TITLE I. SCOPE OF RULES; FORM OF ACTION

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the Civil Division of the Superior Court of the District of Columbia, with the exception of cases in the Landlord and Tenant Branch and the Small Claims and Conciliation Branch of the court and other exceptions stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

COMMENT TO 2017 AMENDMENTS

This rule was amended consistent with the 2007 and 2015 amendments to *Federal Rule of Civil Procedure 1*. The addition of the phrase “employed by the court and the parties” is intended to emphasize that the court, parties, and attorneys are all responsible for using these rules to achieve the stated goals.

COMMENT

This Rule parallels *Federal Rule of Civil Procedure 1* but has been modified to reflect applicability to appropriate cases in the Superior Court. Note that these Rules do not, by their own terms, extend to cases in the Landlord and Tenant Branch or the Small Claims and Conciliation Branch; however, the separate Rules for those respective branches do designate certain of these Rules for incorporation by reference therein. Further, the scope of these rules will necessarily be expanded in the future as new rules are promulgated to govern procedure in areas (such as probate) over which the court receives jurisdiction in subsequent increments. See D.C. Code (1967 Edition, Supplement IV) § 11-921.

The phrase "these Rules" refers to the entire body of Superior Court Rules of Civil Procedure, those derived from the Federal Rules of Civil Procedure and those purely local Rules bearing numbers above 100. Any reference herein to a particular Rule, as, for example, "Rule 69" comprehends both the original Rule and any addenda thereto, e.g., "69-I" and "69-II".

Rule 2. One Form of Action

There is one form of action—the civil action.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to *Federal Rule of Civil Procedure 2*.

COMMENT

Identical to *Federal Rule of Civil Procedure 2*. For ease of identification, the Clerk of the Court will place before the case number of every case filed in the Civil Division appropriate prefixes as follows: "SC" for Small Claims and Conciliation Branch cases, "LT" for Landlord and Tenant Branch cases, "F" for Fiduciary cases, and "CA" for all other civil actions.

TITLE II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencing an Action

A civil action is commenced by filing a complaint with the court.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to *Federal Rule of Civil Procedure 3*.

COMMENT

Rule 3 identical to *Federal Rule of Civil Procedure 3*.

Rule 3-I. Actions Involving Real Property

Any pleading the adjudication of which may affect title to or interests in real property, including pleadings in change of name cases, must bear immediately below the title of the pleading the inscription "ACTION INVOLVING REAL PROPERTY." On the filing of such a pleading, the clerk must place after the number assigned to the case the suffix "RP."

COMMENT TO 2017 AMENDMENTS

Under Rule 3-I, parties must identify pending actions that may impact the title of real property in the District of Columbia. *See First Md. Fin. Servs. Corp. v. District-Realty Title Ins. Corp.*, 548 A.2d 787, 791 (D.C. 1988) (citing Rule 3-I and quoting *Anderson v. Reid*, 14 App. D.C. 54, 68 (1899) for proposition that “[t]he public records give constructive notice of their contents . . . .”).

Rule 4. Summons

(a) CONTENTS; AMENDMENTS.

(1) *Contents*. A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;

(D) state the time within which the defendant must appear and defend;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) *Amendments*. The court may permit a summons to be amended.

(3) *Service Outside the District of Columbia; Service in Suit Seeking Seizure of Property in the District of Columbia*. A summons, or notice, or order in lieu of summons should correspond as nearly as possible to the requirements of a statute or rule whenever service is made pursuant to a statute or rule that provides for:

(A) service of a summons, or notice, or order in lieu of summons on a party not an inhabitant of or found within the District of Columbia; or

(B) service on or notice to a party to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of the party's property located within the District of Columbia.

(b) ISSUANCE. A prepared summons, with copies for each defendant named in the complaint, must be delivered to the clerk at the time the complaint is filed. If additional process is required, a prepared summons for the additional process must also be delivered to the clerk. On receipt and due notation, the clerk will return all but one copy of the summons to the plaintiff or the plaintiff's agent for service of process in accordance with Rule 4(c), recording on all copies the date of return to the plaintiff or the plaintiff's agent.

(c) SERVICE.

(1) *In General*. A summons must be served with a copy of the complaint, the Initial Order setting the case for an initial scheduling and settlement conference, any addendum to that order, and any other order directed by the court to the parties at the time of filing. The plaintiff is responsible for having the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) *By Whom*. Any person who is at least 18 years of age and not a party may serve a summons and complaint.

(3) *By Marshal or Someone Specially Appointed*. At the plaintiff's request, the court may direct that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. This request will only be granted when:

(A) service is to be made on behalf of the United States or an officer or agency of the United States; or

(B) the court issues an order stating that service by a United States marshal or deputy marshal or by a person specially appointed by the court is required for service to be properly made in that particular action.

(4) *By Registered or Certified Mail*. Any defendant described in Rule 4(e), (f), (h), (i), (j)(1), or (j)(3) may be served by mailing a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the person to be served by registered or certified mail, return receipt requested, except as specified in Rule 4(i).

(5) *By First-Class Mail with Notice and Acknowledgment*.

(A) *Requesting an Acknowledgment of Service.* Any defendant described in Rule 4(e), (f), or (h) may be served by mailing—by first-class mail, postage prepaid, to the person to be served:

(i) a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing;

(ii) 2 copies of a Notice and Acknowledgment conforming substantially to Civil Action Form 1-A; and

(iii) a return envelope, postage prepaid, addressed to the sender.

(B) *Failure to Acknowledge Service.* Unless good cause is shown for not doing so, the court must order the party served to pay:

(i) the costs incurred in securing an alternative method of service authorized by this rule if the person served does not complete and return the Notice and Acknowledgment of receipt of the summons within 21 days after mailing; and

(ii) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(6) *Manner of Conducting Service*. Service of process pursuant to Rule 4(c)(2)–(4), or acknowledgment of service pursuant to Rule 4(c)(5), may, at the plaintiff's or the court's election, be attempted either concurrently or successively.

(d) [Omitted].

(e) SERVING AN INDIVIDUAL WITHIN THE UNITED STATES. Unless applicable law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose acknowledgment has been filed—may be served anywhere in the United States by:

(1) following District of Columbia law, or the state law for serving a summons in an action brought in courts of general jurisdiction in the state where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the individual personally;

(B) 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; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(f) SERVING AN INDIVIDUAL IN A FOREIGN COUNTRY. Unless applicable law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose acknowledgment has been filed—may be served at a place not within the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(g) SERVING A MINOR OR AN INCOMPETENT PERSON. A minor or an incompetent person in the United States must be served by following District of Columbia law (D.C. Code §§ 13-332 and -333 (2012 Repl.)) or the state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) SERVING A CORPORATION, PARTNERSHIP, OR ASSOCIATION. Unless applicable law provides otherwise or the defendant's acknowledgment has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant, or

(2) at a place not within the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

(i) SERVING THE UNITED STATES AND ITS AGENCIES, CORPORATIONS, OFFICERS, OR EMPLOYEES.

(1) *United States*. To serve the United States, a party must:

(A)(i) deliver a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the United States Attorney for the District of Columbia—or to an assistant United States attorney or clerical employee whom the United States Attorney designates in a writing filed with the court clerk—or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States Attorney's Office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) *Agency; Corporation; Officer or Employee Sued in an Official Capacity*. To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing by registered or certified mail to the agency, corporation, officer, or employee.

(3) *Officer or Employee Sued Individually*. To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) *Extending Time*. The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States Attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

(j) SERVING THE DISTRICT OF COLUMBIA, AN AGENCY OR OFFICER OF THE DISTRICT OF COLUMBIA, OR OTHER GOVERNMENT ENTITIES SUBJECT TO SUIT.

(1) *Foreign State.* A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with *28 U.S.C. § 1608*.

(2) *State or Local Government*. A state, municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to its chief executive officer; or

(B) serving the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(3) *District of Columbia*.

(A) In General. The District of Columbia must be served by delivering (pursuant to Rule 4(c)(2)-(3)) or mailing (pursuant to Rule 4(c)(4)) a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the Mayor of the District of Columbia (or designee) and the Attorney General of the District of Columbia (or designee).

(B) *Designees*. The Mayor and the Attorney General may each designate an employee for receipt of service of process by filing a written notice with the court clerk.

(C) *Service on a Nonparty*. In any action attacking the validity of an order of an agency or officer of the District of Columbia not made a party, a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing must also be delivered or mailed to the officer or agency.

(D) *Agency; Officer or Employee Sued in an Official Capacity*. To serve a District of Columbia agency or a District of Columbia officer or employee sued only in an official capacity, a party must serve by delivering (pursuant to Rule 4(c)(2)-(3)) or mailing (pursuant to Rule 4(c)(4)) a copy of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing to the Mayor (or designee), the Attorney General (or designee), as well as the agency, officer, or employee.

(E) *Officer or Employee Sued Individually*. To serve a District of Columbia officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the District of Columbia's behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the District of Columbia under Rule 4(j)(3)(A) and also serve the officer or employee under Rule 4(e), (f), or (g).

(k) TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

(1) *In General*. Serving the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing or filing an acknowledgment of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of this court;

(B) who is a party joined under Rule 14 or 19 and is served at a place not more than 100 miles from the place of the hearing or trial; or

(C) when authorized by a federal or District of Columbia statute.

(2) [Deleted].

(*l*) PROVING SERVICE.

(1) *Affidavit Required*. Unless service is acknowledged, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(A) *Service by Delivery*. If service is made by delivery pursuant to Rule 4(c)(2)-(3), the return of service must be made under oath (unless service was made by the United States marshal or deputy United States marshal) and must specifically state:

(i) the caption and number of the case;

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

(iii) the time and place when service was made;

(iv) the fact that the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing were delivered to the person served; and

(v) if service was made by delivery to a person other than the party named in the summons, then specific facts from which the court can determine that the person to whom process was delivered meets the appropriate qualifications for receipt of process set out in Rule 4(e)–(j).

(B) *Service by Registered or Certified Mail*. If service is made by registered or certified mail under Rule 4(c)(4), the return must be accompanied by the signed receipt attached to an affidavit which must specifically state:

(i) the caption and number of the case;

(ii) the name and address of the person who posted the registered or certified letter;

(iii) the fact that the letter contained the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing; and

(iv) if the return receipt does not purport to be signed by the party named in the summons, then specific facts from which the court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in Rule 4(e)–(j).

(2) *Service Outside the United States*. Service not within the United States must be proved as follows:

(A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or

(B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing were delivered to the addressee.

(3) *Validity of Service; Amending Proof*. Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

(m) TIME LIMIT FOR SERVICE.

(1) *Time Limit; Proof*.

(A) *In General*. Within 60 days of the filing of the complaint or, if an order of publication has been issued, within 60 days from the return date specified in the order, the plaintiff must file either an acknowledgment of service or proof of service of the summons, complaint, Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing. A separate acknowledgement or proof must be filed as to each defendant who has not responded to the complaint.

(B) *Exceptions to Rule 4(m)(1)(A)*. The following exceptions apply to the 60-day time limit for filing either an acknowledgment or proof of service in Rule 4(m)(1)(A).

(i) *Actions to Foreclose the Right of Redemption Filed Pursuant to D.C. Code § 47-1370*. In a case filed pursuant to D.C. Code § 47-1370 (2015 Repl.), the plaintiff must file a separate acknowledgment or proof of service for each defendant who has not responded to the complaint no later than 180 days after the complaint was filed.

(ii) *Collection and Subrogation Cases*. The time limit for service in these cases is set forth in Rule 40-III.

(iii) *Service Outside of the United States*. When service is made under Rule 4(f), (h)(2), or (j)(1), the plaintiff must follow the deadlines specified in the relevant statute, treaty, or other international law.

(2) *Motion for Extension of Time*. Prior to the expiration of any of the foregoing time periods, the plaintiff may make a motion to extend the time for service. The motion must set forth in detail the efforts that have been made, and will be made in the future, to obtain service. Except for cases governed by the provisions of Rule 40-III, the court, if the plaintiff shows good cause, must extend the time for an appropriate period.

(3) *Service After Granting Extension of Time*. Along with the materials identified in Rule 4(c)(1), the plaintiff must serve on the party to be served a copy of the order granting a motion for extension of time and notice of the new court date. Proof of service pursuant to Rule 4(*l*) must include, in addition to the materials identified in that rule, the order granting the motion for extension of time and notice of the new court date.

(4) *Dismissal*. With the exception of cases where service is made under Rule 4(f), (h)(2), or (j)(1), or Rule 54-II, the plaintiff's failure to comply with the requirements of this rule will result in the dismissal without prejudice of the complaint. The clerk will enter the dismissal and serve notice on all the parties. Dismissals of collection and subrogation cases are governed by the provisions of Rule 40-III. Dismissals of actions condemning real or personal property are governed by Rule 71.1.

(n) ASSERTING JURISDICTION OVER PROPERTY OR ASSETS.

(1) *District of Columbia Law.* The court may assert jurisdiction over property if authorized by a District of Columbia statute. Notice to claimants of the property must be given as provided in the statute or by serving a summons under this rule.

(2) *Acquiring Jurisdiction*. On a showing that personal jurisdiction over a defendant cannot be obtained in the District of Columbia by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over the defendant's assets found in the District of Columbia. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by District of Columbia law.

(o) [Deleted].

COMMENT TO 2017 AMENDMENTS

Rule 4 differs substantially from *Federal Rule of Civil Procedure 4*, as amended in 2007 and 2015. The differences include: 1) the addition of language referring to the "Initial Order, any addendum to that order, and any other order directed by the court to the parties at the time of filing" wherever the rule discusses service of the summons and complaint; 2) the substitution of "District of Columbia" for "the state where the district court is located"; 3) the substitution of "District of Columbia" for "federal" and "state"; 4) the substitution of "applicable law" and "applicable statute" for "federal law" and "federal statute"; 5) the addition of sections (a)(3), (c)(4)–(6), (j)(3), and (*l*)(1)(A)–(B); 6) revising sections (b) and (m) to reflect Superior Court practice; 7) the insertion of additional language at the end of subsection (c)(3), which limits the circumstances when a U.S. marshal or deputy marshal or specially appointed process server may be used; and 8) the deletion of section (k)(2) as inapplicable to local practice.

Subsection (c)(5) retains the language of former subsection (c)(4), which dealt with sending the defendant a request for an acknowledgment of service via first-class mail. However, the deadline to return the acknowledgment of service has been changed from 20 days to 21 days based on the time-calculation amendments to Rule 6. Additionally, a provision has been added that allows a party to recover the reasonable expenses, including attorney's fees, for filing a motion to collect the costs of service incurred after the defendant failed to acknowledge service.

The provisions governing service on the District of Columbia or a District of Columbia agency, officer, or employee were moved to subsection (j)(3) so that subsections (j)(1)-

(2) would align with the federal rule. Subsection (j)(3) was also amended to specify how service should be made when an officer or employee is sued in their individual capacity for something connected to their duties. Although subsection (j)(1) was omitted in prior versions of Rule 4, it has now been adopted because there are instances where foreign states may be sued in the District of Columbia. *See 28 U.S.C. § 1608*.

Section (m) was amended to include language previously found in section (o). Accordingly, section (o) has been deleted entirely.

In order to dispose of cases within the time limits set by the Chief Judge in an administrative order, the Superior Court rule retains the 60-day service provision in section (m). That 60-day provision permits cases to proceed to an initial hearing within 90-120 days of filing the complaint. Exceptions to that 60-day service provision include the collection and subrogation cases defined in Rule 40-III, cases filed under D.C. Code § 47-1370 (2015 Repl.) (*see* section (m)(1)(B)(i)), cases where an order of publication has been issued, and any other exceptions set forth in these rules or provided by statute, treaty (*see* section (f)), or other international law.

Finally, subsection (m)(4) includes the 2015 amendment to the federal rule, which clarified that the reference to Rule 4 in Rule 71.1(d)(3)(A) did not include Rule 4(m). Dismissal of actions condemning real or personal property is governed by Rule 71.1 and is not affected by Rule 4(m).

COMMENT

Federal Rule of Civil Procedure 4 was substantially revised and reorganized effective December 1, 1993. In order to maintain uniformity with the Federal Rule to the maximum extent feasible, Superior Court Rule of Civil Procedure 4 has been similarly revised and reorganized to match the structure and substance of the new Federal Rule in large part. Although most provisions of new Superior Court Rule 4 are identical to those of new Federal Rule 4, there are a few variations. Throughout the rule reference is made to the initial order. This refers to the order setting the initial scheduling conference that is given to plaintiffs at the time of their filing the summons and complaint. Many of the other variations result from the obvious inapplicability of the federal provisions and thus require no explanation. A few of the variations merit comment.

Subdivision (a) of this rule is virtually identical to new Federal Rule 4(a) except for the final sentence, which has been added to preserve the substance of a useful provision, contained in former SCR-Civil 4(b), regarding the form of summons or notice to be used when service is made outside the District of Columbia or is based on the seizure of property within the District.

In subdivision (b), the prior Superior Court provision concerning issuance of the summons has been retained, in lieu of the new federal rule provision. The prior Superior Court provision is well known to the Clerk's Office and the Bar and has worked well.

In subdivision (c), a sentence has been added to paragraph (2) to retain the language, contained in former SCR-Civil 4(c)(2)(B), regarding the limited circumstances in which service by a U.S. marshal, deputy marshal, or specially appointed process server is permitted.

Paragraph 3 has been added to subdivision (c) to preserve the long-standing Superior Court practice of allowing service of a summons, complaint and initial order by registered or certified mail, return receipt requested. This practice has been extensively used for years in this Court with great success and little difficulty. Paragraph 4 retains the language of former SCR-Civil 4(c)(2)(C) and (D) which deal with sending the defendant, via first-class mail, a request for an acknowledgment of service.

A paragraph (5) has been added to subdivision (c) to retain the provision of former SCR-Civil 4(c) allowing the plaintiff to attempt service through alternative means, either concurrently or successively.

In subdivision (j), paragraph 1 of the Federal Rule dealing with service upon a foreign national has been deleted as inapplicable to Superior Court jurisdiction. In its place has been inserted the provisions, previously contained in SCR-Civil 4(d)(4), governing service on the District of Columbia or an officer of [or] agency thereof.

In subdivision (1), there has been inserted language describing the information required in affidavits of personal service and mail service. These provisions were previously contained in SCR-Civil 4(g).

Finally, Federal Rule 4(m), which allows 120 days to effect service or obtain a waiver thereof, has been replaced entirely with the language previously contained in Superior Court Rule 4(j). That provision allowed 60 days for effecting service so that the case could proceed to an Initial Scheduling Conference within 90-120 days of filing the complaint (except in cases where an order of publication has been issued) and a disposition within the time limits recommended by the American Bar Association (i.e., one year in 90% of cases and two years in 100% of cases). The rule has an additional paragraph (o) allowing greater time for service of the summons in cases filed under D.C. Code § 47-1370.

Rule 4-I. Service by Publication

(a) REQUIREMENTS. Notices relating to proceedings in this court of which publication is required must be published for the prescribed time in at least one legal newspaper or periodical of daily circulation and any other newspaper or periodical specifically designated by the court.

(b) PROOF BY AFFIDAVIT. Publication must be proved by affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the order as published.

(c) DEFINITION. For purposes of this rule, a legal newspaper or periodical of daily circulation means a publication designated by the court that is:

(1) devoted primarily to publication of opinions, notices and other information from the courts of the District of Columbia;

(2) circulated generally to the legal community; and

(3) published at least on each weekday that the Superior Court is in session.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 4.1. Serving Other Process

(a) IN GENERAL. Process—other than a summons under Rule 4 or a subpoena under Rule 45—must be served by a United States marshal or deputy marshal or unless otherwise provided by statute, by a person who is not a party and not less than 18 years of age. It may be served anywhere within the territorial limits of the District of Columbia and, if authorized by an applicable statute, beyond those limits. Proof of service must be made under Rule 4(*l*).

(b) ENFORCING ORDERS: COMMITTING FOR CIVIL CONTEMPT. An order committing a person for civil contempt must be served only in the District of Columbia or within 100 miles of the District of Columbia.

COMMENT TO 2017 AMENDMENTS

This rule was amended to conform to the 2007 stylistic changes to *Federal Rule of Civil Procedure 4.1*. However, the Superior Court rule maintains several existing substantive differences, including the following language substitutions in section (a): 1) "unless otherwise provided by statute, by a person who is not a party and not less than 18 years of age" is substituted for **"**by a person specially appointed for that purpose"; 2) "District of Columbia" is substituted for "state where the district court is located"; and 3) "applicable statute" is substituted for "federal statute." Also, section (b) conforms to D.C. Code § 11-943 (2012 Repl.), which provides that any order of commitment for civil contempt may be served not more than 100 miles from the District of Columbia.

COMMENT

Rule 4.1 is substantially identical to *Federal Rule of Civil Procedure 4.1*, which sets forth provisions on service of process other than a summons or subpoena. Most of the variations from federal rule language are self-explanatory. The principal change involves the deletion from subdivision (b) of a provision for nationwide service of process of a Federal court order for civil commitment of a person held to be in contempt of a decree or injunction issued to enforce the laws of the United States. This provision is not applicable to Superior Court and has thus been deleted.

Rule 5. Serving and Filing Pleadings and Other Papers

(a) SERVICE: WHEN REQUIRED.

(1) *In General*. Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) *If a Party Fails to Appear*. A pleading that asserts a new claim for relief against a party in default must be served on that party under Rule 4.

