench warrant;

(B) serve the party with any orders previously issued by the court but not served on the party;

(C) if applicable, require the party to sign a notice to return for any subsequent hearing date; and

(D) issue a release order in the civil protection order case.

COMMENT TO 2017 AMENDMENTS

Formerly Rule 5, this rule has been renumbered as Rule 11. This rule has also been modified to provide better notice, to the parties, of the consequences for failing to appear.

COMMENT

Several factors may be considered in determining whether to hold a default hearing on the same day the default is entered or at a later date. These factors include, but are not limited to: (1) whether the relief sought is focused primarily on violence prevention, or whether it also includes more complex issues such as custody and child support; and (2) whether the Court has a reliable address for the respondent, or whether s/he is unlikely to actually receive the notice of a subsequent default hearing.

Rule 12. Conduct of Trials or Hearings

(a) **BY COURT.** The court will, without a jury, hear and adjudicate petitions for civil protection orders and all motions made in accordance with these rules.

(b) **EVIDENCE.**

(1) *Under Oath.* In all trials or hearings under these rules, the testimony of witnesses must be taken under oath or affirmation.

(2) *Who May Present Evidence.* At a trial or hearing held in accordance with these rules, both the petitioner and the respondent may present evidence, including their own testimony and testimony of other witnesses, and physical evidence.

(3) *Admissible Evidence.* The following rules apply at a trial or hearing:

(A) Evidence that is competent, material, and relevant is admissible.

(B) One spouse is a competent and compellable witness against the other and may testify as to confidential communications, but the testimony is inadmissible as evidence in a criminal trial over the objection of a spouse entitled to claim that privilege.

(4) *Prohibition Against Use of Respondent's Testimony.* The respondent's testimony in any trial or hearing under these rules is inadmissible as evidence in a criminal trial or delinquency proceeding except in a prosecution for perjury or false statement.

(5) *Level of Proof Required for Civil Protection Order.* The court may issue a civil protection order if the court finds that there is good cause to believe the respondent has committed or threatened to commit a criminal offense against the petitioner or against petitioner's animal or an animal in petitioner's household.

(c) **FINDINGS.** At the conclusion of a trial or hearing, the court must make those findings of fact essential to the ultimate conclusion of law.

COMMENT TO 2017 AMENDMENTS

Formerly Rule 9, this rule was renumbered as Rule 12. The rule was also amended consistent with the stylistic changes to the civil rules. Additionally, former subsection (a)(1) was eliminated as unnecessary, and former subsection (a)(2) was eliminated as inaccurate.

Rule 13. Issuance of Orders

(a) IN GENERAL. The court may not issue a civil protection order unless:

- (1) the petitioner has filed a petition under oath;
- (2) the respondent has been served in accordance with Rule 5; and
- (3) the respondent consents to entry of the civil protection order or the court determines that the petitioner is entitled to relief.

(b) WHEN BOTH PARTIES ARE PRESENT. All protection orders entered by the court must be in writing, and a copy must be provided to each party to the proceeding. The court must explain the meaning of the order to the parties and advise the parties of the criminal penalties for violating the order.

(c) CONSENT ORDER. When the respondent has consented to entry of a civil protection order, the court must make sufficient inquiry to be assured that:

- (1) the respondent's consent is voluntary; and
- (2) the parties understand the contents of the order.

(d) WHEN RESPONDENT IS NOT PRESENT. When the court issues a civil protection order or temporary protection order without the respondent present, the court may deliver an additional copy of the order to the petitioner for service on the respondent. The court must inform the petitioner that, while the order is valid and effective, the respondent cannot be found in violation of the order unless the violation is committed after the respondent is personally served with a copy of it. When possible, the court may order that a member of the Metropolitan Police Department serve the order on the respondent or take other steps necessary to effectuate the court's order.

(e) AVAILABLE REMEDIES. The court may issue a civil protection order if, after a hearing, the court determines that the petitioner is entitled to relief or the parties agree to a consent order under Rule 13(c). The court may order any of the remedies available in D.C. Code § 16-1005 (2017 Supp.). The court may, as a condition of the issuance of a civil protection order in favor of the petitioner, require that the petitioner abide by fair and reasonable conditions that are consistent with the requirements of D.C. Code § 16-1005 (c)(6)-(7) (2017 Supp.).

(f) DURATION AND EXTENSION. A civil protection order issued in accordance with D.C. Code § 16-1005 (2017 Supp.) is effective for the time period specified by the court, which may be up to one year. On motion of any party to the original proceeding, made in accordance with Rule 7, the court may extend an order for good cause.

COMMENT TO 2017 AMENDMENTS

Formerly Rule 11, this rule was renumbered as Rule 13. The rule was amended consistent with the stylistic changes to the civil rules. Also, the remedies listed in section (e) were deleted as unnecessary because they appear in the statute.

COMMENT

The terms of any order against a respondent may require certain conduct and cooperation by the petitioner or members of the petitioner's family. In those situations in which the Court determines that full relief under this rule cannot reasonably be afforded without requiring more substantial conduct, the petitioner may be permitted to consent to

issuance of an order against both parties. Section (e) tracks the language of D.C. Code § 16-1005.