(3) *Seizing Property*. If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) SERVICE: HOW MADE.

(1) *Serving an Attorney*. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) *Service in General*. A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person’s last known address—in which event service is complete upon mailing;

(D) leaving it with the clerk’s office if the person has no known address;

(E) sending it by electronic means as permitted or required by administrative order or as consented to in writing by the person—in which event service is complete on transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) [Omitted].

(c) SERVING NUMEROUS DEFENDANTS.

(1) *In General*. If an action involves an unusually large numbers of defendants, the court may, on motion or on its own, order that:

(A) defendants’ pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) *Notifying Parties*. A copy of every such order must be served on the parties as the court directs.

(d) FILING.

(1) *Required Filings*. Any paper after the complaint that is required to be served, other than those referred to in Rule 12-I(d)(2) and (e), must be filed within 7 days after service. The following discovery requests and responses must not be filed except as provided in Rule 5(d)(2) or until they are used in the proceeding: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(2) *Discovery Requests and Responses*.

(A) *Without Leave of Court*. Discovery requests and responses may be filed, without leave of court, if they are appended to a motion or opposition to which they are relevant.

(B) *By Court Order*. If not appended to a motion or opposition under Rule 5(d)(2)(A), a party may only file discovery requests and responses by court order.

(C) *Retaining Discovery Papers*. The requesting party must retain the original discovery paper, and must also retain personally, or make arrangements for the reporter to retain, in their original and unaltered form, any deposition transcripts until the case is concluded in this court, the time for noting an appeal or petitioning for a writ of certiorari has expired, and any appeal or petition has been decided.

(D) *Certificate Regarding Discovery*. A “CERTIFICATE REGARDING DISCOVERY,” setting forth all discovery that has occurred, must be filed with the court as an attachment to:

(i) any motion regarding discovery;

(ii) any opposition to a dispositive motion based on the need for discovery; and

(iii) any motion to extend scheduling order dates.

(3) *How Non-Electronic Filing Is Made*. A paper is filed by delivering it:

(A) to the clerk’s office; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk’s office.

(4) *Chambers Copy Required for Non-Electronic Filing*. When a party files, by non-electronic means, a motion, papers related to the motion (e.g., an opposition, a memorandum of points and authorities, exhibits, or a proposed order), pretrial statements, or other papers described in Rule 16(d) and (e), the party must deliver a chambers copy to a depository designated by the clerk’s office for receipt of such papers by the assigned judge.

(A) *Motions*. With the chambers copy of a motion, the moving party must provide:

(i) a proposed order; and

(ii) an addressed envelope or a mailing label for each counsel or unrepresented party to the case.

(B) *Oppositions*. With the chambers copy of an opposition, the filing party must provide a proposed order.

(C) *Filing by Mail*. If the original document was mailed, the chambers copy may be mailed to chambers. But no other papers should be delivered to the judge's chambers unless the assigned judge so orders.

(5) *How Electronic Filing Is Made*.

(A) *In General*. As permitted or required by statute, rule or administrative order, pleadings and filings may be electronically filed. A paper filed electronically is a written paper for the purposes of these rules. Electronic filing is complete on transmission, unless the filing party learns that the attempted transmission was undelivered or undeliverable.

(B) *Form of Electronically Filed Documents*.

(i) *Format*. All electronic filings must, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper filings, and in any other format as the court may require.

(ii) *Signatures*. Every document filed electronically through the court's authorized eFiling system is deemed to have been signed by the attorney who made or authorized the filing. Each filing must have either "/s/" or a typographical or imaged signature on the signature line. Below the signature line, the filing attorney must list his or her typed name, address, telephone number, email address and Bar number.

(iii) *Self-Represented Parties*. If a self-represented party chooses to use the court's authorized eFiling system, the same format and signature requirements listed in Rule 5(d)(5)(B)(i) and (ii) apply to him or her except that no Bar number is required. A self-represented party will be responsible for the filing under Rule 11.

(C) *Maintenance of Original Document*. Unless the court orders otherwise, an original of all electronically filed documents, including original signatures, must be maintained by the filing party during the pendency of the case and through exhaustion of any appeals or appeal times, and the original documents must be made available, on reasonable notice, for inspection by other counsel or the court.

(D) *Service of Original Complaint and Related Documents*. After electronically filing the original complaint, a plaintiff is responsible for serving the defendant(s) in accordance with these rules. Proof of service must be filed electronically.

(E) *Electronic Filing and Service of Orders and Other Papers*. The court may issue, file, and serve notices, orders, and other documents electronically, subject to the provisions of these rules, statutes or administrative order.

(F) *Who Must Electronically File*. By statute, rule or administrative order, all attorneys representing parties may be required to electronically file.

(G) *Who May Electronically File*. By statute, rule or administrative order, any self-represented party, who has consented in writing, may electronically file and serve documents and may be electronically served, if such activities are provided for by the court's eFiling program.

(H) *Failure to Process Transmission*. If the electronic filing is not filed because of a failure to process it, through no fault of the filing party, the court must enter an order allowing the document to be filed nunc pro tunc to the date it was electronically filed, as long as the document is filed within 14 days of the attempted transmission.

(6) *Exceptions to Electronic Filing*.

(A) *Documents Filed Under Seal*. A motion to file documents under seal must be electronically filed and served. But the documents to be filed under seal must be filed in paper form, unless a different procedure is required by statute, rule, the court, or administrative order. Documents filed under seal should be clearly marked as such by the filing party.

(B) *Exhibits and Real Objects*. Exhibits to declarations or other documents that are real objects (e.g., x-ray film or vehicle bumper) or which otherwise may not be comprehensibly viewed in an electronic format may be filed and served by non-electronic means, unless a different procedure is required by statute, rule, the court, or administrative order.

(C) *Chambers Copies*.

(i) Paper chambers copies of electronically filed documents exceeding 25 pages must be delivered to the clerk. Otherwise, unless specifically requested by the court or required by administrative order, paper chambers copies of electronically filed documents do not need to be delivered to the court.

(ii) When motions are served, unless otherwise provided by administrative order, a copy of the proposed order must be emailed to the judge's eService email address in a format that can be edited (i.e., a non-write protected format).

(e) PRIVACY REQUIREMENTS. Privacy requirements are set forth in Rule 5.2.

COMMENT TO OCTOBER 2017 AMENDMENTS

Consistent with the Federal Rules of Civil Procedure, the provisions regarding privacy requirements appear in new Rule 5.2.

COMMENT TO MARCH 2017 AMENDMENTS

Rule 5 differs substantially from *Federal Rule of Civil Procedure 5*, as amended in 2007.

Subsection (a)(1)(B) excludes language from the federal rule that permits courts to make exceptions to the requirement that every pleading subsequent to the original complaint be served on each of the parties when there is a large number of defendants. This omission allows the court to make such exceptions in all cases.

Subsection (a)(1)(E) omits the former reference to a designation of record on appeal. District of Columbia Court of Appeals Rule 10 is a self-contained provision for the record on appeal, and it provides for service. This provision has also been deleted from the federal rule. Deleted from subsection (a)(2) is the provision that no service need be made upon parties in default for failure to appear. It is required, for example, that a copy of a Rule 55-II(a) motion and affidavit be sent to a defendant who is in default. If new or additional claims are asserted against parties in default, then such parties must be served in the manner provided in Rule 4.

Subsection (b)(3) is omitted from this rule because it is inapplicable. The Superior Court does not supply parties with facilities to transmit electronically filed documents.

Section (d) differs substantially from its federal counterpart. It includes a significant amount of Superior Court specific material. Subsection (d)(1) is different in the following ways: 1) the substitution of language that specifies the 7-day period within which papers must be filed with the court; 2) the omission of language requiring a certificate of service; 3) the addition of a provision excluding papers filed under Rule 12-I(d)(2) and (e) from the filing requirements of section (d); and 4) the modification of language, which states that the specified discovery requests and responses must not be filed except as provided in subsection (d)(2) or until they are used in the proceeding.

Subsection (d)(2) is unique to the Superior Court rule. It provides exceptions for filing discovery papers. Additionally, it provides rules for retaining discovery papers and submitting certificates regarding discovery.

Subsection (d)(3) is the same as subsection (d)(2) of the federal rule except that the title has been modified and the phrase “clerk’s office” is substituted for “clerk” throughout.

Subsection (d)(4) is unique to the Superior Court rule. It provides the rules for submitting chambers copies. Specifically, it requires that any party filing a motion, any paper related to a motion or a pretrial statement and other papers described in Rule 16(d) and (e), deliver a chambers copy of the motion or papers to judge assigned to the case via a designated depository at the courthouse. If the original paper has been mailed, the copy can likewise be mailed. Note, as to this matter, original papers should never, unless ordered otherwise, be filed with a judge.

Subsection (d)(5) replaces subsection (d)(3) of the federal rule. This subsection provides the specific rules for electronically filing documents in the Superior Court.

Subsection (d)(6) is unique to the Superior Court rule. It provides exceptions to the mandatory electronic filing rules in subsection (d)(5). Certain documents may be filed conventionally if they meet the requirements in this subsection.

Subsection (d)(4) of the federal rule is omitted in its entirety from Superior Court Rule 5.

COMMENT TO 2006 AMENDMENTS

This Rule expresses the Court's concern about access to, and dissemination of, private information in the Court's public records to the detriment of individuals whose privacy is compromised simply because their otherwise private information is contained in court filings. The risk of invasion of privacy is heightened where the court's public records are made available through the internet. Although the Rule does not expressly prohibit all use of personal identifiers and other private information, such as home addresses, it is the policy of the Court that parties not include home addresses and other private information in any court filings unless it is necessary to the matter being litigated or is otherwise expressly required by statute or other Rules of the Court, such as, for example, Rules 16(a)(2), 10-I(b), and 4(l)(2).

COMMENT

Several changes are made to Federal Rule of Civil Procedure 5. Deleted from paragraph (a) is the provision that no service need be made upon parties in default for failure to appear. It is required, for example, that a copy of a Rule 55-II(a)(3) affidavit be sent to a defendant who is in default. If new or additional claims are asserted against parties in default, then such parties must be served in the manner provided in Rule 4. Unlike the federal rule which permits courts to make exceptions to the requirement that every pleading subsequent to the original complaint be served upon each of the parties because of the large number of defendants, the local rule would allow the Court to make such exceptions in all cases. Paragraph (d) specifies the time within which papers must be filed with the Court and provides that discovery papers or deposition transcripts shall not be filed unless relevant to a motion or opposition or authorized to be filed by order of

the Court. Paragraph (e) requires that any party filing a motion, any paper related to a motion or a pretrial statement and other papers described in SCR Civil 16(d) and (e), deliver a chambers copy of such motion or papers to judge assigned to the case via a designated depository at the Courthouse. If the original paper has been mailed, the copy can likewise be mailed. Note, as to this matter, original papers should never, unless ordered otherwise, be filed with a judge.

Rule 5-I. Proof of Service

(a) IN GENERAL. Proof of service of filings required or permitted to be served (other than those for which a method of proof is prescribed elsewhere in these rules or by statute) and proof that chambers copies have been supplied to the assigned judge as required by Rule 5(d), must be filed before any other action is taken on that filing. The proof must show the date and manner of service on the parties and delivery to the judge, and may be made by:

(1) written acknowledgment;
(2) affidavit of the person making service or delivery;
(3) certificate of a member of the Bar of this court; or
(4) other proof satisfactory to the court.

(b) 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 to do so would result in material prejudice to a party.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 5-II. Pleadings and Orders Affecting Estates of Veterans

A copy of any pleading or order affecting the estate of a veteran must be mailed to the United States Department of Veterans Affairs by the party filing or obtaining the same.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

This rule helps the United States Department of Veterans Affairs fulfill its statutory responsibility of ensuring that federal funds disbursed to veterans are properly expended and accounted for. *See 38 U.S.C. § 5502*. Parties should mail copies of pleadings and orders to:

Office of Regional Counsel
U.S. Department of Veterans Affairs
1722 I Street, NW, Suite 302
Washington, DC 20421

Rule 5-III. Sealed or Confidential Documents

(a) SEALING.

(1) *In General*. Absent statutory authority, no case or document may be sealed without a written court order. Any document filed with the intention of being sealed must be accompanied by a motion to seal or an existing written order. The document will be treated as sealed, pending the ruling on the motion.

(2) *Electronically-Filed Cases*. For cases that are electronically filed, the motion to seal must be electronically filed and redacted as necessary for the public record. If the motion to seal is granted, an unredacted motion to seal with the materials sought to be placed under seal must be delivered in paper form to the clerk's office for filing. Any subsequent documents allowed to be filed under seal must be filed in paper with the clerk's office.

(3) *Failure to Comply with This Rule*.

(A) *Failure to File Motion to Seal*. Failure to file a motion to seal will result in the pleading or document being placed in the public record.

(B) *Failure to Redact Electronically Filed Documents*. Filing an unredacted document electronically before or after a motion to seal is granted will result in the document being placed in the public record.

(b) IN CAMERA INSPECTION.

(1) *Submission*. Unless otherwise ordered or provided in these rules, all documents submitted for a confidential in camera inspection by the court must be submitted to the clerk securely sealed if they are:

(A) the subject of a protective order;

(B) subject to an existing written order that they be sealed; or

(C) the subject of a motion requesting that they be sealed.

(2) *Required Notation*. The envelope or box containing documents being submitted for in camera inspection must contain a conspicuous notation such as "DOCUMENT UNDER SEAL" or "DOCUMENTS SUBJECT TO PROTECTIVE ORDER" or something equivalent.

(c) OTHER FILING REQUIREMENTS. The face of the envelope or box must also contain the case number, the title of the court, a descriptive title of the document and the case caption unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope or box must also contain the date of any written order or the reference to any statute permitting the item to be sealed.

(d) HOW TO SUBMIT SEALED MATERIALS. Sealed materials must be filed in the clerk's office during regular business hours. Filing of sealed materials at the security desk is prohibited.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Provisions related to electronic filing were also added.

Rule 5-III(a)(3) does not prohibit the court, in the appropriate exercise of its discretion, from sealing documents already in the public record on motion of a party or on its own initiative.

Rule 5.1. Challenge to Validity or Constitutionality of a District of Columbia Statute, Order, Regulation, or Enactment—Constitutional Challenge to a Federal or State Statute—Notice, Certification, and Intervention

(a) NOTICE BY A PARTY. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute, or the constitutionality or validity under the District of Columbia Self-Government and Government Reorganization Act of 1973, of a District of Columbia statute, order, regulation, or enactment of any type, must promptly:

(1) file a notice of constitutional question or notice of question of validity stating the question and identifying the paper that raises it, if:

(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity;

(B) a District of Columbia statute, order, regulation, or enactment of any type is questioned and the parties do not include the District of Columbia, one of its agencies, or one of its officers or employees in an official capacity; or

(C) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned—or on the Attorney General of the District of Columbia if a District of Columbia statute, order, regulation, or other enactment is questioned—or on the state attorney general if a state statute is questioned—either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) CERTIFICATION BY THE COURT. Where a notice is required under Rule 5.1(a), the court must certify to the appropriate attorney general that a federal or state statute—or a District of Columbia statute, order, regulation, or other enactment—has been questioned.

(c) INTERVENTION; FINAL DECISION ON THE MERITS. Unless the court sets a later time, the appropriate attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the challenge, but may not enter a final judgment holding the statute, regulation, order, or other enactment unconstitutional or otherwise invalid.

(d) NO FORFEITURE. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a claim or defense that is otherwise timely asserted.

COMMENT TO 2017 AMENDMENTS

This rule adopts, with certain modifications and additions, the corresponding federal rule, which was adopted in 2006. Consistent with the approach taken by the federal rules, the current rule moves requirements to Rule 5.1 from Rule 24(c), which addresses the criteria and procedures for intervention.

The rule adds a notification provision for acts, orders, regulations, or enactments exclusively applicable to the District of Columbia so that the court will follow as nearly as possible the notification procedure prescribed for courts of the United States in *28 U.S.C. § 2403.* In order to assist the court in fulfilling its notification responsibilities

under this section, the rule requires an alerting inscription on every pleading the filing of which makes such notification necessary.

The District of Columbia Self-Government and Governmental Reorganization Act of 1973, Public Law 93-198 (also known as the District of Columbia Home Rule Act), is reported primarily at D.C. Code §§ 1-201.01 to -207.71 (2016 Repl.). Individual sections of the Act are codified throughout the D.C. Code, and a listing of those sections and references to their counterparts in the D.C. Code can be found in the Disposition Table in Volume 23 (Tables) of the 2012 Replacement Edition of the D.C. Code, pp. 323-25.

Rule 5.1-I. Intervention by the United States or the District of Columbia

In any case in which the court has sent a notification to the Attorney General of the United States or the Attorney General of the District of Columbia under Rule 5.1, the court must permit the United States or the District of Columbia, respectively, to intervene for the presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States, or the District of Columbia, as appropriate, must, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. This rule was also renumbered to correspond with the relocation to Rule 5.1 of provisions related to notice, certification, and intervention by the United States or the District of Columbia when there is a constitutional challenge.

Rule 5.2. Privacy Protection for Filings Made with the Court

(a) REDACTED FILINGS. 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, taxpayer-identification number, driver's license or non-driver's license identification card number, and birth date; the name of an individual known to be a minor; and a financial-account number, except that a party or nonparty making the filing may include the following:

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

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

(3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;

(4) the year of the individual's birth;

(5) the minor's initials; and

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

(b) [Omitted].

(c) [Omitted].

(d) 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.

(e) 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.

(f) ADDITIONAL UNREDACTED FILING UNDER SEAL.

(1) *Motion to File an Unredacted Copy Under Seal*. Except as provided in Rule 5.2(f)(2), 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.

(2) *Name Change Applications*. A person filing an application under Rule 205 (name change) must file an unredacted copy of the application under seal.

(g) OPTION FOR FILING A REFERENCE LIST. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) WAIVER OF PROTECTION OF IDENTIFIERS. A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

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

COMMENT TO 2017 AMENDMENTS

This rule is similar to *Federal Rule of Civil Procedure 5.2* except that: 1) section (a) has been modified to require protection of driver's license and non-driver's license identification card numbers; 2) section (a) requires parties to redact entirely social-security numbers and taxpayer-identification numbers, allowing only the acronyms "SS#" and "TID#," respectively; 3) section (b) has been omitted, removing exemptions to provide greater protection for identifiers; 4) section (c) has been omitted as inapplicable; 5) section (f) has been modified to require a motion where a person wishes to file an unredacted copy except that a person filing a name change application must file an unredacted version under seal; and 6) section (i) was added to make clear that the clerk is not required to review filings for compliance with this rule.

The modifications to section (a) were made because the Superior Court was concerned that filing portions of social-security numbers and taxpayer-identification numbers might increase the risk of identity theft by making the critical portions of these numbers readily accessible on the internet.

As used in this rule, the phrase "financial-account number" is intended to include credit and debit card numbers.

A party may move to seal documents or other information not covered under this rule by using the procedures described in Rule 5-III.

Rule 6. Computing and Extending Time; Time for Motion Papers

(a) COMPUTING TIME. The following rules apply in computing any time period specified in these rules, in any court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit*. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or a legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *“Legal Holiday” Defined*. "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.’s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day; and

(B) any day declared a holiday by the President or Congress, or observed as a holiday by the court.

(C) [Omitted].

(b) EXTENDING TIME.

(1) *In General*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if the request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions*. A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

(c) TIME FOR SERVING AFFIDAVITS. Any affidavit supporting a motion or opposition must be served with the motion or opposition unless the court orders otherwise.

(d) ADDITIONAL TIME AFTER CERTAIN KINDS OF SERVICE. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 6*, as amended in 2007, 2009, and 2016, except for 1) deletion of reference to local rules; 2) modification of subsection (a)(6)(B) to include holidays observed by the court, which made federal subsection (a)(6)(C) inapplicable; and 3) in section (c) (formerly section (d)), retention of language reflecting District of Columbia practice for service of affidavits in support of a motion or opposition. As explained in the Advisory Committee Notes to the federal rule, the 2009 federal amendments were intended to simplify and clarify the process for computing deadlines.

COMMENT

Rule 6 identical to *Fed. Rule of Civil Procedure 6* except for deletion from section (a) of reference to local rules of district courts and states in which district courts are held, deletion from section (b) of reference to Federal Rule 74(a), which prescribes the method of appeal from a judgment of a magistrate, and revision of section (d) in accordance with local practice respecting service of motions and affidavits. In addition, section (a) of the Superior Court Rule, like Superior Court Criminal Rule 45(a), has been modified to permit an extra day for the computation of time for the filing of legal papers only when the office of the clerk has been ordered closed.

Rule 6-I. Continuous Session of Court

Terms of court are abolished. The court will be in continuous session.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

TITLE III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Form of Motions and Other Papers

(a) PLEADINGS. Only these pleadings are allowed:

(1) a complaint;
(2) an answer to a complaint;
(3) an answer to a counterclaim designated as a counterclaim;
(4) an answer to a crossclaim;
(5) a third-party complaint;
(6) an answer to a third-party complaint; and
(7) if the court orders one, a reply to an answer

(b) MOTIONS AND OTHER PAPERS.

(1) *In General*. A request for a court order must be made by motion. The motion must:

(A) be in writing unless made during a hearing or trial;
(B) state with particularity the grounds for seeking the order; and
(C) state the relief sought.

(2) *Form*. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 7*, as amended in 2007.