Rule 14. Contempt

(a) CIVIL CONTEMPT.

(1) *Definition.* Civil contempt is a sanction imposed by the court to force a party to obey a court order or to compensate a party for losses or damages caused by noncompliance with a court order.

(2) Motion for Civil Contempt.

(A) *In General.* A motion for civil contempt alleging one or more violations of a temporary protection order or civil protection order must be filed under oath.

(B) *Hearing.* On filing of a motion for civil contempt, the clerk must schedule a hearing on the motion and issue a notice of hearing and order to appear in accordance with Rule 7.

(C) *Timing.* A motion for civil contempt must be filed prior to the expiration of the protection order or within a reasonable time after it expires.

(b) CRIMINAL CONTEMPT.

(1) *Definition.* Criminal contempt of a temporary protection order or civil protection order is a violation of the law that is punishable by a fine of not more than the amount set forth in D.C. Code § 22-3571.01 (2017 Supp.), imprisonment for not more than 180 days, or both.

(2) Motion for Criminal Contempt.

(A) *In General.* A motion for criminal contempt alleging one or more violations of a temporary protection order or civil protection order must be filed under oath.

(B) *Hearing.* On filing of a motion for criminal contempt, the clerk must schedule a hearing on the motion and issue a notice of hearing and order to appear in accordance with Rule 7.

(C) *Referral and Review.* A motion for criminal contempt will be referred to the Office of the Attorney General for the District of Columbia and the United States Attorney's Office for review. If both public prosecutors decline to prosecute, the court may appoint a private prosecutor to independently review the motion.

(D) *Prosecution.* If a public or private prosecutor decides to proceed, the prosecutor must file an information or complaint in accordance with Criminal Rule 7. After an information or complaint is filed, all proceedings are governed by the Superior Court Rules of Criminal Procedure.

(3) Orders to Show Cause.

(A) *In General.* On notice that the respondent has allegedly violated a temporary protection order or civil protection order or willfully failed to appear in violation of D.C. Code § 16-1005 (a) (2017 Supp.), the court may order the respondent to appear and show cause why the matter should not be referred to the prosecutor.

(B) *Notice to Respondent.* The order must be sent to the respondent's last known address. If the respondent fails to appear in response to an order to show cause, the court may issue a bench warrant for the respondent's arrest.

(C) *Show Cause Hearing.* At the hearing on the order to show cause, the court may:

(i) discharge the show cause;

(ii) continue the matter; or

(iii) refer the matter to the Office of the Attorney General and the United States Attorney's Office for review.

(D) *Review by Private Prosecutor*. If both public prosecutors decline to prosecute, the court may appoint a private prosecutor to independently review the motion.

(E) *Prosecution*. If a public or private prosecutor decides to proceed, the prosecutor must file an information or complaint in accordance with Criminal Rule 7. After an information or complaint is filed, all proceedings are governed by the Superior Court Rules of Criminal Procedure.

(c) SUMMARY CONTEMPT. Notwithstanding any other provision of these rules, a judge may summarily punish a person who commits criminal contempt in his or her presence if the judge saw or heard the contemptuous conduct and so certifies. The contempt order must recite the facts, be signed by the judge, and be filed with the clerk.

COMMENT TO 2017 AMENDMENTS

Formerly Rule 12, this rule has been renumbered as Rule 14. The rule has been reorganized to better distinguish between civil and criminal contempt procedures. The process for criminal contempt proceedings has also been modified consistent with the holdings in *In re Robertson*, 19 A.3d 751 (D.C. 2011) (determining that criminal contempt actions “had to be brought in the name and pursuant to the sovereign power of the United States”) and *In re Jackson*, 51 A.3d 529 (D.C. 2012) (applying *In re Robertson* in context of show cause).

Finally, while subsection (a)(2)(C) now indicates that a motion for civil contempt may be filed within a reasonable time after the order expires, a motion for civil contempt to force a party to obey a protection order must be filed prior to the expiration of the protection order that the party is seeking to enforce. If the order will expire before the motion for civil contempt is resolved and the party wishes to proceed with the motion for civil contempt, the party must also file a motion to extend the protection order.

COMMENT

Enforcement by contempt is expressly authorized by D.C. Code § 16-1005 (f). The party alleged to be in contempt has no right to a jury trial under either the Constitution or the law of the District of Columbia as long as the penalty for such offense is not more than six months. Therefore, contempt proceedings may be heard by a single judge within the Domestic Violence Unit or Family Division, or may be certified to the Criminal Division for proceedings consistent with the above statute and this rule. The penalties prescribed for criminal contempt are set forth in D.C. Code § 16-705.

Rule 15. Appeal

(a) IN GENERAL. All appeals are governed by the District of Columbia Court of Appeals Rules.

(b) STAY OF ORDER PENDING APPEAL. On motion of a party and on appropriate terms for the opposing party, the court may stay the execution or enforcement of an order pending appeal.

COMMENT TO 2017 AMENDMENTS

Formerly Rule 13, this rule was renumbered as Rule 15. The substance of former section (a) was deleted to eliminate any existing or potential conflicts with the District of Columbia Court of Appeals Rules. It now directs the parties to the appellate rules.