COMMENT

Civil Rule 7 has been amended to clarify that the Court may impose sanctions against litigants who engage in improper motions practice. A new provision has been added to this rule to make explicit that the certification requirements and sanctions set forth in new Civil Rule 11 apply as well to motions filed with the Court.

Rule 7-I. Stipulations

Neither the court nor a master will consider a stipulation unless the stipulation is:

(1) in a writing signed by the parties or their attorneys;

(2) made on the record before the court or a master; or

(3) made in the taking of a deposition and recorded by or at the direction of the officer before whom the deposition is being taken.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

Rule 7-I is identical to former Rule 43-II. The location of the Rule was changed in order to avoid the impression that stipulations are limited to evidentiary matters.

Rule 7.1. Disclosure Statement

(a) WHO MUST FILE; CONTENTS. A nongovernmental corporate party must file 2 copies of a disclosure statement that:

(1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or

(2) states that there is no such corporation.

(b) TIME TO FILE; SUPPLEMENTAL FILING. A party must:

(1) file the disclosure with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and

(2) promptly file a supplemental statement if any required information changes.

(c) COLLECTION AND SUBROGATION CASE PROCEDURES. A plaintiff need not file a statement in a case filed pursuant to Rule 40-III(a) unless the defendant files a responsive pleading or otherwise appears to contest the allegations contained in the complaint. In a case in which such a pleading is filed or a defendant appears, the statement must be filed promptly.

COMMENT TO 2017 AMENDMENTS

Sections (a) and (b) are identical to *Federal Rule of Civil Procedure 7.1*, as amended in 2007. Section (c), which is unique to the Superior Court rule, is retained from the prior version of this rule.

Rule 8. General Rules of Pleading

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) DEFENSES; ADMISSIONS AND DENIALS.

(1) *In General*. In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) *Denials—Responding to the Substance*. A denial must fairly respond to the substance of the allegation.

(3) *General and Specific Denials*. A party that intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) *Denying Part of an Allegation*. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) *Lacking Knowledge or Information*. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) *Effect of Failing to Deny*. An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) AFFIRMATIVE DEFENSES.

(1) *In General*. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- contributory negligence;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- injury by fellow servant;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;

· statute of limitations; and
· waiver.

(2) *Mistaken Designation*. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice so requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) PLEADING TO BE CONCISE AND DIRECT; ALTERNATIVE STATEMENTS; INCONSISTENCY.

(1) *In General*. Each allegation must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense*. A party may set out 2 or more statements of a claim or defense alternately or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent Claims or Defenses*. A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) CONSTRUING PLEADINGS. Pleadings must be construed so as to do justice.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 8*, as amended in 2007 and 2010. In addition to stylistic changes, "discharge in bankruptcy" is deleted from the list of affirmative defenses. As explained in the Advisory Committee Notes to the 2010 federal amendment:

> Under *11 U.S.C. § 524 (a)(1) and (2)*, a discharge voids a judgment to the extent that it determines a personal liability of the debtor with respect to a discharged debt. The discharge also operates as an injunction against commencement or continuation of an action to collect, recover, or offset a discharged debt. For these reasons it is confusing to describe discharge as an affirmative defense. But § 524 (a) applies only to a claim that was actually discharged. Several categories of debt set out in *11 U.S.C. § 523 (a)* are excepted from discharge. The issue whether a claim was excepted from discharge may be determined either in the court that entered the discharge or—in most instances—in another court with jurisdiction over the creditor's claim.

COMMENT

Identical to *Federal Rule of Civil Procedure 8*.

Rule 9. Pleading Special Matters

(a) CAPACITY OR AUTHORITY TO SUE; LEGAL EXISTENCE.

(1) *In General*. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) *Raising Those Issues*. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) FRAUD OR MISTAKE; CONDITIONS OF MIND. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) CONDITIONS PRECEDENT. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) OFFICIAL DOCUMENT OR ACT. In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) JUDGMENT. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) TIME AND PLACE. An allegation of time and place is material when testing the sufficiency of a pleading.

(g) SPECIAL DAMAGES. If an item of special damage is claimed, it must be specifically stated.

(h) [Deleted].

COMMENT TO 2017 AMENDMENTS

Rule 9 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 9*.

COMMENT

Rule 9 identical to *Federal Rule of Civil Procedure 9* except for deletion of section (h) thereof dealing with claims for relief "within the admiralty and maritime jurisdiction" which are within the exclusive jurisdiction of federal District Courts. See *28 U.S.C. § 1333*(1).

Rule 9-I. Verifications, Affidavits, and Declarations

(a) Sufficiency. When verification of a pleading is required, it will be sufficient for the person verifying to swear or affirm that the person verily believes the facts stated in the pleading to be true. Verification by an individual party must be supported as set forth in Rule 9-I(e). Civil Action Form 101 satisfies this requirement.

(b) One Party May Verify. If several parties are united in interest and plead together, the verification may be made by any one of those parties.

(c) By Officer, Agent, Attorney.

(1) *When Allowed.* A verification, affidavit, or declaration may be made by an officer, agent or attorney only when;

(A) a corporation is a party;

(B) the facts are within the personal knowledge of the attorney or agent;

(C) the party is an infant, or of unsound mind, or in prison; or

(D) the party is absent from the District of Columbia.

(2) *Requirements.* Where verification of a pleading, an affidavit, or a declaration is made on behalf of a party to an action, it must set forth the representative capacity and, in the case of a corporation, the title of a person so verifying or making the affidavit or declaration, and must contain a statement that the person has authority to verify the particular pleading or make the affidavit or declaration on behalf of the person's principal.

(d) Form of Affidavits and Declarations. Affidavits and declarations, other than verifications, must be separate and distinct from a pleading, verification, motion or other paper filed in the action. All facts contained in any affidavit or declaration submitted to the court must be expressly stated in detail in separately numbered paragraphs and must not be incorporated by reference.

(e) Unsworn Declarations.

(1) *When Allowed.* Unless otherwise provided by law, whenever any matter is required or permitted by these rules to be supported by the sworn written declaration, verification, certificate, statement, oath, or affidavit of a person, the matter may, with the same force and effect, be supported by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed as true under penalty of perjury, and dated, in substantially the following form, which must appear directly above the person's signature:

(A) If executed inside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States:

> I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(B) If executed outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States:

> I declare under penalty of perjury under the law of the District of Columbia that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. Executed on _____ (date) day of _____ (month),

_____ (year), at _____ (city or other locations, and state), _____ (country).

(2) *Exclusions.* Rule 9-I(e)(1) does not apply to:

(A) a deposition;

(B) an oath of office;

(C) an oath required to be given before a specified official other than a notary public; or

(D) a declaration to be recorded with the Recorder of Deeds of the District of Columbia.

COMMENT

This rule was amended as a result of the passage of the Uniform Unsworn Foreign Declaration Act of 2010, D.C. Code § 16-5301 et seq. and D.C. Code § 22-2402(a)(1)-(3), which post-dates the decision of the District of Columbia Court of Appeals in *Cormier v. D.C. Water & Sewer Auth.*, 959 A.2d 658 (D.C. 2008). Consistent with federal court and the District of Columbia Court of Appeals practice, the new section (e) allows parties to file declarations that have not been notarized. D.C. Code § 22-2402(a)(3) provides that, “[a] person commits the offense of perjury if ... [i]n any declaration, certificate, verification, or statement made under the penalty of perjury in the form specified in D.C. Code § 16-5306 or 28 U.S.C. § 1746(2), the person willfully states or subscribes as true any material matter that the person does not believe to be true and that in fact is not true.” The rule is patterned after the United States District Court for the District of Columbia's Local Rule 5.1(h); the federal declarations statute, 28 U.S.C. § 1746; and D.C. Code § 16-5306.

Rule 10. Form of Pleadings

(a) CAPTION; NAMES OF PARTIES. Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties. If a case has been assigned to a specific judge or magistrate judge, the name of that judge or magistrate judge and, when known, the calendar number must appear below the file number on every pleading.

(b) PARAGRAPHS; SEPARATE STATEMENTS. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) ADOPTION BY REFERENCE; EXHIBITS. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

COMMENT TO 2017 AMENDMENTS

Rule 10 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 10*.

COMMENT

Rule 10 is identical to *Federal Rule of Civil Procedure 10* except for the additional requirement that the calendar number or the judge's name be placed on the pleading. A similar provision was formerly in Rule 40-II(e). Rule 40-I(a) contemplates two different types of case assignment. In almost all instances, a case will be assigned to a particular calendar. Such a case may be transferred from one judge to another as judicial assignments change; for these cases the caption should contain the calendar number only. In exceptional circumstances, a particular judge may be assigned permanently to a case; for these cases the caption should contain the judge's name. Note, that in certain cases described in Rule 24(c) the pleading must bear immediately below the caption the inscription "RULE 24 NOTIFICATION REQUIRED." Note that the requirements of Rule 10 apply not only to pleadings but also to the form of all motions and other papers provided for by the civil rules. *See* Rule 7(b)(2).

Rule 10-I. Pleadings: Stationery and Locational Information

(a) STATIONERY; TITLE; RELIEF PRAYED. Pleadings and like papers must be on opaque white paper, approximately 11 inches long and 8 1/2 inches wide, without back or cover, fastened at the top and stating under the caption the nature of the pleading and the relief, if any, prayed.

(b) LOCATIONAL INFORMATION: PLEADINGS AND OTHER PAPERS. The first pleading filed by or on behalf of a party must set forth in the caption the party's name, full residence address, and unless the party is represented by counsel, the party's telephone number, if any. All subsequent pleadings and other papers filed by or on behalf of a party must set forth the name, full residence address and telephone number of the party, unless that party is represented by counsel. If a party is represented by counsel, all pleadings or other papers must set forth the name, office address, telephone number, email address, and Bar number of the attorney. The names, addresses, email addresses, and telephone numbers so shown will be conclusively deemed to be correct and current. It is the obligation of the attorney or unrepresented party whose address, email address, or telephone number has been changed to give immediate notice to the appropriate branch or office within the Civil Division and all other attorneys and unrepresented parties named in the case of this change. Attorneys must include their Bar number in all such notices. Should a party incur expenses, including reasonable attorney's fees, due to the failure of any other party, or that party's attorney, to give prompt notice of a change of address, email address, or telephone number, the court, upon motion or upon its own initiative, may order the party failing to give notice to reimburse the other party for expenses incurred.

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

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) SIGNATURE. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. If the filing is submitted through the Court's authorized eFiling program, Rule 5(d)(5)(B)(ii) and (iii) will govern the signing of any electronic filing. A name affixed by a rubber stamp will not be deemed a signature. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper, including an electronic filing—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) SANCTIONS.

(1) *In General*. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions*. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed with or presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative*. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include, nonmonetary directives, an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order

directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions*. The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show–cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order*. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) INAPPLICABILITY TO DISCOVERY. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

COMMENT TO 2017 AMENDMENTS

Rule 11 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 11*. Two provisions that are unique to the Superior Court rule are retained, including language related to the court's eFiling program and a provision explicitly prohibiting use of a rubber stamp.

COMMENT

This rule is identical to *Federal Rule of Civil Procedure 11*. This Rule also makes clear that a signature affixed by a rubber stamp is not sufficient.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) TIME TO SERVE A RESPONSIVE PLEADING.

(1) *In General*. Unless another time is specified by this rule or an applicable statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer within 21 days after being served with the summons and complaint.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) *The United States or the District of Columbia and the Agencies, Officers, or Employees of Either Sued in an Official Capacity*. The United States or the District of Columbia or an agency, officer, or employee of either sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney (in suits involving the United States) or the Attorney General for the District of Columbia (in suits involving the District of Columbia).

(3) *United States or District of Columbia Officers or Employees Sued in an Individual Capacity*. A United States or District of Columbia officer or employee sued in an individual capacity for an act or omission occurring in connection with the duties performed on the United States' or the District of Columbia's behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney (in suits involving the United States) or the Attorney General for the District of Columbia (in suits involving the District of Columbia), whichever is later.

(4) *Effect of a Motion*. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(5) *Entry of Default*. Unless the time to respond to the complaint has been extended as provided in Rule 55(a)(3) or the court orders otherwise, failure to comply with the requirements of this rule will result in the entry of a default by the clerk or the court sua sponte.

(b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) [Omitted];

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted;

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) MOTION FOR JUDGMENT ON THE PLEADINGS. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) RESULTS OF PRESENTING MATTERS OUTSIDE THE PLEADINGS. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) MOTION FOR A MORE DEFINITE STATEMENT. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) MOTION TO STRIKE. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) JOINING MOTIONS.

(1) *Right to Join*. A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitations on Further Motions*. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) WAIVING AND PRESERVING CERTAIN DEFENSES.

(1) *When Some Are Waived*. A party waives any defense listed in Rule 12(b)(2)–(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others*. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) *Lack of Subject-Matter Jurisdiction*. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.
(i) HEARING BEFORE TRIAL. If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 12*, as amended in 2007 and 2009, except for: 1) the substitution of “applicable statute” for “federal statute” in subsection (a)(1); 2) the deletion of inapplicable federal limitation periods in subsection (a)(1)(A); 3) the addition of references to “the District of Columbia” in subsections (a)(2) and (a)(3); 4) the retention of subsection (a)(5) regarding the automatic entry of default against a defendant who does not timely respond to the complaint; and 5) the omission of subsection (b)(3), which deals with improper venue and is not applicable in the District of Columbia.

COMMENT

SCR-Civil 12(a) is rearranged to reflect the format established by the federal rule revisions of December 1993. Federal limitation periods are altered to comport with those in the existing Superior Court rule. Additionally, a paragraph (5) has been added to preserve the existing Superior Court rule of automatic entry of default against a defendant who does not timely respond to the complaint.

Rule 12-I. Motions Practice

(a) EFFORTS TO OBTAIN CONSENT; CONSENT MOTIONS.

(1) *In General*. Before filing any motion, except motions filed pursuant to Rule 11, the moving party must first ascertain whether other affected parties will consent to the relief sought.

(2) *Rule 11 Motions*. For motions filed pursuant to Rule 11, the moving party must make good faith efforts to resolve or dispose of the issues in dispute before the motion is served pursuant to Rule 11(c)(2).

(3) *No Resolution or Consent*. The court must consider the motion as a contested matter if the movant certifies in writing that, in the case of Rule 11 motions, resolution of the disputed issues is not possible or that despite diligent efforts consent could not be obtained.

(4) *Consent Obtained*. If consent is obtained, and if the relief does not require court approval, the party seeking the relief may memorialize the other parties' consent in a letter to the parties (which should not be filed) or in a praecipe filed and served as provided in Rule 5. If the relief sought is consented to but requires court approval, the moving party must file, serve, and provide to the assigned judge a courtesy copy of a motion which includes the word "consent" in its title and states that all affected parties have consented to the relief sought. No response to a consent motion is required.

(b) JUDGE IN CHAMBERS.

(1) The following matters may at any time be presented for disposition to a judge in chambers designated by the Chief Judge, either ex parte or with opposing counsel, as appropriate:

(A) approval of accounts;

(B) warrants and return of warrants;

(C) approval of subpoenas for administrative proceedings;

(D) applications for appointment of special process servers in small claims cases;

(E) applications for name change under Rule 205 or any applicable administrative order;

(F) petitions to release mechanic's liens;

(G) applications for entry of administrative agencies' final orders as judgments;

(H) petitions to take depositions pursuant to Rule 27(a);

(I) master-meter proceedings under D.C. Code §§ 42-3301 to -3307 (2012 Repl.);

(J) requests for issuance of subpoenas under Rule 28-I(d);

(K) petitions to amend birth certificates pursuant to Rule 205 or any applicable administrative order; and

(L) petitions to amend death certificates.

(2) The following matters, if presented on the day the complaint is filed, must be presented to the Judge in Chambers; thereafter, such matters must be presented to the judge assigned to the case:

(A) appointment of a special process server;

(B) motions with respect to publication of notice requirements;

(C) judicial approval of settlements involving minors;

(D) motions regarding security for costs;

(E) writs of ne exeat;

(F) applications to set bonds;

(G) applications for temporary restraining orders;
(H) writs of attachment before judgment;
(I) writs of replevin;
(J) libels of information;
(K) motions for protective orders barring access to court documents; and
(L) motions to use pseudonyms in any pleading or paper filed in a case.

(c) JUDGE ON EMERGENCY ASSIGNMENT. Any motion requiring immediate judicial attention at a time outside the regular business hours of the court may be presented to the judge on emergency assignment. The Chief Judge must establish a roster for such emergency assignments.

(d) FORM OF MOTIONS.

(1) *In General*. With the exception of motions made in open court during hearing or trial when opposing counsel is present and motions made under emergent conditions, every petition or motion to the court must be made in writing and filed with the clerk. Every motion must state clearly its object and the grounds on which it is based or the reasons for the relief sought. If a motion is consented to by all affected parties, that fact must be indicated in the title of the motion, e.g., "Consent Motion to Extend Time for Filing Plaintiff's Witness List." The caption must contain the parties' next court date (e.g. case mediation, pretrial conference, or trial) if one has been set.

(2) *Points and Authorities*. Each motion must include or be accompanied by a statement of the specific points and authorities that support the motion, including, where appropriate, a concise statement of material facts. The statement of points and authorities must be a part of the record. The points and authorities must be labeled as such and placed either on a separate paper or below all other material, including signatures, on the last page of the motion.

(e) OPPOSING POINTS AND AUTHORITIES. Within 14 days after service of the motion or at such other time as the court may direct, an opposing party must file and serve a statement of opposing points and authorities in opposition to the motion. If a statement of opposing points and authorities is not filed within the prescribed time, the court may treat the motion as conceded.

(f) PROPOSED ORDER. Each motion and opposition must be accompanied by a proposed order for the court's signature. The proposed order must list all persons to whom copies of the judge's order must be sent, including the addresses of those who cannot be served electronically. The proposed order also must list existing dates from the scheduling order and must indicate which dates, if any, would be affected by the motion or opposition.

(g) REPLY. Within 7 calendar days after service of the opposing statement, the moving party may file and serve a statement of points and authorities in reply to the following types of motions only:

(1) motions for summary judgment;
(2) motions to dismiss for failure to state a claim;
(3) motions to strike expert testimony; and
(4) motions for judgment on the pleadings.

(h) HEARING: WHEN ALLOWED. A party may specifically request an oral hearing by endorsing at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested"; but the court in its discretion may decide the motion without

a hearing. If the judge assigned to the case decides to hold a hearing on the motion, that judge must give to all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing and the amount of time afforded to each party. If a pending motion is resolved by counsel, the movant must immediately notify the court by telephone.
(i) HEARING: FAILURE OF ONE PARTY TO APPEAR. If, at the time the case is called for hearing on a petition or motion, the moving party fails to appear, the petition or motion may be treated as submitted or waived, or may be continued. If the opposing party fails to appear, it may be treated as conceded. The court in its discretion may hear argument on behalf of the party appearing.
(j) MOTION TO VACATE DEFAULT. A motion to vacate an entry of default or a judgment by default, or both, must comply with the requirements of Rule 55(c).
(k) MOTION FOR SUMMARY JUDGMENT. A motion for summary judgment must comply with the requirements of Rule 56.
(*l*) POST-RULING PROPOSED ORDER. Unless otherwise directed by the court, counsel prevailing at oral argument must file and serve, within 7 days after the court rules on any motion, a proposed order reflecting the court's ruling.
(m) [Deleted].
(n) TIME LIMIT FOR MOTIONS. All motions, other than motions specified in Rule 16(d) and posttrial motions, must be filed by the deadline set forth in the scheduling order issued pursuant to Rule 16(b). For good cause, the court may extend the period for filing such motions.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule, and the rule was reorganized so related materials now appear in the same section or subsection. The deadlines were also amended to conform with the time-calculation changes made to Rule 6 as part of the 2009 amendments to the Federal Rules of Civil Procedure and to allow adequate time to resolve motions where the time for filing a response has been extended. The following provisions in section (a) were deleted as unnecessary: 1) the provision suggesting how the court would rule on a consent motion and 2) the provision stating how the court would serve an order for a consent motion. Language in subsection (d)(2) was modified to clarify that the statement of points and authorities may be included as part of the motion; there is no requirement that it be a separate document.

New section (g) permits the filing of a reply as a matter of right on all of the motions listed. However, no further filings are permitted without leave of court. Section (k) now directs parties to Rule 56 for provisions regarding summary judgment motions.

COMMENT TO 2015 AMENDMENTS

Section (m), “matters taken under advisement,” was deleted; the matters previously addressed by this section are now the subject of an administrative order.

COMMENT

Rule 12-I(a) provides that a moving party must seek consent of other affected parties prior to the filing of a motion, except with respect to Rule 11 motions for imposition of sanctions. In these instances, a good faith effort to resolve the disputed issues is required. Even on dispositive motions a good faith effort to achieve consent can eliminate some issues or parties.

In respect to motions for imposition of Rule 11 sanctions, the good faith requirement may be satisfied by giving notice to the other party, whether in person, by telephone or by letter, of a potential violation before proceeding to prepare and serve a Rule 11 motion.

In respect to motions for orders to compel discovery filed pursuant to Rule 37(a), complying with the good faith efforts to obtain discovery under Rule 37(a) satisfies the requirement to obtain consent pursuant to Rule 12-I(a).

Rule 12-I(b) is amended to show which actions may be presented to the Judge in Chambers and which must be handled by the judge assigned to the case.

The last sentence in Rule 12-I(d) provides that motions which are consented to by the affected parties should indicate that fact. The purpose of this provision is to allow the Court to rule on such motions without the necessity of waiting until the end of the opposition deadline.

Prior language in Rule 12-I(f) and (h) is deleted in its entirety and the letter headings of the paragraphs of this Rule are redesigned to reflect these deletions. Accordingly, paragraph (f) now contains the provisions previously found in paragraph (i). A sentence is added to this paragraph which provides for appropriate notice to the parties when a decision is made to hold a hearing on a motion. It also allows the judge to specify the matters to be addressed at the hearing and the amount of time each side shall be given to present arguments on the motion. The last sentence of paragraph (f) re-quires that counsel immediately inform the Court by telephone if the motion has been resolved. New language has been placed in paragraph (h) to provide that all motions must be accompanied by a copy of the Scheduling Order, if any has been issued in the case.

Rule 12-I(m) is intended to have equal applicability to posttrial motions and such non-motion matters as findings of fact and conclusions of law following a nonjury trial.

Rule 12-I(n) should be read in conjunction with Rule 26(d), which imposes a time limit for the completion of discovery.

Rule 13. Counterclaim and Crossclaim

(a) COMPULSORY COUNTERCLAIM.

(1) *In General.* A pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) *Exceptions.* The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action;

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule; or

(C) it is not within the jurisdiction of the court.

(b) PERMISSIVE COUNTERCLAIMS. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory if such counterclaim is within the jurisdiction of the court.

(c) RELIEF SOUGHT IN A COUNTERCLAIM. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) COUNTERCLAIM AGAINST THE UNITED STATES OR THE DISTRICT OF COLUMBIA. These rules do not expand the right to assert a counterclaim—or to claim a credit—against the United States or the District of Columbia or an officer or agency of either.

(e) COUNTERCLAIM MATURING OR ACQUIRED AFTER PLEADING. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) [Deleted].

(g) CROSSCLAIM AGAINST A COPARTY. A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(h) JOINING ADDITIONAL PARTIES.

Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(i) SEPARATE TRIALS; SEPARATE JUDGMENTS. If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing party’s claims have been dismissed or otherwise resolved.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 13*, as amended in

2007 and 2009, but maintains two local distinctions—1) a reference to the District of Columbia in section (d), which makes clear that these rules do not expand the right to assert a counterclaim—or to claim a credit—against the District of Columbia or a District of Columbia officer or agency and 2) an exception in subsection (a)(2) and section (b) for counterclaims that are not within the court's jurisdiction.

COMMENT

Identical to *Federal Rule of Civil Procedure 13*, (1) reference to the District of Columbia has been added to section (d) which provides that these Rules do not enlarge existing legal limitations with respect to suits against the government or its agents and (2) an exemption has been added to sections (a) and (b) for counterclaims which are with-out the jurisdiction of the Court.

Rule 14. Third-Party Practice

(a) WHEN A DEFENDING PARTY MAY BRING IN A THIRD PARTY.

(1) *Timing of the Summons and Complaint.* A defending party may, as third-party plaintiff, serve a summons and complaint, in the manner and within the time limits prescribed by Rule 4, on a nonparty who is or may be liable to it for all or part of the plaintiff's claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

(2) *Third-Party Defendant's Claims and Defenses.* The person served with the summons and third-party complaint—the "third-party defendant":

(A) must assert any defense against the third-party plaintiff's claim under Rule 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b), or any crossclaim against another third-party defendants under Rule 13(g);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) *Plaintiff's Claims Against a Third-Party Defendant.* The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).

(4) *Motion to Strike, Sever, or Try Separately.* Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) *Third-Party Defendant's Claim Against a Nonparty*. A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it. Persons brought into the action pursuant to the preceding sentence must be designated as fourth-party defendants, fifth-party defendants, and so on, as appropriate, but the practice as to such parties must be governed by the rules respecting third-party defendants.

(6) [Omitted].

(b) WHEN A PLAINTIFF MAY BRING IN A THIRD PARTY. When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

(c) [Omitted].

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 14*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) subsection (a)(1) contains a provision indicating that service on a third-party defendant must be made in accordance with Rule 4; 2) subsection (a)(5) contains language specifying the designations given to additional parties brought into the action; and 3) subsection (a)(6)

and section (c) are omitted as locally inapplicable because both address admiralty and maritime jurisdiction.

COMMENT

Substantially identical to *Federal Rule of Civil Procedure 14* except for deletion therefrom of section (c) and the last sentence of section (a), both of which deal with matters within the exclusive admiralty and maritime jurisdiction of federal district courts, *28 U.S.C. § 1331*(1), and addition to section (a) of one sentence making clear the designations to be given to persons brought into the action by the third-party defendant or by later-party defendants. Also added to the Rule is the provision that service of process must be accomplished in accordance with Rule 4, including the time limit imposed by Rule 4(j). For principles governing service of process on third-party defendants within one hundred miles of the place of hearing or trial, *see* Rule 4(f) and D.C. Code § 11-943 (b) (1981).

Rule 15. Amended and Supplemental Pleadings

(a) AMENDMENTS BEFORE TRIAL.

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it; or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Amending Dismissed or Stricken Pleading*. If a pleading is dismissed or stricken with leave to amend, an amended pleading must be filed within 21 days unless otherwise ordered by the court.

(3) *Other Amendments*. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(4) *Time to Respond*. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(5) *Consent*. No motion to amend will be considered unless it recites that the movant sought to obtain the consent of parties affected, that such consent was denied and the identity of the party or parties who declined to consent.

(b) AMENDMENTS DURING AND AFTER TRIAL.

(1) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) RELATION BACK OF AMENDMENTS.

(1) *When an Amendment Relates Back.* An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) *Notice to the United States and the District of Columbia.* When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or United States attorney's designee, to the Attorney General of the United States, or to the officer or agency. When the District of Columbia or a District of Columbia officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the Attorney General for the District of Columbia or a District of Columbia officer who, or agency that, would have been a proper defendant if named.

(d) SUPPLEMENTAL PLEADINGS. On motion and reasonable notice, the court may, on just terms permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 15*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) subsection (a)(2) addresses amendment of a dismissed or stricken pleading; 2) subsection (a)(5) requires a party to seek consent prior to filing a motion to amend; and 3) subsection (c)(2) includes notice requirements for the District of Columbia and its agencies or officers.

COMMENT

Identical to *Federal Rule of Civil Procedure 15* except for additions to paragraph (a) which specify a time limit within which an amended pleading must be filed, a requirement that the movant seek to obtain the consent of affected parties and an addition to the last sentence of paragraph (c) that refers to amendments which seek to change party designations so as to bring in the District of Columbia or an official or agency thereof as a defendant. *See* Rule 54(c).

Rule 16. Pretrial Conferences; Pretrial Status Conferences; Scheduling; Management

(a) APPLICABILITY. With the exception of cases assigned to a magistrate judge under Rule 40-III, or unless otherwise ordered by the judge to whom the case is assigned, the provisions of this rule apply to all civil actions and to both small claims and landlord and tenant actions certified to the Civil Actions Branch for jury trial.

(b) INITIAL SCHEDULING AND SETTLEMENT CONFERENCE.

(1) *In General*. In every case assigned to a specific calendar or a specific judge, the court must hold an initial scheduling and settlement conference as soon as practicable after the complaint is filed.

(2) *Praecipe in Lieu of Appearance*. No attorney need appear in person for the scheduling conference if a praecipe conforming to the format of Civil Action Form 113 (Praecipe Requesting Scheduling Order) signed by all attorneys is filed no later than 7 calendar days prior to the scheduling conference date consenting to the entry by the court of a track I or track II scheduling order outside their presence.

(A) *Praecipe Requirements*. The praecipe must certify that:

(i) the case is at issue;

(ii) all parties are represented by counsel;

(iii) there are no pending motions; and

(iv) all counsel have discussed the provisions of Rule 16(b)(4)(B) and (C) and do not foresee any issue requiring court intervention.

(B) *Filing the Praecipe; Courtesy Copy*. The praecipe must be accompanied by an addressed envelope or mailing label for each attorney and a courtesy copy must be delivered to the assigned judge's chambers. Neither addressed envelopes nor mailing labels need be provided for documents filed under the court's electronic filing program.

(3) *Scheduling Order; In General*. At the conference, the judge will ascertain the status of the case, explore the possibilities for early resolution through settlement or alternative dispute resolution techniques, and determine a reasonable time frame for bringing the case to conclusion. After consulting with the attorneys for the parties and with any unrepresented parties, the judge will place the case on one of several alternative time tracks and will enter a scheduling conference order which will set dates for future events in the case.

(4) *Contents of the Order*. The scheduling order may:

(A) modify the extent of discovery;

(B) provide for discovery or preservation of electronically stored information;

(C) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced, including agreements on the effects of disclosure reached under Rule 26(b)(5)(C);

(D) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(E) set dates for pretrial conferences and for trial; and

(F) include other appropriate matters.

(5) *Scheduling Order; Deadlines*. Where applicable, the order will specify dates for the following events:

(A) *Discovery Requests; Depositions*.

(i) No interrogatories, requests for admission, requests for production or inspection, or motions for physical or mental examinations may be served less than 30 days before the date set for the end of discovery.

(ii) Party depositions ad testificandum and nonparty depositions duces tecum or ad testificandum must be noticed not less than 5 days before the date scheduled for the deposition and no deposition may be noticed to take place after the date set for the conclusion of discovery.

(B) *Exchange Lists of Fact Witnesses*. On or before this date, each party must file and serve a listing, by name and address, of all fact witnesses known to that party, including experts who participated in, and will testify about, pertinent events. No witness may be called at trial, except for rebuttal or impeachment purposes, unless he or she was named on the list filed by one of the parties on or before this date or the calling party can establish that it did not learn of the witness until after this date.

(C) *Proponent's Rule 26(a)(2)(B) Report.* By this date, a report required by Rule 26(a)(2)(B) must be filed and served by any proponent of an issue who will offer an expert opinion on such an issue.

(D) *Opponent's Rule 26(a)(2)(B) Report*. By this date, a report required by Rule 26(a)(2)(B) must be filed and served by any opponent who will offer an expert opinion on such an issue.

(E) *Close of Discovery*. After this date, no deposition or other discovery may be had, nor motion relating to discovery filed, except by leave of court on a showing of good cause.

(F) *Filing Motions*. All motions must be filed by this date, except as provided in Rule 16(b)(5)(E) and (d). The order will also specify a date by which dispositive motions will be decided.

(G) *Alternative Dispute Resolution*. The order will set out a time period in which mediation or other alternative dispute resolution proceedings will be held.

(H) *Final Pretrial and Settlement Conference*. The order will specify a time period in which the final pretrial and settlement conference will be held.

(I) *Optional Deadlines*. The scheduling conference order may also set dates for the joinder of other parties and amendment of pleadings, the completion of certain discovery, the filing of particular motions and legal memoranda, and any other matters appropriate in the circumstances of the case.

(6) *Obligations of Parties*. All counsel and all parties must take the necessary steps to complete discovery and prepare for trial within the time limits established by the scheduling order.

(7) *Modification*.

(A) *By Leave of Court*. The scheduling order may not be modified except by leave of court on a showing of good cause. A party seeking a modification of the scheduling order must provide the court with a copy of the existing scheduling order and a detailed discovery plan, which lists the specific methods of discovery to be conducted, the persons or materials to be examined, and the date or dates within which all further discovery must be completed.

(B) *By Stipulation*. Stipulations between counsel will not be effective to change any deadlines in the order without court approval, provided, however, that any date in the scheduling order except for the date of court proceedings (e.g., status hearings, ex

parte proofs, ADR sessions, pretrials and trials) may be extended once for up to 14 days on the filing and delivery to the assigned judge of a praecipe showing that all parties who have appeared in the action consent to the extension. Any motion to further modify a date so extended must recite that the date in question was previously extended by consent and must specify the length of that extension.

(c) MEETING 4 WEEKS PRIOR TO PRETRIAL CONFERENCE.

(1) *Attendance*. Not less than 4 weeks prior to the pretrial conference, at least one of the attorneys who will conduct the trial for each of the parties, and any unrepresented parties, must meet in person. If such persons are unable to agree on a date, time, and place for the meeting, the parties must notify the judge by phone in advance that they will meet at 9:00 a.m. in the judge's courtroom or such other place to be designated by the judge on the day which is 4 weeks prior to the date of the pretrial conference.

(2) *Matters for Consideration*. The participants in the meeting must spend sufficient time together to discuss the case thoroughly and must make a good faith effort to reach agreement on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence;

(E) identifying witnesses and documents;

(F) referring matters to a magistrate judge or master;

(G) settling the case or using alternative dispute resolution procedures to resolve the dispute;

(H) determining the form and content of the pretrial order;

(I) disposing of pending motions;

(J) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(K) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(3) *Exhibits*.

(A) *Documentary Exhibits*. At this meeting, each party must provide to all other parties copies of all documentary exhibits which that party may offer at trial; affixed to each exhibit must be a numbered exhibit sticker and the exhibits must be identified, by exhibit number, on an index provided with the exhibits.

(B) *Non-Documentary Exhibits*. Each party also must make all non-documentary exhibits available for examination by other parties at or before this meeting.

(d) 3 WEEKS PRIOR TO PRETRIAL CONFERENCE. Three weeks prior to the pretrial conference, each party must file with the court, serve on all other parties, and deliver to the assigned judge in accordance with the provisions of Rule 5(d) any motion in limine, motion to bifurcate, or other motion respecting the conduct of the trial, which a party wishes to have the court consider.

(e) ONE WEEK PRIOR TO PRETRIAL CONFERENCE.

(1) *Joint Pretrial Statement*. One week prior to the pretrial conference, the parties must file with the court and deliver to the assigned judge in accordance with the provisions of Rule 5(d) a joint pretrial statement, which must include a certification of the date and place of the meeting held pursuant to Rule 16(c), must be in a form prescribed by the court, and must also include the following items:

(A) a list of any proposed voir dire questions;

(B) a list, by number, of those proposed instructions contained in the Standardized Civil Jury Instructions for the District of Columbia;

(C) the complete text of any proposed jury instruction not found in the Standardized Civil Jury Instructions for the District of Columbia;

(D) any proposed verdict form, including any special interrogatories to be answered by the jury; and

(E) any objections and suggestions for alternative language that a party may have to the voir dire questions, jury instructions, or verdict form submitted by any other party.

(2) *Objections to Exhibits*. Objections, if any, by a party to the exhibits submitted by any other party also must be made at this time as part of the joint pretrial statement. A party raising an objection to an exhibit of another party must attach to the statement of objection a copy of the exhibit to which the objection is made. The court will not consider any objection or alternative language that is filed beyond the time frames prescribed by this rule unless the party making the objection or suggestion can establish that the objection or suggestion could not, for reasons beyond that party's control, be timely filed.

(3) *Unlisted Witnesses or Exhibits*. Except for plaintiff's rebuttal case or for impeachment purposes, no party may offer at trial the testimony of any witness not listed in the pretrial statement of the parties, nor any exhibit not served as required by this rule, without leave of court.

(f) PRETRIAL AND SETTLEMENT CONFERENCE.

(1) *Attendance*. The lead counsel who will conduct the trial for each of the represented parties, and, unless excused by the judge for good cause, all parties must attend the pretrial and settlement conference.

(2) *Exhibits*. All counsel and unrepresented parties must bring to the conference their trial exhibits, copies of which were served on other parties pursuant to Rule 16(c)(3). If any party proposes to offer more than 15 exhibits at trial, that party's exhibits must be arranged as follows:

(A) *Nonjury Trials*. In nonjury trials, the original exhibits, with numbered exhibit stickers affixed, must be placed in a looseleaf, three-ring notebook with tabbed divider pages. At the front of the notebook must be an Exhibit Summary Form (copies of which are available in the clerk's office) describing each exhibit by number.

(B) *Jury Trials*. In jury trials, the notebook must contain copies of all the exhibits; the original exhibits, with stickers affixed, must be placed in a folder, in numerical order, along with the original Exhibit Summary Form.

(3) *Conference Details*. The conference will generally be held by the judge who will preside at trial and will not be recorded unless the judge orders otherwise. If settlement of the case cannot be achieved within a reasonable time, the judge will discuss with those attending the conference the pretrial filings of the parties as may be pertinent and will set a trial date for the case.

(g) PRETRIAL ORDER.

(1) *Content of the Order*. After the pretrial conference, the court must issue an order reciting the action taken. Insofar as possible, the court will resolve all pending disputes in the pretrial order. With respect to some matters, it may be necessary to reserve ruling until the time of trial or to require additional briefing by the parties prior to trial. Exhibits, the authenticity of which is not genuinely in dispute, will be deemed authentic and the offering party will not be required to authenticate these exhibits at trial. The pretrial order may set limits with respect to the time for voir dire, opening statement, examination of witnesses, and closing argument and may also limit the number of lay and expert witnesses who can be called by each party. The pretrial order controls the course of the action unless the court modifies it.

(2) *Modification*. The pretrial order may be modified at the discretion of the court for good cause and must be modified if necessary to prevent manifest injustice.

(h) COMMENCEMENT OF TRIAL. On any date for which the case has been set for trial, the parties and their counsel must be prepared to commence the trial on that date or on any of the 2 succeeding court days in the event that their case must trail another trial on the judge's calendar.

(i) OTHER SCHEDULING OR STATUS CONFERENCES. In addition to the initial scheduling and settlement conference and the pretrial and settlement conference, the court may in its discretion order the attorneys for the parties and any unrepresented parties to appear before it for other conferences for such purposes as:

(1) expediting the disposition of the action;

(2) establishing continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation;

(5) facilitating the settlement of the case; and

(6) addressing any other matters appropriate in the circumstances of the case.

(j) AUTHORITY OF COUNSEL; ATTENDANCE OF PARTIES, PRINCIPALS, AND PERSONS WITH SETTLEMENT AUTHORITY. At least one of the attorneys for each party participating in any conference before trial, or in the meeting described in Rule 16(c), must have authority to enter into stipulations, to make admissions regarding all matters that the participants may reasonably anticipate may be discussed, and to participate fully in all settlement discussions. Unless excused by the judge for good cause, all parties and any person not a party whose authority may be needed to settle the case must attend any pretrial conference conducted pursuant to Rule 16(f) and any alternative dispute resolution session ordered by the court.

(k) CONTINUANCES.

(1) *By Court Order*. No trial or conference provided for in this rule may be continued except by order of the judge on a showing of specific and sufficient reasons why the applicant cannot attend or proceed with the trial or conference as scheduled or, for a conference, will not be able by the scheduled date to report to the court the information required by this rule. An application to continue the trial must include a certificate or affidavit by the party or party’s attorney indicating that all other parties were given reasonable notice of the applicant’s intent to make the application.

(2) *Timing of Application*. Except for applications based on circumstances arising later, application for a continuance must be made to the judge not less than 30 days before the trial or conference sought to be continued.

(3) *When Effective*. Until an order granting a continuance is docketed, the case will remain set for the trial or conference on the original date.

(*l*) SANCTIONS.

(1) *In General*. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or a party's attorney:

(A) fails to appear at a scheduling or pretrial conference;

(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) *Imposing Fees and Costs*. Instead of or in addition to any other sanction, the court must order the party, its attorney, or both, to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this rule unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

COMMENT TO 2017 AMENDMENTS

The 2015 amendments to *Federal Rule of Civil Procedure 16*(b)(1)(B) and (b)(2) are inconsistent with Superior Court practice and have not been incorporated into this rule. However, the Superior Court rule incorporates the 2015 federal amendments related to the content of the scheduling order with one alteration—the reference to *Federal Rule of Evidence 502* was replaced with a reference to new Superior Court Rule 26(b)(5)(C). Rule 26(b)(5)(C) contains the relevant language from *Federal Rule of Evidence 502(d) and (e)*. Thus, this provision is intended to operate in the same manner as its federal counterpart.

Section (k) has been amended to address the continuance of a trial. The provisions related to trial continuances were formerly found in Rule 40-I.

COMMENT

This rule differs substantially from *Federal Rule of Civil Procedure 16*, and reflects procedures instituted by the Superior Court to reduce delay in civil litigation.

Section (b) requires that all unrepresented parties and counsel must attend a conference early in the case at which the judge will explore the possibilities of settlement or alternative dispute resolution and will then establish a firm schedule for completion of the litigation. The scheduling order thus set may be modified with court approval and for good cause or the parties may, under certain circumstances, agree to a modification in the order without first obtaining approval from the court.

Section (c) provides for a meeting four weeks before the pretrial conference at which counsel and any unrepresented parties must endeavor to settle the case and to simplify and shorten the trial. The meeting may be held at any location agreed to by the participants; failing agreement, it will be held in the judge's courtroom or another

location designated by the judge. This section also provides for the exchange of exhibits.

Section (d) provides that pretrial motions will be made three weeks before the pretrial conference, and section (e) requires that pretrial statements, suggested voir dire questions, suggested jury instructions and a suggested verdict form be submitted jointly along with responses to these suggestions and to the exhibits one week before pretrial. Note that section (a) permits the court to exempt appropriate cases, such as pro se prisoner cases, from any or all of the provisions contained in this rule.

Subsection (e)(3) provides that, except by leave of court, the only witnesses allowed to testify at a trial whose names were not listed in the pretrial statement of the parties will be those called as rebuttal or impeachment witnesses. See *R. & G. Orthopedic Appliances and Prosthetics, Inc. v. Curtin*, 596 A.2d 530 (D.C. 1991), and *Cooper v. Safeway Stores*, Inc., 629 A.2d 31 (D.C. 1993).

Section (f) governs the conduct of the pretrial and settlement conference.

This rule does not preclude the judge to whom a case is assigned from modifying particular requirements of sections (d), (e) and (f), either by a standing order made available at the Initial Scheduling and Settlement Conference or otherwise as the judge finds appropriate and efficient in any particular case.

Section (g) retains the requirement for the entry of a pretrial order which controls the subsequent course of the action.

Section (h) provides that parties and counsel must be prepared to commence trial on any trial date set by the court or on any of the two succeeding court days if the case must "trail" completion of an earlier trial. If a case is thus trailed, the court will generally permit greater flexibility in the order in which witnesses may be called in each party's case in order to accommodate any rescheduling of witnesses that may be necessary.

Section (i), like *Federal Rule of Civil Procedure 16(b)*, provides that the court may schedule other conferences beyond those called for by sections (b) and (f). It is expected that additional conferences will generally be reserved for more complex cases.

Section (j) requires that, at any conference prior to trial, counsel must have authority to participate fully in discussion of settlement and other matters. Unless excused by the judge for good cause, parties and any person whose authority may be needed to settle the case must attend any pretrial and settlement conference and any alternative dispute resolution session.

Section (k) establishes a strict continuance policy and provides that, except for circumstances arising later, any application for continuance of a conference must be made at least 30 days before the scheduled conference and must set forth specific and sufficient reasons why the applicant cannot attend the conference or cannot provide the information required by the rule by the date of the conference.

Section (*l*), providing for sanctions, is identical to *Federal Rule of Civil Procedure 16(f).*

Rule 16-I. [Deleted].

Rule 16-II. Failure to Appear for Conference

If counsel or a self-represented party fails to appear at a pretrial, settlement, or status conference, the court may, where appropriate:

(1) enter a default;

(2) dismiss the case, with or without prejudice; or

(3) take other action, including the imposition of penalties and sanctions.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

TITLE IV. PARTIES

Rule 17. Plaintiff and Defendant; Capacity; Public Officers

(a) REAL PARTY IN INTEREST.

(1) *Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by statute.

(2) *Action in the Name of the United States or the District of Columbia for Another's Use or Benefit.* When an applicable statute so provides, an action for another's use or benefit must be brought in the name of the United States or the District of Columbia.

(3) *Joinder of the Real Party in Interest.* The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) CAPACITY TO SUE OR BE SUED. Capacity to sue or be sued is determined as follows:

(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;

(2) for a corporation, by the law under which it was organized; and

(3) for all other parties, by the law of the District of Columbia, except that:

(A) a partnership or other unincorporated association with no such capacity under the District of Columbia's laws may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and

(B) *28 U.S.C. §§ 754 and 959 (a)* govern the capacity of a receiver appointed by a United States court to sue or be sued.

(c) MINOR OR INCOMPETENT PERSON.

(1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) *Without a Representative.* A minor or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order— to protect a minor or incompetent person who is unrepresented in an action.

(d) PUBLIC OFFICER'S TITLE AND NAME. A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 17*, as amended in 2007, but maintains the following local distinctions: 1) subsection (a)(2) includes suits in the name of the District of Columbia for the use or benefit of another; 2) "District of Columbia" is substituted for "state where the court is located" in subsection (b)(3); 3) "District of Columbia's laws" is substituted for "that state's law" in subsection (b)(3)(A); and 4) "in a United States court" is struck from subsection (b)(3)(B) to indicate that a federally appointed receiver can properly sue or be sued in the Superior Court in accordance with *28 U.S.C § 959*.

In accordance with the 2007 federal amendments, former Rule 25(d)(2) has been moved to section (d) of this rule.

COMMENT

Identical to *Federal Rule of Civil Procedure 17* except for 4 changes: (1) Revision of the 2nd sentence in section (a) thereof to comprehend statutes authorizing suits by the District of Columbia for the use or benefit of another; (2) substitution of "District of Columbia" for "state in which the district court is held" in section (b); (3) substitution of "District of Columbia" for "such state" in the 1st exception clause of section (b); and (4) deletion of the limiting phrase "in a court of the United States" from the 2nd exception clause in section (b). This last modification was effected so as to insure that the suing or suable capacity of federally appointed receivers, who may sue and be sued in state courts, shall be determined as nearly as possible in conformity with applicable federal law under *28 U.S.C. §§ 754 and 959(a)*.

Rule 18. Joinder of Claims

(a) IN GENERAL. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) JOINDER OF CONTINGENT CLAIMS. A party may join 2 claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

COMMENT TO 2017 AMENDMENTS

Rule 18 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 18*.

COMMENT

Identical to Federal Rule of Civil Procedure 18.

Rule 19. Required Joinder of Parties

(a) PERSONS REQUIRED TO BE JOINED IF FEASIBLE.

(1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order.* If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) *Service of Process.* Service of process under this rule must be accomplished in the manner and within the time limits prescribed by Rule 4.

(b) WHEN JOINDER IS NOT FEASIBLE. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) PLEADING THE REASONS FOR NONJOINDER. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) EXCEPTION FOR CLASS ACTIONS. This rule is subject to Rule 23.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 19*, as amended in 2007, but maintains the following local distinctions: 1) the federal provision related to venue is deleted because it pertains to “[a] change of venue [which] is not an available option in the District [of Columbia],” *Catlett v. United States*, 545 A.2d 1202, 1215 n.27 (D.C. 1988); 2) the federal venue provision is replaced with a provision specifying that service of process must be accomplished in accordance with Rule 4.

COMMENT

Identical to *Federal Rule of Civil Procedure 19* except for the deletion of the inapplicable last sentence in section (a) thereof relating to venue and for the addition of the provision that service of process under the Rule must be accomplished in accordance with Rule 4, including the time limit imposed by Rule 4(j). For discussion of service of process on Rule 19 parties, see Rule 4(f) and D.C. Code § 11-943 (b) (1981).

Rule 20. Permissive Joinder of Parties

(a) PERSONS WHO MAY JOIN OR BE JOINED.

(1) *Plaintiffs*. Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) *Defendants* Persons—and any property subject to process in rem—may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) *Extent of Relief*. Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more of the plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) PROTECTIVE MEASURES. The court may issue orders—including an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

COMMENT TO 2017 AMENDMENTS

Rule 20 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 20*.

COMMENT

Identical to *Federal Rule of Civil Procedure 20*, except for deletion of reference to admiralty process in the 2nd sentence of section (a) thereof.

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

COMMENT TO 2017 AMENDMENTS

Rule 21 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 21*.

COMMENT

Identical to *Federal Rule of Civil Procedure 21*.

Rule 22. Interpleader

(a) GROUNDS.

(1) *By a Plaintiff*. Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Service of process within this rule must be accomplished in the manner and within the time limits provided by Rule 4. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) *By a Defendant*. A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) RELATION TO OTHER RULES AND STATUTES. This rule supplements—and does not limit—the joinder of parties allowed by Rule 20.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 22*, as amended in 2007, but maintains the following local distinctions: 1) the addition of a provision specifying that service of process must be accomplished in accordance with Rule 4; 2) the deletion of language addressing interpleader actions in federal district courts.

COMMENT

Identical to *Federal Rule of Civil Procedure 22* except for deletion of section (2) thereof which deals with sections of Title 28, United States Code relating only to interpleader actions in federal district courts and for the addition of the provision that service of process under the Rule must be accomplished in accordance with Rule 4, including the time limit imposed by Rule 4(j).

Rule 23. Class Actions

(a) PREREQUISITES. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) TYPES OF CLASS ACTIONS. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) CERTIFICATION ORDER; NOTICE TO CLASS MEMBERS; JUDGMENT; ISSUES CLASSES; SUBCLASSES.

(1) *Certification Order*.

(A) *Time to Issue*. At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel*. An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) *Altering or Amending the Order*. An order that grants or denies class certification may be altered or amended before final judgment.

(2) *Notice*.

(A) *For (b)(1) or (b)(2) Classes*. For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) *For (b)(3) Classes*. For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion by a specified date;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) *Judgment*. Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) *Particular Issues*. When appropriate, an action may be maintained as a class action with respect to particular issues.

(5) *Subclasses*. When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) CONDUCTING THE ACTION.

(1) *In General*. In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require—to protect class members and fairly conduct the action—giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) *Combining and Amending Orders*. An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) SETTLEMENT, VOLUNTARY DISMISSAL, OR COMPROMISE. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised

only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

(2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.

(3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under Rule 23(e); the objection may be withdrawn only with the court's approval.

(f) APPEALS. An appeal from an order of the Superior Court granting or denying class action certification under this rule may be permitted in accordance with D.C. Code § 11-721 (d) (2012 Repl.) and the District of Columbia Court of Appeals Rules.

(g) CLASS COUNSEL.

(1) *Appointing Class Counsel.* Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) *Standard for Appointing Class Counsel.* When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) *Interim Counsel.* The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) *Duty of Class Counsel.* Class counsel must fairly and adequately represent the interests of the class.

(h) ATTORNEY'S FEES AND NONTAXABLE COSTS. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the

provisions of Rule 23(h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 23*, as amended in 2007 and 2009, except that 1) language in subsection (c)(2)(B)(v) clarifies that there is a deadline for requesting exclusion from the class; and 2) in accordance with *Ford v. ChartOne*, 834 A.2d 875 (D.C. 2003), section (f) has been modified to indicate that the filing of an appeal is governed by D.C. Code § 11-721 (d) (2012 Repl.) and the appellate rules. The provisions allowing the court to shift the cost of notice, which were unique to the Superior Court rule, have been deleted. If a class action is settled and residual funds remain after all identified members of the class have received their proper distribution, the court may turn to conventional principles of equity to resolve the case. Traditionally, there are four ways by which a court may distribute the residual funds: 1) *pro rata* distribution to the class members; 2) reversion to the defendant; 3) escheat to the government; and 4) *cy pres* distribution. *See, e.g.*, *Powell v. Georgia-Pacific Corp.*, 119 F.3d 703, 706 (8th Cir. 1997). It is generally understood that "neither party has a legal right to the unclaimed funds." *Id. See also Diamond Chem. Co. v. Akzo Nobel Chems. B.V.*, 517 F. Supp. 2d 212, 217 (D.D.C. 2007). When determining which method of distribution is most appropriate, the court's choice "should be guided by the objectives of the underlying statute and the interests of the silent class members." *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1307 (9th Cir. 1990).

In the case of a *cy pres* distribution of the residual funds, the court should first consider whether the funds can be distributed in a manner that is closely related to the original purpose. *See Superior Beverage Co. v. Owens-Illinois, Inc.*, 827 F. Supp. 477, 477-80 (N.D. Ill. 1993). If no such distribution is possible, the court may use its equitable powers to consider "other public interest purposes by educational, charitable, and other public service organizations," including "charitable donations . . . to support non-profit provision of pro bono legal services." *Jones v. Nat'l Distillers*, 56 F. Supp. 2d 355, 359 (S.D.N.Y. 1999) (citing *Superior Beverage Co.*, 827 F. Supp. at 478-79) (internal quotation marks omitted). The court may solicit applications for *cy pres* grants by public notice and, if necessary, hold hearings to give the applicants a chance to be heard. Alternatively, the court may allocate some or all of the residual funds to an organization such as the D.C. Bar Foundation or other local bar associations that have already implemented procedures for the distribution of funds to public service organizations.

COMMENT

Rule 23 is identical to Federal Rule of Civil Procedure 23 except for certain changes in subsections (c)(1) and (c)(2) which specifically authorize the judge to shift the costs of notice to the defendant, in whole or in part, under limited circumstances. In order to make this determination relating to costs of notice, the judge is further authorized to conduct a hearing, pursuant to Rule 23-I(c)(3), at which all relevant factors, including the likelihood of success on the merits, can be considered. The amendment, while essentially retaining the previous Superior Court procedure, was made necessary by *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974) which held that under the language of Fed. R. Civ. P. 23, the costs of notice could not be shifted to the defendant, except perhaps in cases involving a fiduciary, and, the Court could not make a preliminary determination of the merits of a case. The specific changes are the deletion of the phrase, “As soon as practicable ...” in the 1st sentence of subsection (c)(1) and the addition of the last sentence in subsection (c)(2).

Rule 23-I. Class Actions: Procedure for Determining Whether Action May Be Maintained as Class Action; Additional Notice Requirements

(a) CLASS ACTION ALLEGATIONS. In any case sought to be maintained as a class action, the complaint must contain under a separate heading styled "Class Action Allegations":

(1) a reference to the portion or portions of Rule 23, under which the suit is claimed properly to be maintainable as a class action; and

(2) appropriate allegations justifying the claim, including but not limited to:

(A) the size (or approximate size) and definition of the alleged class;

(B) the basis on which the plaintiff claims to be an adequate representative of the class, or if the class is comprised of defendants, that those named as parties are adequate representatives of the class;

(C) the alleged questions of law and fact claimed to be common to the class; and

(D) in actions claimed to be maintainable as class actions under Rule 23(b)(3), allegations supporting the findings required by that rule.

(b) MOTION FOR CERTIFICATION. Within 90 days after the filing of a complaint in a case sought to be maintained as a class action, unless the court in the exercise of its discretion has extended this period, the plaintiff must move for a certification under Rule 23(c)(1) that the case may be so maintained. In ruling on the motion, the court may allow the action to be so maintained, may deny the motion, or may order that a ruling be postponed pending discovery or other appropriate preliminary proceedings. A defendant may move at any time to strike the class action allegations or to dismiss the complaint.

(c) PROVISIONS AS TO NOTICE. In an action maintained under Rule 23(b)(3), the plaintiff must include in the motion for certification a statement proposing:

(1) how, when, by whom, and to whom the notice required by Rule 23(c)(2) must be given;

(2) how and by whom payment is to be made; and

(3) by whom the response to the notice is to be received.

In lieu of this statement, the movant may state reasons why a determination of these matters cannot be made at that time, and offer a proposal as to when the determination should be made. In certifying a class action as maintainable under Rule 23(b)(3), the court may include in its order the provisions for notice pursuant to Rule 23(c)(2) or may postpone a determination of the matter.

(d) APPLICABILITY TO COUNTERCLAIMS AND CROSSCLAIMS. The foregoing provisions apply, with appropriate adaptations, to any counterclaim or crossclaim alleged to be brought for or against a class.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Subsections (b)(2) and (c)(2)-(4) were deleted as unnecessary because the material is covered by other rules.

COMMENT

Rule 23-I. Section (a) incorporates the substance of U.S. District Court for D.C. Rule 23.1 which requires specific allegations, relating to the class character of the suit, to be included in the complaint. Section (b) has been amended to incorporate certain other features in U.S. District Court Rule 23.1. Section (b) provides a clear and simple procedure for promptly securing a Court ruling on the class character of the suit. The amendment requires a motion for certification as a class to be made within 90 days. Ten days is provided for an opposition to be filed. The procedure is similar to the local requirements for handling a motion for summary judgment set forth in Rule 12-I. However, the certification motion necessarily comes much earlier in the action than does a motion for summary judgment. Accordingly, Rule 23(c)(1) permits the Court to "alter or amend" its order later if there should develop matters not apparent to the Court at the time the order was entered. Note that the motion for certification and any opposition thereto should also contain any material with respect to notice procedure which may be required by Rule 23-I(c). Section (c) included matters which were previously contained in Rule 23-II, which is now vacant. This section provides a procedure for the Court to determine the manner in which notice to the class members is to be provided. The procedure is substantially identical to that of former Rule 23-II. As noted above, the use of "mini-hearings" as a tool for determining who should pay for the notice, which was found to be contrary to the language of *Federal Rule 23* in Eisen, is specifically authorized under the amendment to this Court's Rule 23. Section (d) is taken from U.S. District Court Rule 23-1. Accordingly, the word "claimant" is changed to "plaintiff" throughout the Rule.

Rule 23-II. [Deleted].

Rule 23.1. Derivative Actions

(a) PREREQUISITES. This rule applies when one or more shareholders or members of a corporation or an unincorporated association bring a derivative action to enforce a right that the corporation or association may properly assert but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.

(b) PLEADING REQUIREMENTS. The complaint must be verified and must:

(1) allege that the plaintiff was a shareholder or member at the time of the transaction complained of, or that the plaintiff's share or membership later devolved on it by operation of law;

(2) allege that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and

(3) state with particularity:

(A) any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and

(B) the reasons for not obtaining the action or not making the effort.

(c) SETTLEMENT, DISMISSAL, AND COMPROMISE. A derivative action may be settled, voluntarily dismissed, or compromised only with the court’s approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 23.1*, as amended in 2007.

COMMENT

Identical to *Federal Rule of Civil Procedure 23.1* except that reference to "a court of the United States" has been deleted from the clause describing the allegation of non-collusiveness.

Rule 23.2. Actions Relating to Unincorporated Associations

This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 23(e).

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 23.2*, as amended in 2007.

COMMENT

Identical to *Federal Rule of Civil Procedure 23.2*.

Rule 24. Intervention

(a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by an applicable law; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) PERMISSIVE INTERVENTION.

(1) *In General.* On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by an applicable law; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) *By a Government Officer or Agency.* On timely motion, the court may permit a federal, District of Columbia, or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) *Delay or Prejudice.* In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) NOTICE AND PLEADING REQUIRED. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 24*, as amended in 2007, but maintains the following local distinctions: 1) the addition of "District of Columbia" in subsection (b)(2); and 2) the substitution of "applicable law" for "federal statute" throughout the rule.

As with the federal rule, the notification provisions for challenges to the constitutionality or validity of 1) federal or state statutes, or 2) acts, orders, regulations, or enactments exclusively applicable to the District of Columbia, which were formerly found in section (c), have been moved to Rule 5.1.

COMMENT

Rule 24 identical to *Fed. Rule of Civil Procedure 24* except for (1) addition of "District of Columbia" to the governmental jurisdictions specified in the 2nd sentence of section (b); (2) substitution of "applicable law" for "statute of the United States" in sections (a), (b), and (c) so as to comprehend reference to appropriate statutory or case law relating to intervention rights in the District of Columbia.; and (3) addition to section (c) of a notification provision for acts, orders regulations, or enactments exclusively applicable to the District of Columbia so that this Court will follow as nearly as possible

the notification procedure prescribed for courts of the United States in *23 U.S.C. § 2403.* In order to assist the Court in fulfilling its notification responsibilities under this section, the Rule requires an alerting inscription on every pleading the filing of which makes such notification necessary.

The District of Columbia Self-Government and Governmental Reorganization Act of 1973, Public Law 93-198, is reported in its entirety in Volume 1 of the 1981 Michie Edition of the D.C. Code (1991 Replacement Volume, pp. 173-255). Individual sections of the Act are codified throughout the D.C. Code, and a listing of those sections and references to their counterparts in the D.C. Code can be found in the Disposition Table in Volume 11 of the 1981 (1990 Replacement Volume, pp. 216-218).

Rule 25. Substitution of Parties

(a) DEATH.

(1) *Substitution If the Claim Is Not Extinguished*. If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) *Continuation Among the Remaining Parties*. After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) *Service.* A motion to substitute must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

(b) INCOMPETENCY. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) TRANSFER OF INTEREST. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

(d) PUBLIC OFFICERS; DEATH OR SEPARATION FROM OFFICE. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 25*, as amended in 2007, except that, as with the prior version of the Superior Court rule, "notice of hearing" has been deleted from the service provision.

In accordance with the 2007 amendments to the federal rule, former section (d)(2) of this rule has been moved to Rule 17(d).

Rule 25(a)(3) only requires service of the motion to substitute. It does not "incorporate a substantive requirement that a summons and complaint also . . . be served." *Epps v. Vogel*, 454 A.2d 320, 324 (D.C. 1982).

COMMENT

Identical to *Federal Rule of Civil Procedure 25*, except for deletion of inapplicable reference to notice of hearing in subsection (a)(1). In connection with this Rule, see D.C. Code (1967 Edition, Supplement IV) § 12-102.

TITLE V. DISCLOSURES AND DISCOVERY

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) REQUIRED DISCLOSURES.

(1) [Omitted].

(2) *Disclosure of Expert Testimony*.

(A) *In General*. A party must disclose to the other parties the identity of any witness it may use at trial to present expert testimony.

(B) *Witnesses Who Must Provide a Written Report*. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition;

(vi) a statement of the compensation to be paid for the study and testimony in the case; and

(vii) the following certification, signed by the witness: “I hereby certify that this report is a complete and accurate statement of all of my opinions, and the basis and reasons for them, to which I will testify under oath.”

(C) *Witnesses Who Do Not Provide a Written Report*. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) *Time to Disclose Expert Testimony*. A party must make these disclosures at the times and in the sequence set forth in the scheduling order issued pursuant to Rule 16(b)(5)(C) and (D).

(E) *Supplementing the Disclosure*. The parties must supplement these disclosures when required under Rule 26(e).

(3) [Omitted].

(4) *Form of Disclosures*. Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

(b) DISCOVERY SCOPE AND LIMITS.

(1) *Scope in General*. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or

expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) *Limitations on Frequency and Extent*.

(A) *When Permitted*. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or length of depositions under Rule 30. By order, the court may also limit the number of requests under Rule 36.

(B) *Specific Limitations on Electronically Stored Information*. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) *When Required*. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

(3) *Trial Preparation: Materials*.

(A) *Documents and Tangible Things*. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) *Protection Against Disclosure*. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party’s attorney or other representative concerning the litigation.

(C) *Previous Statement*. Any party or other person may, on request and without the required showing, obtain the person’s own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording—or a transcription of it—that recites substantially verbatim the person’s oral statement.

(4) *Trial Preparation: Experts*.

(A*) Deposition of an Expert Who May Testify*. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule

26(a)(2) requires a report from an expert, the deposition may be conducted only after the report is provided.

(B) *Trial-Preparation Protection for Draft Reports or Disclosures*. Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) *Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses*. Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) *Expert Employed Only for Trial Preparation*. Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(E) *Payment*. Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and

(ii) for discovery under (D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert’s facts and opinions.

(5) *Claiming Privilege or Protecting Trial-Preparation Materials*.

(A) *Information Withheld*. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) *Information Produced*. If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party 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 to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(C) *Orders and Agreements Controlling the Effects of Disclosure*.

(i) The court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other proceeding in any jurisdiction.

(ii) An agreement on the effect of disclosure in a proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(6) *Insurance Agreements*. A party may obtain for inspection and copying any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(c) PROTECTIVE ORDERS.

(1) *In General*. A party or any person from whom discovery is sought may move for a protective order in this court—or as an alternative on matters relating to a deposition, in the court for the jurisdiction where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

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

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only by court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) *Ordering Discovery*. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) *Awarding Expenses*. Rule 37(a)(5) applies to the award of expenses.

(d) TIMING AND SEQUENCE OF DISCOVERY.

(1) *Timing*. Time limitations for completion of discovery will be set by court order. The court may order an enlargement of the time limitations for the completion of discovery, pursuant to Rule 16(b)(5)(E) and (F).

(2) *Sequence*. Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

(e) SUPPLEMENTING DISCLOSURES AND RESPONSES.

(1) *In General*. A party who has made an expert disclosure under Rule 26(a) —or who has responded to an interrogatory, request for production, or request for admission— must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) *Expert Witness*. For an expert whose report must be disclosed under Rule 26(a)(2), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 16(c) are due.

(f) [Omitted].

(g) SIGNING DISCOVERY REQUESTS, RESPONSES, AND OBJECTIONS.

(1) *Signature Required, Effect of Signature*. Every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name—or by the party personally, if unrepresented—and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry, the discovery request, response, or objection is:

(A) consistent with these rules and warranted by existing law or a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(B) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(C) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) *Failure to Sign*. Other parties have no duty to act on an unsigned request, response, or objection, until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) *Sanction for Improper Certification*. If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

(h) MEETING TO RESOLVE DISCOVERY DISPUTES.

(1) *In General*. Before filing any motion relating to discovery except a motion pursuant to Rule 37(b) for sanctions for failure to comply with a court order, the affected parties or counsel must meet for a reasonable period of time in an effort to resolve the disputed matter. Any motion relating to discovery, except a motion pursuant to Rule 37(b), must contain, immediately below the signature of the attorney or party signing the motion, a certification that despite a good faith effort to secure it, the relief sought in the motion has not been provided. The certification must set forth specific facts describing the good

faith efforts, including a statement of the date, time, and place of the meeting required by this rule.

(2) *Waiver*. The requirement of a meeting is waived if:

(A) the motion concerns a failure to serve any response whatever to a Rule 33, 34, or 36 discovery request or a failure to appear for a deposition or a Rule 35 examination and the motion is accompanied by a copy of a letter, sent at least 10 days before the motion was filed, asking that the opposing counsel or party respond to the discovery request or that the deponent or examinee appear for a rescheduled deposition or examination; or

(B) the movant certifies that, despite having sent to the opposing counsel or party, at least 10 days before the motion was filed, a letter (a copy of which must be attached to the motion) proposing a time and place for such a meeting, and despite having made 2 telephone calls to the office of the opposing counsel or party (the date and time of which calls must be specified in the motion), the movant has been unable to convene a meeting to resolve the disputed discovery matter.

COMMENT TO 2017 AMENDMENTS

This rule incorporates the 2010 and 2015 amendments to *Federal Rule of Civil Procedure 26* with the following exceptions: 1) subsection (a)(2)(C)(i) does not include references to *Federal Rules of Evidence 702, 703, or 705*; 2) the timing of expert disclosures in subsection (a)(2)(D) differs; 3) the subsection entitled “Early Rule 34 Requests” is omitted because there is no discovery moratorium in the Superior Court; and 4) amendments to section (f) are not incorporated because this section was previously omitted. New subsection (b)(5)(C) was created to address an issue raised by a 2015 amendment to *Federal Rule of Civil Procedure 16*. Instead of referencing *Federal Rule of Evidence 502* in Rule 16(b)(4)(C), Rule 26(b)(5)(C) includes the text of *Federal Rule of Evidence 502(d) and (e)*. These new provisions govern the manner and means by which litigants and the court can control the effects of disclosure of privileged or protected information. Agreements reached under Rule 26(b)(5)(C) can be included in a scheduling order issued under Rule 16(b)(4).

COMMENT

Subsection (a)(1). *Federal Rule of Civil Procedure 26(a)(1)* is inconsistent with Superior Court practice, and would ultimately slow down the process of discovery. The Superior Court rules allow parties to begin discovery at the filing of the complaint; this process gives parties greater options for early discovery than those available under the Federal Rules.

Subsection (a)(2) is new. It requires a written report from an expert; however, it clarifies the federal rule in accordance with the Federal Advisory Committee Notes and case decisions, which explain that legal counsel are not prohibited from being substantively involved with the preparation of the expert’s written report so long as the substance and conclusions are the expert’s own.

Subsection (a)(3). As it relates to pretrial disclosures, *Federal Rule of Civil Procedure 26(a)(3)* is incorporated in the pretrial statement required under Rule 16.

Subsection (b). The Advisory Committee Notes to the *Federal Rules of Civil Procedure* contain a lengthy discussion of the 2006 amendments to the federal rule addressing the discovery of electronically-stored information. Because these 2015 amendments to the Superior Court Rules closely follow the 2006 *Federal Rules of Civil Procedure* amendments, parties and counsel should refer to the *Federal Rules of Civil Procedure* Advisory Committee Notes for guidance. In particular, the *Federal Rules of Civil Procedure* Advisory Committee Notes to Rule 26(b) address the potential for cost-shifting in the context of discovery and state as follows:

> The good-cause inquiry and consideration of the Rule 26(b)(2)(C) limitations are coupled with the authority to set conditions for discovery. The conditions may take the form of limits on the amount, type, or sources of information required to be accessed and produced. The conditions may also include payment by the requesting party of part or all of the reasonable costs of obtaining information from sources that are not reasonably accessible. A requesting party's willingness to share or bear the access costs may be weighed by the court in determining whether there is good cause. But the producing party's burdens in reviewing the information for relevance and privilege may weigh against permitting the requested discovery.

Rule 27. Depositions to Perpetuate Testimony

(a) BEFORE AN ACTION IS FILED.

(1) *Petition*. A person who wants to perpetuate testimony about any matter cognizable in this court may file a verified petition in this court, in an appropriate state court in the place where any expected adverse party resides, or in the United States district court in the district where any expected adverse party resides. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

(A) that the petitioner expects to be a party to an action cognizable in this court but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address and expected substance of the testimony of each deponent.

(2) *Notice and Service*. At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the district or state in the manner provided in Rule 4. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney to represent persons not served in the manner provided by Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. If any expected adverse party is a minor or is incompetent, Rule 17(c) applies.

(3) *Order and Examination*. If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35. A reference in these rules to this court means, for the purposes of this rule, the court where the petition for the deposition was filed.

(4) *Using the Deposition*. A deposition to perpetuate testimony may be used under Rule 32(a) in any later-filed action in this court involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible in evidence in the courts of the state where it was taken.

(b) PENDING APPEAL.

(1) *In General*. The court after rendering judgment may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in the court.

(2) *Motion*. The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) *Court Order*. If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in a pending court action.

(c) PERPETUATION BY AN ACTION. This rule does not limit a court's power to entertain an action to perpetuate testimony.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 27*, as amended in 2007 and 2009, except that court designations have been modified throughout the rule. This rule is not an attempt to confer jurisdiction on a state court or a United States district court but allows a petition to be heard in that court when permitted.

COMMENT

Identical to *Federal Rule of Civil Procedure 27* except for changes in court designations in sections (a)(1), (a)(3), (a)(4), and (b) to reflect applicability to this Court.

Rule 28. Persons Before Whom Depositions May Be Taken

(a) WITHIN THE UNITED STATES.

(1) *In General*. Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths either by federal law or by the law in the place of examination; or

(B) a person appointed by the court to administer oaths and take testimony.

(2) *Definition of "Officer."* The term "officer" in Rules 30, 31 and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).

(b) IN A FOREIGN COUNTRY.

(1) *In General*. A deposition may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a "letter rogatory";

(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) *Issuing a Letter of Request or a Commission*. A letter of request, a commission, or both may be issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) *Form of a Request, Notice, or Commission*. When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in [name of country]." A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) *Letter of Request—Admitting Evidence*. Evidence obtained in response to a letter of request need not be excluded merely because:

(A) it is not a verbatim transcript;

(B) the testimony was not taken under oath; or

(C) any similar departure from the requirements for depositions taken within the United States.

(c) DISQUALIFICATION. A deposition must not be taken before a person who is:

(1) any party's relative, employee, or attorney;

(2) related to or employed by any party's attorney; or

(3) financially interested in the action.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 28*, as amended in 2007, except that 1) the phrase "in which the action is pending" is still omitted; and 2) subsection (b)(4) and section (c) are divided into further subsections.

COMMENT

Rule 28 is identical to *Federal Rule of Civil Procedure 28* except for deletion from paragraph (a) of the superfluous Court designation "in which the action is pending."

Rule 28-I. Interstate Depositions and Discovery Procedures

(a) IN GENERAL. In seeking to conduct interstate depositions and discovery, parties may proceed under any of the following provisions.

(b) INTERSTATE DEPOSITIONS AND DISCOVERY PROCEDURES UNDER THE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT, D.C. CODE §§ 13-441 to -448.

(1) *Issuance of Subpoena*.

(A) To request a subpoena under D.C. Code § 13-443 (2012 Repl.), a party must submit a foreign subpoena to the clerk. A request for the issuance of a subpoena under the Uniform Interstate Depositions and Discovery Act does not constitute an appearance in the courts of the District of Columbia.

(B) When a party submits a foreign subpoena to the clerk, the clerk, in accordance with these rules, must promptly issue a subpoena for service on the person to whom the foreign subpoena is directed.

(C) A subpoena under Rule 28-I(b)(1)(B) must:

(i) incorporate the terms used in the foreign subpoena; and

(ii) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(2) *Service of Subpoena*. A subpoena issued by a clerk under Rule 28-I(b)(1) must be served in compliance with D.C. Code § 11-942 (2012 Repl.) and Rule 45.

(3) *Deposition, Production, and Inspection*. The rules applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under Rule 28-I(b)(1).

(4) *Motions Regarding Subpoena.* A motion for a protective order or to enforce, quash, or modify a subpoena issued by a clerk under Rule 28-I(b)(1) must comply with these rules and the laws of the District of Columbia and must be submitted to the Superior Court.

(c) ASSISTANCE TO TRIBUNALS AND LITIGANTS OUTSIDE THE DISTRICT OF COLUMBIA UNDER D.C. CODE § 13-434.

(1) *By Court Order*. Upon application by any interested person or in response to letters rogatory issued by a tribunal outside the District of Columbia, the Superior Court may order service on any person who is domiciled or can be found within the District of Columbia of any document issued in connection with a proceeding in a tribunal outside the District of Columbia. The order must direct the manner of service.

(2) *Without Court Order.* Service in connection with a proceeding in a tribunal outside the District of Columbia may be made inside the District of Columbia without an order of the court.

(3) *Effect*. Service under Rule 28-I(c) does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside the District of Columbia.

(d) COMMISSIONS OR NOTICES FOR TESTIMONY UNDER D.C. CODE § 14-103. When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in a court of a state, territory, commonwealth, possession, or a place under the jurisdiction of the United States, the party seeking that testimony may file with this court a certified copy of the

commission or notice. Upon approval by the judge in chambers of the commission or notice and the proposed subpoena, the clerk must issue a subpoena compelling the designated witness to appear for deposition at a specified time and place. Testimony taken under Rule 28-I(d) must be taken in the manner prescribed by these rules, and the court may entertain any motion, including motions for quashing service of a subpoena and for issuance of protective orders, in the same manner as if the action were pending in this court.

COMMENT TO 2017 AMENDMENTS

This rule was amended to include the procedures for filing under the Uniform Interstate Depositions and Discovery Act (D.C. Code §§ 13-441 to -448 (2012 Repl.)) and D.C. Code § 13-434 (2012 Repl.). The process for obtaining a commission or notice under D.C. Code § 14-103 (2012 Repl.) has been retained from the prior version of the rule, but the provisions related to appointment of an examiner to take testimony of a witness outside the District of Columbia have been moved to new Rule 28-II. Stylistic changes were also made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

Paragraphs (c) and (b) of Rule 28-I implement the authority conferred on the Superior Court by § 14-103 and § 14-104, respectively.

Rule 28-II. Appointment of Examiner to Take Testimony of a Witness Residing Outside the District of Columbia; Commissions

(a) APPOINTMENT OF EXAMINER; ISSUING COMMISSION. Any party to a civil action pending in this court may file with the court a motion for appointment of an examiner to take the testimony of any witnesses who reside outside the District of Columbia. If the motion is granted, the court must appoint an examiner to take the testimony of such witnesses as are designated in the order of appointment and must issue a commission to the examiner who will take the testimony in the manner prescribed by these rules.

(b) MOTION REQUIREMENTS. A motion for appointment of an examiner must state:

(1) the name and address of each witness sought to be deposed; and

(2) the reasons why the testimony of such witness is required in the action.

(c) SERVICE OF THE MOTION; OPPOSITIONS. The motion must be served on all other parties to the action who may within 7 days file an opposition to the motion as prescribed by Rule 12.

COMMENT TO 2017 AMENDMENTS

The substance of this rule is substantially similar to former Rule 28-I(a) and is derived from D.C. Code § 14-104 (2012 Repl.).

Rule 29. Stipulations About Discovery Procedure

Unless the court orders otherwise, the parties may stipulate that:

(a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition, and

(b) other procedures governing or limiting discovery be modified—but the parties may only stipulate to extend a deadline set by the court to the extent permitted by Rule 16(b).

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 29*, as amended in 2007, except that section (b) retains references to Superior Court Rule 16(b).

COMMENT

Identical to *Federal Rule of Civil Procedure 29* except for the reference to Superior Court Rule 16(b) with respect to deadlines.

Rule 30. Depositions by Oral Examination

(a) WHEN A DEPOSITION MAY BE TAKEN.

(1) *Without Leave*. A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) *With Leave*. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the plaintiff seeks to take the deposition before the expiration of 30 days after service of the summons and complaint upon any defendant or 70 days in any case involving the District of Columbia or its officer or agency, or the United States or its officer or agency; or

(B) if the deponent is confined in prison; except

(C) leave is not required under Rule 30(a)(2)(A)(iii) if:

(i) a defendant has served a notice of taking deposition or otherwise sought discovery; or

(ii) the plaintiff's notice states that the deponent is expected to be out of the District of Columbia and more than 25 miles from the place of trial and be unavailable for examination unless the person's deposition is taken before the expiration of the 30-day or 70-day period, and sets forth facts to support the statement.

(b) NOTICE OF THE DEPOSITION; OTHER FORMAL REQUIREMENTS.

(1) *Notice in General*. A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Documents*. If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

(3) *Method of Recording*.

(A) *Method Stated in the Notice*. The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) *Additional Method*. With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) *By Remote Means*. The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this

rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place in the District of Columbia and where the deponent answers the questions.

(5) *Officer's Duties*.

(A) *Before the Deposition*. Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:

(i) the officer's name and business address;

(ii) the date, time, and place of the deposition;

(iii) the deponent's name;

(iv) the officer's administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

(B) *Conducting the Deposition; Avoiding Distortion*. If the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)–(iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) *After the Deposition*. At the end of the deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about other pertinent matters.

(6) *Notice or Subpoena Directed to an Organization*. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. Rule 30(b)(6) does not preclude a deposition by any other procedure allowed by these rules.

(c) EXAMINATION AND CROSS-EXAMINATION; RECORD OF THE EXAMINATION; OBJECTIONS; WRITTEN QUESTIONS.

(1) *Examination and Cross-Examination*. The examination and cross-examination of a deponent proceed as they would at trial under the provisions of Rule 43(c). After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) *Objections*. An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) *Participating Through Written Questions*. Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party

noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) DURATION; SANCTION; MOTION TO TERMINATE OR LIMIT.

(1) *Duration*. Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of 7 hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanction*. The court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) *Motion to Terminate or Limit.*

(A) *Grounds*. At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in this court or the court in the jurisdiction where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order*. The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of this court, except as provided in Rule 45(e).

(C) *Award of Expenses*. Rule 37(a)(5) applies to the award of expenses.

(e) REVIEW BY THE WITNESS; CHANGES.

(1) *Review; Statement of Changes*. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes Indicated in the Officer's Certificate*. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) CERTIFICATION AND DELIVERY; EXHIBITS; COPIES OF THE TRANSCRIPT OR RECORDING; FILING.

(1) *Certification and Delivery*. The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who arranged for the transcript or recording. The officer must comply with the requirements of Rule 5(d) for the processing of such materials. If the deposition is recorded by other than stenographic means, the storage media must be clearly identified with the name of the deponent, the date of the deposition, and the title of the action. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and Tangible Things*.

(A) *Originals and Copies*. Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

(B) *Order Regarding the Originals*. Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) *Copies of the Transcript or Recording*. Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) *Notice of Filing*. A party who files the deposition must promptly notify all other parties of the filing.

(g) FAILURE TO ATTEND A DEPOSITION OR SERVE A SUBPOENA; EXPENSES. A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

(h) FILING TRANSCRIPTION OF DEPOSITION TAKEN BY NONSTENOGRAPHIC MEANS. If a party intends to use in the proceeding a deposition recorded by other than stenographic means, the person must have prepared a typewritten, verbatim transcript of testimony. The original transcription must not be filed with the court unless otherwise ordered. If so ordered, a copy must be served on all parties, at least 30 days before the proceeding.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 30*, as amended in 2007 and 2015, except that: 1) the time period in subsection (a)(2)(A)(iii) reflects local practice; 2) exceptions to the restriction in subsection (a)(2)(A)(iii) have been moved to new subsection (a)(2)(C) and continue to reflect the 25-mile subpoena range of this court; 3) subsection (b)(4) provides that remote depositions taken by telephone are considered to have taken place in the District of Columbia and the location where the person answers the questions; 4) subsection (c)(1) refers to Rule 43(c) rather than the Federal Rules of Evidence; 5) subsection (d)(3) refers to depositions taken in Superior Court actions as well as those taken in the District of Columbia pursuant to the Uniform Interstate Depositions and Discovery Act; 6) subsection (f)(1) requires the officer to comply with Rule 5(d) regarding filing; and 7) section (h) retains the requirement that a party transcribe a deposition that was recorded by nonstenographic means if the party intends to use the deposition in the proceeding.

The term “storage media” as used in subsection (f)(1) means any technology used to store a deposition recording for later reuse. This includes, but is not limited to, cassette tapes, videotapes, CDs, DVDs, memory cards, and USB flash drives.

COMMENT

Largely identical to *Federal Rule of Civil Procedure 30* except that there is no cross-reference in subparagraph (a)(2)(C) to Rule 26, since the changes in that Rule have not been adopted herein, and that subparagraph provides additional time to the District of Columbia and the United States after service of summons and complaint before the taking of testimony is allowed without leave of Court because the District of Columbia and the United States have 60 days to answer a complaint under Rule 12(a). Subparagraph (a)(2)(C) has also been modified to reflect the 25 mile subpoena range of the Court. Subparagraph (b)(1) has been amended to provide notice if the deposition is to be recorded by audio or videotape. In addition, paragraph (c) refers to Rule 43(b) rather than to the Federal Rules of Evidence. Paragraphs (b), (d), and (f) are revised to show reference only to cases pending in this Court. Subparagraph (f)(1) comports with Rule 5(d), which provides, among other things, that depositions shall not be filed with the Court unless their filing is pursuant to Court order or they are appended to a motion or opposition to which they are relevant. Paragraph (h) requires the preparation, filing and serving of a transcription of a deposition recorded by other than stenographic means if a party intends to use the deposition in the proceeding.

Rule 31. Depositions by Written Questions

(a) WHEN A DEPOSITION MAY BE TAKEN.

(1) *Without Leave*. A party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) *With Leave*. A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the plaintiff seeks to take a deposition before the expiration of 30 days after service of the summons and complaint upon any defendant or 70 days in any case involving the District of Columbia or its officer or agency, or the United States or its officer or agency; or

(B) if the deponent is confined in prison; except

(C) leave is not required under Rule 31(a)(2)(A)(iii) if:

(i) a defendant has served a notice of taking deposition or otherwise sought discovery; or

(ii) the plaintiff's notice states that the deponent is expected to be out of the District of Columbia and more than 25 miles from the place of trial and be unavailable for examination unless the person's deposition is taken before expiration of the 30-day or 70-day period, and sets forth facts to support the statement.

(3) *Service; Required Notice*. A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) *Questions Directed to an Organization*. A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with Rule 30(b)(6).

(5) *Questions from Other Parties*. Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) DELIVERY TO THE OFFICER; OFFICER'S DUTIES. The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f), to:

(1) take the deponent's testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and of the notice.

(c) FILING. The deposition must not be filed except as provided in Rule 5(d).

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 31*, as amended in 2007 and 2015, except that: 1) the time period in subsection (a)(2)(A)(iii) reflects local practice; 2) exceptions to the restriction in subsection (a)(2)(A)(iii) have been moved to new subsection (a)(2)(C) and continue to reflect the 25-mile subpoena range of this court; and 3) section (c) prohibits the filing of a deposition except as permitted in Rule 5(d).

COMMENT

SCR Civil 31 is largely identical to *Federal Rule of Civil Procedure 31* except that there is no cross-reference in subparagraph (a)(2)(C) to Rule 26, since the changes in that Rule have not been adopted herein, and that subparagraph restricts the taking of depositions within 30 days of the service of the summons and complaint or within 70 days after service of the summons and complaint in the case of the United States or the District of Columbia. Additionally, paragraph (b) provides that the deposition shall not be filed and paragraph (c) has been deleted in its entirety.

Rule 32. Using Depositions in Court Proceedings

(a) USING DEPOSITIONS.

(1) *In General*. At a hearing or trial, all or part of a deposition may be used against a party on these conditions:

(A) the party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under the law of evidence if the deponent were present and testifying; and

(C) the use is allowed by Rule 32(a)(2) through (9).

(2) *Impeachment and Other Uses*. Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the law of evidence.

(3) *Deposition of Party, Agent, or Designee*. An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).

(4) *Unavailable Witness*. A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) that the witness is dead;

(B) that the witness is more than 25 miles from the place of hearing or trial or is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition could not procure the witness's attendance by subpoena; or

(E) on motion and notice, that exceptional circumstances make it desirable—in the interest of justice and with due regard to the importance of live testimony in open court—to permit the deposition to be used.

(5) *Limitations on Use*.

(A) *Deposition Taken on Short Notice*. A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken.

(B) *Unavailable Deponent; Party Could Not Obtain an Attorney.* A deposition taken without leave of court under the unavailability provision of Rule 30(a)(2)(C)(ii) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(6) *Using Part of a Deposition*. If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) *Substituting a Party*. Substituting a party under Rule 25 does not affect the right to use a deposition previously taken.

(8) *Deposition Taken in an Earlier Action*. A deposition lawfully taken and, if required, filed in this court or any federal- or state-court action may be used in a later action

involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the law of evidence.

(9) *Videotape Deposition of Physicians or Experts*. A videotape deposition of a treating or consulting physician or of any expert witness may be used for any purpose, unless otherwise ordered by the court for good cause, even though the witness is available to testify, if the notice of that deposition specified that it was to be taken for use at trial.

(b) OBJECTIONS TO ADMISSIBILITY. Subject to Rules 28(b) and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) EFFECT OF TAKING OR USING DEPOSITIONS. A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part of it for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this does not apply to the use by an adverse party of a deposition under Rule 32(a)(3). At the hearing or trial, any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

(d) WAIVER OF OBJECTIONS.

(1) *To the Notice*. An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) *To the Officer's Qualification*. An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) *To the Taking of the Deposition*.

(A) *Objection to Competence, Relevance, or Materiality*. An objection to a deponent's competence—or to the competence, relevance, or materiality of testimony—is not waived by failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) *Objection to an Error or Irregularity*. An objection to an error or irregularity at an oral examination is waived if:

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.

(C) *Objection to a Written Question*. An objection to the form of a written question under Rule 31 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.

(4) *To completing and Returning the Deposition*. An objection to how the officer transcribed the testimony—or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition—is waived unless a motion to suppress is made

promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.
(e) FORM OF PRESENTATION. Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but may provide the court with the testimony in nontranscript form as well. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court for good cause orders otherwise.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 32*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) subsection (a)(4) refers to a distance of 25 miles instead of 100 miles; 2) subsection (a)(8) refers to actions in the Superior Court as well as actions in state or federal courts; 3) subsection (a)(9) addresses the use of videotaped depositions of physicians and other experts; 4) references to the Federal Rules of Evidence are replaced with "the law of evidence"; 5) section (c), entitled "Effect of Taking or Using Depositions," retains provisions that were eliminated from the federal rule when the Federal Rules of Evidence were adopted; and 6) the provisions contained in section (c) of the federal rule appear in section (e) of the Superior Court rule.

COMMENT

Largely identical to *Federal Rule of Civil Procedure 32* except that subparagraph (a)(3) refers to a 25 mile rather than 100 mile distance. Subparagraph (a)(4) is an amendment and covers the videotape depositions of expert witnesses. It is intended that such depositions will not be taken until after opposing parties have had the opportunity to obtain relevant discovery. Subparagraph (a)(5) parallels (a)(4) of the Federal Rule, but is revised so as to refer explicitly to previous actions either in the Superior Court or in any other state or federal court. Reference to the Federal Rules of Evidence has been deleted from paragraph (a). In addition, paragraph (c) was retained by this Court after its federal counterpart was eliminated upon the adoption of the Federal Rules of Evidence. Paragraph (e) is identical to paragraph (c) of *Federal Rule of Civil Procedure 32*.

Rule 33. Interrogatories to Parties

(a) IN GENERAL.

(1) *Number*. Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 40 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).

(2) *Scope*. An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(3) *Electronic Format*. A party, represented by counsel, serving interrogatories must, upon request of any other party, promptly transmit to such other party an electronic version of the interrogatories in a format that will enable the receiving party to copy the language of the interrogatories electronically. A self-represented party may participate in electronic discovery pursuant to this rule, provided that the party files a completed Civil Action Form 115, which includes the party's email address and confirms the party's capacity to file documents and receive the filings of other parties electronically and on a regular basis.

(b) ANSWERS AND OBJECTIONS.

(1) *Responding Party*. The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party

(2) *Time to Respond*. The responding party must serve its answers and any objections within 30 days after being served with the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant or within 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) *Answering Each Interrogatory*. Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath. Answers and objections to interrogatories must identify and quote each interrogatory in full immediately preceding the answer or objection.

(4) *Objections*. The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) *Signature*. The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) USE. An answer to an interrogatory may be used to the extent allowed by the law of evidence.

(d) OPTION TO PRODUCE BUSINESS RECORDS. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden

of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

(e) FILING. Except as provided for in Rule 5(d), interrogatories, answers, and any objections must not be filed with the court.

COMMENT TO 2017 AMENDMENTS

This rule incorporates the 2015 amendment to *Federal Rule of Civil Procedure 33*. Specifically, in subsection (a)(1), the cross-reference to Rule 26 has been updated to reflect that the proportionality factors are now in Rule 26(b)(1).

Section (d) is amended to include a stylistic change which was inadvertently omitted when the Superior Court rule was amended in 2015.

COMMENT

This rule is identical to *Federal Rule of Civil Procedure 33*, as amended in 2007, with certain exceptions. The rule retains four provisions of the existing rule that differ from the federal rule: (1) the provision in subsection (a)(1) that allows 40 interrogatories rather than 25, given that Rule 26 does not require the initial disclosures contemplated by *Federal Rule of Civil Procedure 26*; (2) the requirement of subsection (b)(3) that a party quote each interrogatory in full before answering or objecting to it; (3) the substitution of “law of evidence” for “rules of evidence” in section (c), because evidence in the District of Columbia is governed by statute and common law principles rather than rules comparable to the Federal Rules of Evidence; and (4) the requirement in section (e) that parties not file interrogatories, answers, and any objections with the court unless so ordered.

The rule adds a new subsection (a)(3), requiring represented parties, and self-represented parties electing to participate in electronic discovery to, upon request, transmit electronic copies of interrogatories to another party, facilitating compliance with subsection (b)(3). The additional language in subsection (b)(3) comes from Local Rule 26.2(d) of the United States District Court for the District of Columbia.

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

(a) IN GENERAL. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) PROCEDURE.

(1) *Contents of the Request*. The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) *Responses and Objections*.

(A) *Time to Respond*. The party to whom the request is directed must respond in writing within 30 days after being served, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant or within 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(B) *Responding to Each Item*. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

(C) *Objections*. An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.

(D) *Responding to a Request for Production of Electronically Stored Information*. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

(E) *Producing the Documents or Electronically Stored Information*. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(F) *Quoting Each Request in Full*. Responses and objections to requests for production of documents must identify and quote each request in full immediately preceding the response or objection.

(3) *Electronic Format*. A party, represented by counsel, requesting production must, upon request of any other party, promptly transmit to such other party an electronic version of the request in a format that will enable the receiving party to copy the language of the request electronically. A self-represented party may participate in electronic discovery pursuant to this rule, provided that the party files a completed Civil Action Form 115, which includes the party's email address and confirms the party's capacity to file documents and receive the filings of other parties electronically and on a regular basis.

(c) NONPARTIES. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

COMMENT TO 2017 AMENDMENTS

This rule incorporates the 2015 amendments to *Federal Rule of Civil Procedure 34,* except for the amendment related to early Rule 34 requests, which were deemed inconsistent with Superior Court practice.

COMMENT

Identical to *Federal Rule of Civil Procedure 34*, as amended in 2007, except for: (1) the addition of language in subsection (b)(2)(A), clarifying the extended 75–day response period to requests for the United States, the District of Columbia, or officers or agents of either, and the extended 45-day response period to requests for all other defendants; (2) the addition of subsection (b)(2)(F), which requires that the responses and objections to requests for production must quote each request in full preceding the response or objection; and (3) the addition of subsection (b)(3), requiring represented parties, and self-represented parties electing to participate in electronic discovery to, upon request, transmit electronic copies of requests to any other party.

The language in subsection (b)(2)(F) comes from Local Rule 26.2(d) of the United States District Court for the District of Columbia.

Rule 35. Physical and Mental Examinations

(a) ORDER FOR AN EXAMINATION.

(1) *In General*. The court may order a party whose mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) *Motion and Notice; Contents of the Order*. The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

(b) EXAMINER'S REPORT.

(1) *Request by the Party or Person Examined*. The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) *Contents*. The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) *Request by the Moving Party*. After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) *Waiver of Privilege*. By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(5) *Failure to Deliver a Report*. The court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) *Scope*. Rule 35(b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. Rule 35(b) does not preclude obtaining an examiner's report or deposing an examiner under other rules.

COMMENT TO 2017 AMENDMENTS

Rule 35 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 35*. The phrase "where the action is pending" is still omitted from section (a) of the Superior Court rule.

COMMENT

Identical to *Federal Rule of Civil Procedure 35* except for deletion from section (a) thereof of the phrase "in which the action is pending."

Rule 36. Requests for Admission

(a) SCOPE AND PROCEDURE.

(1) *Scope*. A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) *Form; Copy of a Document*. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is or has been, otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served on the plaintiff after commencement of the action and on any other party with or after service of the summons and complaint on that party.

(3) *Time to Respond; Effect of Not Responding*. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court. However, unless the court shortens the time, a defendant is not required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant or before the expiration of 75 days after service of the summons and complaint upon the District of Columbia or its officer or agency or the United States or its officer or agency.

(4) *Answer*. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter, and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) *Objections*. The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) *Motion Regarding the Sufficiency of an Answer or Objection*. The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

(b) EFFECT OF AN ADMISSION; WITHDRAWING OR AMENDING IT. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an

admission for any other purpose and cannot be used against the party in any other proceeding.
(c) QUOTING EACH REQUEST IN FULL. Answers and objections to requests for admissions must identify and quote each request in full immediately preceding the answer or objection.
(d) ELECTRONIC FORMAT. A party, represented by counsel, serving requests for admission must, upon request of any other party, promptly transmit to the other party an electronic version of the requests for admission in a format that will enable the receiving party to copy the language of the requests for admission electronically. A self-represented party may participate in electronic discovery pursuant to this rule, provided that the party files a completed Civil Action Form 115, which includes the party's email address and confirms the party's capacity to file documents and receive the filings of other parties electronically and on a regular basis.

COMMENT

Identical to *Federal Rule of Civil Procedure 36*, as amended in 2007, except for: (1) the addition of language in subsection (a)(3), clarifying the extended 75-day response period to interrogatories for the United States, the District of Columbia, or officers or agents of either, and the extended 45-day response period to interrogatories for all other defendants; (2) the addition of section (c), which requires that the responses and objections to requests for production must quote each request in full preceding the response or objection; and (3) the addition of section (d), requiring that represented parties, and self-represented parties electing to participate in electronic discovery, upon request, transmit electronic copies of requests for admission to any other party..

The language in section (c) comes from Local Rule 26.2(d) of the United States District Court for the District of Columbia.

Rule 37. Failure to Cooperate in Discovery; Sanctions

(a) MOTION FOR ORDER COMPELLING DISCOVERY.

(1) *In General*.

(A) *Certification of Good Faith Effort to Secure Required Discovery*. Before any motion to compel discovery is filed, the affected parties or counsel must meet in person for a reasonable period of time in an effort to resolve the disputed matter. The movant must accompany any motion to compel discovery with a certification that despite a good faith effort to secure it, the discovery material sought has not been provided.

(B) *Contents of Certification*. This certification must set out specific facts describing the good faith effort, including a statement of the date, time, and place of the meeting required by Rule 37(a)(1)(A), and must be placed immediately below the signature of the attorney or party signing the motion.

(C) *Requirement of Meeting Waived If No Response Made*. The requirement of a meeting is waived if:

(i) the motion concerns a failure to serve any response to a Rule 33, 34, or 36 discovery request, a failure to appear for a deposition, or a Rule 35 examination, and the motion is accompanied by a copy of a letter, sent at least 10 days before the motion was filed, asking that the opposing counsel or party respond to the discovery request or that the deponent or examinee appear for a rescheduled deposition or examination; or

(ii) the movant certifies that, despite having sent to the opposing counsel or party, at least 10 days before the motion was filed, a letter (a copy of which must be attached to the motion) proposing a time and place for a meeting, and despite having made 2 telephone calls to the office of the opposing counsel or party (the date and time of each call must be specified in the motion), the movant has been unable to convene a meeting to resolve the disputed discovery matter.

(D) *Format of Motion to Compel.* Any motion to compel discovery must set out verbatim the question propounded and the answer given, or a description of the other discovery requested and the response to this request. The motion must also set out the reason or reasons the answer or response is inadequate.

(2) *Appropriate Court*. An application for an order to a party must be made to this court, or, on matters relating to a deposition, to the court in the jurisdiction where the deposition is being taken. A motion for an order to a nonparty must be made in the court where discovery is or will be taken.

(3) *Specific Motion*s.

(A) [Omitted].

(B) *To Compel a Discovery Response*. A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to produce documents, electronically stored information, or tangible things, or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.

(C) *Related to a Deposition*. When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) *Evasive or Incomplete Answer or Response*. For purposes of Rule 37(a), an evasive or incomplete answer or response must be treated as a failure to answer or respond.

(5) *Payment of Expenses; Protective Orders*.

(A) *If the Motion Is Granted (or Discovery Is Provided After Filing)*. If the motion is granted—or if the requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the discovery without court action;

(ii) the opposing party's response or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) *If the Motion Is Denied*. If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) *If the Motion Is Granted in Part and Denied in Part*. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) FAILURE TO COMPLY WITH A COURT ORDER.

(1) *Sanctions Sought in the Jurisdiction Where the Deposition Is Taken*. If the court where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court. If a deposition-related motion is transferred to the court where the action is pending, and that court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.

(2) *Sanctions Sought in This Court*.

(A) *For Not Obeying a Discovery Order*. If a party or a party's officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(4)—fails to obey an order to provide or permit discovery, including an order under Rule 26(e), 35, or 37(a), the court may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for the purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) *For Not Producing a Person for Examination*. If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(2)(A)(i)–(vi), unless the disobedient party shows that it cannot produce the other person.

(C) *Payment of Expenses*. Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) FAILURE TO ADMIT. If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) PARTY'S FAILURE TO ATTEND ITS OWN DEPOSITION, SERVE ANSWERS TO INTERROGATORIES, OR RESPOND TO A REQUEST FOR INSPECTION.

(1) *In General*.

(A) *Motion; Grounds for Sanctions*. The court may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent—or a person designated under Rule 30(b)(6) or 31(a)(4)— fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(B) *Certification*. A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) *Unacceptable Excuse for Failing to Act*. A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) *Types of Sanctions*. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)–(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) FAILURE TO PRESERVE ELECTRONICALLY STORED INFORMATION. If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

(f) EXPENSES AGAINST UNITED STATES OR DISTRICT OF COLUMBIA. Except to the extent permitted by statute, expenses and fees may not be awarded against the United States or the District of Columbia under this rule.

COMMENT TO 2017 AMENDMENTS

This rule was amended to conform to the 2013 and 2015 amendments to *Federal Rule of Civil Procedure 37*. Section (b) was amended to allow the transfer of a deposition-related motion to the court where the action is pending. Violation of any resulting order may be treated as contempt of either the court where discovery is taken or the court where the action is pending.

Consistent with the 2015 federal amendment, section (e) now addresses the preservation of electronically stored information. The rule does not seek to define the duty to preserve; instead, it focuses on the remedies available once the court has determined that there was a duty to preserve electronically stored information and that the information was lost.

A cross-reference in subsection (b)(2)(B) has been corrected to reflect that a judge may issue any of the orders listed in Rule 37(b)(2)(A)(i)–(vi). Subsection (b)(2)(A)(vi) was inadvertently omitted when the Superior Court rule was amended in 2015.

COMMENT

Identical to *Federal Rule of Civil Procedure 37*, as amended in 2007, except for: (1) the deletion of references to initial disclosures under Rule 26(a) throughout; (2) the substitution of District of Columbia specific provisions for subsections (a)(1) and (2) and section (f); (3) the omission of subsection (a)(3)(A); (4) the addition of language referring to the production of documents, electronically stored information, and tangible things in subsection (a)(3)(B)(iv) to eliminate any arguable ambiguity as to the obligation to produce such items; (5) the substitution of District of Columbia specific titles in subsections (b)(1) and (2); and (6) the omission of subsection (c)(1). Section (g) from previous versions of the rule has been deleted.

The words "in person" have been added to subsection (a)(1) to clarify that the required meeting should be in person, which has always been the intention of the rule. As per the General Order, motions to compel discovery and motions relating to discovery must comply with Rules 5, 26(i) and 37(a) and must include the various certifications required by Rule 37(a). The meeting required under the circumstances set forth in Rule 37(a) must be face to face, for a reasonable period of time (usually at least 60 minutes) in an effort to resolve the matter before filing a motion. Motions lacking any

certification required by Rule 37(a), including the date, time, and place at which a meeting was held, will be summarily denied**.** Motions lacking a Certificate Regarding Discovery will not be accepted for filing.

TITLE VI. TRIALS

Rule 38. Right to a Jury Trial; Demand

(a) RIGHT PRESERVED. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by an applicable statute—is preserved to the parties inviolate.

(b) DEMAND. On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand—which may be included in a pleading— no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with Rule 5(d).

(c) SPECIFYING ISSUES. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may—within 14 days after being served with the demand or within a shorter time ordered by the court—serve a demand for a jury trial on any other or all factual issues triable by jury.

(d) WAIVER; WITHDRAWAL. A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

(e) [Deleted].

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 38*, as amended in 2007 and 2009, but maintains two local distinctions—1) in subsection (a), the phrase “applicable statute” is substituted for “federal statute”; 2) subsection (e) addressing admiralty and maritime claims is omitted.

COMMENT

Rule 38 is substantially similar to *Federal Rule of Civil Procedure 38* except for the deletion of section (e) thereof pertaining to admiralty and maritime claims and the substitution of "applicable statute" for "statute of the United States" in section (a).

Rule 38-I. [Deleted].

Rule 38-II. Failure to Appear for Trial as Consent to Trial Without Jury

Failure of a party to appear for trial, in person or through counsel, will be deemed by the court to constitute consent by that party to a trial without a jury.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 39. Trial by Jury or by the Court

(a) WHEN A DEMAND IS MADE. When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that on some or all of those issues there is no right to a jury trial.

(b) WHEN NO DEMAND IS MADE. Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) ADVISORY JURY; JURY TRIAL BY CONSENT. In an action not triable of right by a jury, the court, on motion or on its own:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is one for which an applicable statute provides a nonjury trial.

COMMENT TO 2017 AMENDMENTS

Rule 39 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 39*. As with the prior version of the rule, the exception in subsection (c)(2) is framed in terms of local practice.

COMMENT

Identical to *Federal Rule of Civil Procedure 39* except that "statutes of the United States" in section (a) has been changed to "applicable law" and the exception clause in section (c) has been rephrased so as to comprehend any applicable statute.

Rule 39-I. Appearance at Trial

(a) WHEN NO RESPONSE BY ANY PARTY. When an action is called for trial and no party responds, the court may dismiss the same, with or without prejudice, or take such other action as may be deemed appropriate.

(b) WHEN NO RESPONSE BY PARTY SEEKING RELIEF. When an action is called for trial and the party seeking affirmative relief fails to respond, an adversary may have the claim dismissed, with or without prejudice as the court may decide, or the court may, in a proper case, conduct a trial or other proceeding.

(c) WHEN NO RESPONSE BY PARTY AGAINST WHOM RELIEF IS SOUGHT. When an action is called for trial and a party against whom affirmative relief is sought fails to respond, in person or through counsel, an adversary may where appropriate proceed directly to trial. When an adversary is entitled to a finding in the adversary's favor on the merits, without trial, the adversary may proceed directly to proof of damages.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

See District of Columbia Transit System v. Young, 293 A.2d 488 (1972).

Rule 39-II. Number of Counsel

(a) EXAMINING WITNESSES; ADDRESSING COURT. Except by permission of the court, only one attorney for each party may examine a witness or address the court on a question arising in a trial.

(b) FINAL ARGUMENTS. With the court's approval, 2 attorneys for each party may address the court or jury in final arguments on the facts.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

This rule should be liberally construed and flexibly applied where representation is being provided by law students accompanied by supervising attorneys.

Rule 40. [Omitted].

Rule 40-I. Assignment of Cases

(a) IN GENERAL. The clerk will randomly assign new civil actions to judges in the Civil Division.

(b) SPECIAL ASSIGNMENTS. The Chief Judge may specially assign a civil action for all purposes to a specific calendar or a single judge. The Chief Judge may delegate to the Presiding Judge of the Civil Division the authority to make special assignment of cases to a judge currently assigned to the Civil Division.

(c) PROCEEDINGS AFTER ASSIGNMENT. All proceedings in a case after its assignment, including trial, will be scheduled and conducted by the assigned judge.

(d) REASSIGNMENT. When a judge's assignment to the Civil Division is concluded, the Chief Judge or the Presiding Judge may designate the judge or judges to whom the cases on the calendar of the previous judge will be reassigned.

(e) ASSIGNMENT TO A MAGISTRATE JUDGE. Nothing in this rule precludes the assignment of civil actions to magistrate judges under Rule 73.

(f) RELATED CASES.

(1) "*Related Case" Defined*. Civil cases are deemed related when the earliest is still pending on the merits in the Superior Court and they:

(A) involve common property;

(B) involve common issues of fact;

(C) grow out of the same event or transaction; or

(D) involve common and unique issues of law, which appear to be of first impression in this jurisdiction.

(2) *Notification of Related Cases*. The parties must notify the clerk of the existence of related cases as follows:

(A) At the time of filing a civil case, the plaintiff or his attorney must indicate on a form provided by the clerk, the name, docket number and relationship of any related cases in the Superior Court or in the District of Columbia Court of Appeals. The plaintiff must serve a copy of this form on the defendant with the complaint. The defendant must serve a statement with the first responsive pleading either objecting or concurring with the related case designation.

(B) Whenever an attorney or party becomes aware of the existence of a related case, he or she must immediately notify, in writing, the judges on whose calendars the cases appear.

(g) REFILED CASES. If a case is refiled after it was dismissed, with or without prejudice, the clerk must reassign the case to the original judge unless the Presiding Judge orders otherwise. Additionally, cases are deemed refiled where a case is dismissed, with or without prejudice, and a second case is filed involving the same parties and relating to the same subject matter.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. The rule was also reorganized to clarify general assignment procedures. The provisions related to trial continuances were moved to Rule 16(k), which addresses other continuances; its location in Rule 40-I was a vestige of the original rule on assignment of trials by the assignment commissioner. Section (f),

“Related Cases,” has been moved from Rule 42(f). Section (g) is new, and it describes the procedure for assigning refiled cases.

COMMENT

Federal Rule of Civil Procedure 40 which authorized the establishment of local systems for the assignment and calendaring of cases has been deleted. It has been replaced by SCR Civil 40-I which describes the Superior Court's Assignment System. Note that the second and third sentences of paragraph (a) contain essentially the same provisions as appeared in former Rule 40-II(d) and that language of the last sentence of paragraph (a) is essentially the same as that which formerly appeared in paragraph (f) of Rule 40-I.

Paragraph (b), on random distribution of cases among the judges, is derived from former Rule 40-II(c). Its purpose is to insure equitable allocation of the caseload to all judges assigned to the Division and to preclude any potential for litigants to predetermine the judge to whom the case will be assigned.

Rule 40-II. Designation and Assignment of Cases to Civil I Calendars

(a) IN GENERAL. All cases involving claims for relief based on exposure to asbestos or asbestos products must be designated to a Civil I calendar. The Presiding Judge of the Civil Division may designate any other case to a Civil I calendar.

(b) ON RECOMMENDATION. On motion of a party or sua sponte, a judge assigned to a case may recommend to the Presiding Judge that the case be designated to a Civil I calendar.

(c) FACTORS CONSIDERED. In designating a case to a Civil I calendar, the Presiding Judge may consider the following:

(1) the estimated length of trial;
(2) the number of witnesses that may appear;
(3) the number of exhibits that may be introduced;
(4) the nature of the factual and legal issues involved;
(5) the extent to which discovery may require supervision by the court;
(6) the number of motions that may be filed in the case; or
(7) any other relevant factors.

(d) DISTRIBUTION OF CIVIL I CASES. The Presiding Judge must assign cases designated to a Civil I calendar on a rotational basis unless doing so would have an adverse impact on the efficient resolution of a case.

(e) ASSIGNMENT TO JUDGE. All proceedings in a case after its assignment to a Civil I calendar must be scheduled and conducted by the judge to whom the case is assigned, except as otherwise provided in these rules. When a judge's assignment to a Civil I calendar is concluded, the Chief Judge or the Presiding Judge must designate the judge or judges to whom the cases on the calendar of the former Civil I judge will be reassigned.

(f) PROCEDURE. After a case has been assigned to a Civil I calendar, the judge's name and, when known, the calendar number must appear below the case number on every pleading and other paper filed in the case. Pleadings and other papers in cases designated to a Civil I calendar must be filed in accordance with Rule 5(d).

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 40-III. Collection and Subrogation Cases

(a) APPLICABILITY. This rule applies to all civil actions in which the complaint seeks:

(1) collection of a liquidated debt of greater than the maximum amount set under D.C. Code § 11-1321 (2017 Supp.) for jurisdiction of actions in the Small Claims and Conciliation Branch; or

(2) recovery as subrogee of damages of greater than the maximum amount set under D.C. Code § 11-1321 (2017 Supp.) for jurisdiction of actions in the Small Claims and Conciliation Branch.

(b) TIME ALLOWED FOR SERVICE OF PROCESS. Notwithstanding the provisions of Rule 4(m), proof of service of the summons and any complaint listed in Rule 40-III(a) must be made no later than 180 days after the filing of the complaint. Failure to comply with the requirements of this rule will result in the dismissal without prejudice of the complaint. The clerk will enter the dismissal and serve notice on the parties.

(c) EXTENSION OF TIME FOR SERVICE OF PROCESS. Notwithstanding the provisions of Rule 6(b), the time allowed for service of process of complaints covered by this rule will not be extended unless a motion for extension of time is filed within 180 days after the filing of the complaint. The motion must set forth in detail the efforts which have been made, and will be made in the future, to obtain service. An extended period for service will be granted only if exceptional circumstances, detailed in the motion, demonstrate that additional time is required in order to prevent manifest injustice.

(d) PLAINTIFF'S CONSENT TO MAGISTRATE JUDGE CALENDAR. Upon filing any complaint covered by this rule, plaintiff may file a written consent to have the complaint assigned to a magistrate judge calendar. If such consent is filed, the magistrate judge may rule on any motion, and take any other judicial action (including conducting ex parte proof of damage hearings), as to any defendant who has not answered or otherwise responded to the complaint.

(e) INITIAL SCHEDULING CONFERENCE. As soon as practicable after the filing of any defendant's response to a complaint covered by this rule, the court must notify the parties to appear for an initial scheduling conference. If all appearing parties so consent, the case, including all claims, may be assigned to the magistrate judge calendar. If the parties have consented, the magistrate judge will ascertain the status of the case, rule on any pending motions, explore the possibilities for early resolution through settlement or alternative dispute resolution techniques, and determine a reasonable time frame for bringing the case to conclusion. After consulting with the attorneys for the parties and with any unrepresented parties, the magistrate judge will schedule future events in the case.

(f) WITHDRAWAL OF CONSENT TO MAGISTRATE JUDGE CALENDAR. If a party has consented to the assignment of the case to the magistrate judge calendar, such consent may be withdrawn only for good cause upon leave of the Presiding Judge of the Civil Division or that judge's designee.

(g) COPIES OF PAPERS TO MAGISTRATE JUDGE.

(1) *Motions*. When a party files, by non-electronic means, a motion or paper relating to a motion (i.e., an opposition to a motion, memorandum of points and authorities, related exhibits, or a proposed order) in a case assigned to the magistrate judge calendar, the party must deliver a copy to the magistrate judge as follows:

(A) if the motion or paper is filed in person at the clerk's office, the party, on the date the original is filed, must hand-deliver a copy addressed to the magistrate judge to the court mail depository; or

(B) if the motion or paper is mailed, the party, on the date the original is mailed, must mail a copy to the magistrate judge.

(2) *Other Pleadings and Papers*. No other pleading or paper should be delivered to the magistrate judge unless so ordered.

(h) ASSIGNMENT TO A JUDGE'S CALENDAR. In any case covered by Rule 40-III(a), if the plaintiff does not file a consent as provided in Rule 40-III(d), the case must be assigned to a judge's individual calendar pursuant to Rule 40-I. A complaint covered by this rule must also be promptly assigned to a judge's individual calendar in accordance with Rule 40-I if any party makes a jury demand.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 41. Dismissal of Actions

(a) VOLUNTARY DISMISSAL.

(1) *By the Plaintiff.*

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) *By Court Order; Effect.* Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under Rule 41(a)(2) is without prejudice.

(b) INVOLUNTARY DISMISSAL; EFFECT.

(1) *By the Court*.

(A) *In General*. If the plaintiff fails to prosecute or to comply with these rules or a court order:

(i) a defendant may move to dismiss the action or any claim against it; or

(ii) the court may, on its own initiative, enter an order dismissing the action or any claim.

(B) *Result of Dismissal*. An order dismissing a claim for failure to prosecute must specify that the dismissal is without prejudice, unless the court determines that the delay in prosecution of the claim has resulted in prejudice to an opposing party. Unless the dismissal order states otherwise or as provided elsewhere in these rules, a dismissal by the court—except a dismissal for lack of jurisdiction or for failure to join a party under Rule 19—operates as an adjudication on the merits.

(2) *By the Clerk*.

(A) *In General*. The clerk may, on his or her own initiative, and with written notice to the parties:

(i) in a case where there is only one defendant, dismiss the case for failure to file proof of service;

(ii) in a case where there are multiple defendants, dismiss any individual defendant for whom no proof of service has been filed;

(iii) dismiss a case for failure to comply with a court order requiring the filing of supplemental proof of service by a date certain, unless the court has ordered otherwise;

(iv) require a supplementation, for the judge or magistrate judge to consider, of any proof of service that is incomplete, unclear, or does not on its face adequately explain why the person allegedly served was authorized to accept service on behalf of the defendant; and

(v) dismiss a case when otherwise authorized by these rules or by a court order.

(B) *Result of Dismissal*. Unless a court order specifies otherwise, a dismissal by the clerk is without prejudice.

(3) *Effect*. Any order of dismissal entered by the court or the clerk under this rule does not take effect until 14 days after the date on which it is docketed and must be vacated upon the granting of a motion filed by the plaintiff within the 14-day period showing good cause why the case should not be dismissed.

(c) DISMISSING A COUNTERCLAIM, CROSSCLAIM, OR THIRD-PARTY CLAIM. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) COSTS OF A PREVIOUSLY DISMISSED ACTION. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 41*, as amended in 2007, but maintains the following local distinctions: 1) in subsection (a)(1)(A), "applicable statute" was substituted for "federal statute"; 2) subsection (b)(1) includes language from United States District Court for the District of Columbia Local Civil Rule 83.23, which specifies that the court may dismiss a case on its own initiative and that an order of dismissal must state that it is without prejudice unless the opposing party would suffer prejudice from the delay; 3) subsection (b)(1)(B) includes the phrase "or as provided elsewhere in these rules" to clarify that where dismissal under a rule other than Rule 41 is required to be without prejudice (such as Rule 4(m)), a dismissal under that other rule does not operate as an adjudication on the merits; 4) the reference to dismissal for "improper venue" is omitted from subsection (b)(1)(B); and 5) subsection (b)(2) allows the clerk to dismiss an action without prejudice in certain situations—a deviation which is necessary because of the significantly higher volume of annual filings in the Superior Court compared to the federal district courts.

COMMENT

SCR Civil 41 is identical to *Federal Rule of Civil Procedure 41* except for the substitution of "applicable statute" for "statute of the United States" in section (a) and deletion of venue reference in section (b). Language has also been added to paragraph (b) of this Rule making it clear that the Court or Clerk may, sua sponte, dismiss an action when a plaintiff fails to prosecute or to comply with the Rules or any order of Court.

Rule 41-I. [Deleted].

Rule 42. Consolidation; Separate Trials

(a) CONSOLIDATION.

(1) *In General*. If actions before the court involve a common question of law or fact, the court may:

(A) join for hearing or trial any or all matters at issue in the actions;

(B) consolidate the actions; or

(C) issue any other orders to avoid unnecessary costs or delay.

(2) *Motion Judge*. Any motion to consolidate 2 or more civil actions must be decided by the judge on whose calendar appears the oldest assigned case covered by the motion. If the motion is granted, all the consolidated cases must be placed on the calendar of the judge who granted the motion.

(b) SEPARATE TRIALS. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any right to a jury trial.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 42*, as amended in 2007, but maintains the following local distinctions: 1) subsection (a)(2) has been added to address responsibility for ruling on a motion to consolidate; and 2) the word “federal” has been omitted from section (b). Section (c), “Related Cases,” has been moved to Rule 40-I so that Rule 42 more closely aligns with its federal counterpart. This placement also conforms with the placement of similar provisions in United States District Court for the District of Columbia Local Civil Rule 40.5.

COMMENT

Rule 42 differs from *Federal Rule of Civil Procedure 42* in several respects. Added to paragraph (a) is a provision that the judge on whose calendar appears the oldest assigned case will make the determination as to whether or not other related actions will be consolidated with the case on that judge's calendar. In paragraph (b) the phrase "an applicable statute" is substituted for "a statute of the United States." Also added is paragraph (c) which defines what is meant by "related cases." This substantially tracks the definition used by the United States District Court for the District of Columbia.

Rule 43. Evidence

(a) IN GENERAL. The admissibility of evidence and the competency and privileges of witnesses are governed by the principles of the common law as they may be interpreted by the courts in the light of reason and experience, except when a statute or these rules otherwise provide.

(b) IN OPEN COURT. At trial, the witnesses' testimony must be taken in open court unless otherwise provided by these rules. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(c) MODE AND ORDER OF EXAMINING WITNESSES AND PRESENTING EVIDENCE. *Federal Rule of Evidence 611* is incorporated herein.

(d) RULINGS ON EVIDENCE. *Federal Rule of Evidence 103* is incorporated herein.

(e) AFFIRMATION INSTEAD OF AN OATH. When these rules require an oath, a solemn affirmation suffices.

(f) EVIDENCE ON A MOTION. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

COMMENT TO 2017 AMENDMENTS

Rule 43 differs substantially from *Federal Rule of Civil Procedure 43*, as amended in 2007, and from the prior rule. Section (a) is taken from Criminal Rule 26. Sections (c) and (d) incorporate by reference *Federal Rules of Evidence 611* and *103*, respectively. Sections (b), (e), and (f) are substantially identical to sections (a), (b), and (c) of the federal rule. The section regarding interpreters has been deleted. The subject of interpreters is addressed in statutes, administrative orders, and Department of Justice guidance.

Rule 43-I. Record of a Regularly Conducted Activity; Public Record; Photographic Copies

(a) RECORD OF A REGULARLY CONDUCTED ACTIVITY. A record of an act, event, condition, opinion, or diagnosis is not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness, if:

(1) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

(2) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(3) making the record was a regular practice of that activity;

(4) all these conditions are shown by the testimony of the custodian or another qualified witness or by other means as may be provided by statute; and

(5) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

(b) PUBLIC RECORDS. A record or statement of a public office is not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness, if:

(1) it sets out:

(A) the offices' activities;

(B) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(C) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(2) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

(c) PHOTOGRAPHIC COPIES.

(1) *In General*. The reproduction of a record or an enlargement or facsimile of the reproduction, when satisfactorily identified, is as admissible in evidence as the original, whether the original is in existence or not, if any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity, has:

(A) kept or recorded any memorandum, writing, entry, print, representation or combination thereof of any act, transaction, occurrence or event; and

(B) caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process, which appears to accurately reproduce or form a durable medium for reproducing the original,

(2) *Admission of Original*. The introduction of a reproduced record, enlargement, or facsimile does not preclude admission of the original.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

The rule was also amended to make it more consistent with federal practice. Section (a) adopts language from *Federal Rule of Evidence* 803(6), except that the reference to "a certification that complies with [*Federal Rule of Evidence*] *902(11) or*

(12)" was replaced with "by other means as may be provided by statute." While the majority of states permit authentication of domestic or foreign business records by a certification under 902(11) or (12), this jurisdiction does not currently permit it.

Section (b) adopts language from *Federal Rule of Evidence* 803(8). Section (c) maintains the Superior Court practice of permitting photographic copies.

Rule 43-II. [Deleted].

COMMENT

The subject matter of former Rule 43-II is now treated in Rule 7-I.

Rule 44. Proving an Official Record

(a) MEANS OF PROVING.

(1) *Domestic Record*. Each of the following evidences an official record—or an entry in it—that is otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

(i) by a judge of a court of record of the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) *Foreign Record*.

(A) *In General*. Each of the following evidences a foreign official record—or an entry in it—that is otherwise admissible:

(i) an official publication of the record; or

(ii) the record—or a copy—that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) *Final Certification of Genuineness*. A final certification must certify the genuineness of the signature and official position of the attestor or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) *Other Means of Proof*. If all parties have had a reasonable opportunity to investigate a foreign record’s authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the record to be evidenced by an attested summary with or without a final certification.

(b) LACK OF A RECORD. A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with Rule 44(a)(2)(C)(ii).

(c) OTHER PROOF. A party may prove an official record—or an entry or lack of entry in it—by any other method authorized by law.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 44*, as amended in 2007.

Rule 44-I. Proving Statutes, Ordinances, and Regulations

Printed books or pamphlets purporting on their face to be the statutes, ordinances, or regulations of the United States, of any state or territory of the United States, or of any foreign jurisdiction, which are either published by the authority of the state, territory, or foreign jurisdiction or are commonly recognized in its courts, must be presumptively considered by the court to constitute the statutes, ordinances, or regulations. The court's determination must be treated as a ruling on a question of law.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination must be treated as a ruling on a question of law.

COMMENT TO 2017 AMENDMENTS

Rule 44.1 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 44.1*.

COMMENT

Identical to Federal Rule of Civil Procedure 44.1 except that it refers to Rule 43 of the Civil Rules of this Court rather than to the Federal Rules of Evidence.

Rule 45. Subpoena

(a) IN GENERAL.

(1) *Form and Contents*.

(A) *Requirements—In General*. Every subpoena must:

(i) state the name of the court;

(ii) state the title of the action, its civil action number, the calendar number, when known, and if assigned to a specific judge or magistrate judge, the name of that judge or magistrate judge;

(iii) command each person to whom it is directed to do the following at a specified time and place within the District of Columbia, unless the parties and person subpoenaed otherwise agree or the court, upon application, fixes another convenient location: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(c) and (d).

(B) *Command to Attend a Deposition—Notice of the Recording Method*. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information*. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) *Command to Produce; Included Obligations*. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(2) [Omitted].

(3) *Issued by Whom*. The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney authorized to practice in the District of Columbia also may issue and sign a subpoena.

(4) *Notice to Other Parties Before Service*. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

(b) SERVICE.

(1) *By Whom and How; Tendering Fees*. 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 and, if the subpoena requires that person's attendance, tendering the fees for one day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or the District of Columbia or any officers or agencies of either.

(2) *Service in the District of Columbia*. Subject to Rule 45(c)(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 deposition, 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 of the court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(c) 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 Materials or Permit Inspection*.

(A) *Appearance Not Required*. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for deposition, hearing, or trial.

(B) *Objections*. A person commanded to produce documents, electronically stored information, or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. 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 neither a party nor a party’s officer 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 neither a party nor a party’s officer to travel more than 25 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 45(c)(3)(B)(iii), 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:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 25 miles to attend trial.

(C) *Specifying Conditions as an Alternative*. In the circumstances described in Rule 45(c)(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.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents or Electronically Stored Information*. These procedures apply to producing documents or electronically stored information:

(A) *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.

(B) *Form for Producing Electronically Stored Information Not Specified*. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form*. The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information*. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(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.
(e) TRANSFERRING A SUBPOENA-RELATED MOTION. A subpoena-related motion may be transferred to the court where the action is pending if the person subject to the subpoena consents or if the court finds exceptional circumstances. To enforce its order, the court where the action is pending may transfer the order to the court where the motion was made.
(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 45(c)(3)(A)(ii).

COMMENT TO 2017 AMENDMENTS

This rule conforms to the 2013 amendments to *Federal Rule of Civil Procedure 45* with the following exceptions: 1) subsection (a)(2) of the federal rule, which states that "[a] subpoena must issue from the court where the action is pending," has been omitted as inconsistent with language in the Uniform Interstate Depositions and Discovery Act (D.C. Code §§ 13-441 to -448 (2012 Repl.)) that instructs the Superior Court clerk to "issue a subpoena for service upon the person to which the foreign subpoena is directed"; 2) the amendment to permit service throughout the United States has been omitted as inconsistent with D.C. Code § 11-942 (2012 Repl.); 3) new section (c) of the federal rule has been rejected in order to maintain the Superior Court rule's focus on place of service, which is also the focus of D.C. Code § 11-942 (2012 Repl.); 4) language in new section (e) (section (f) in the federal rule) has been modified to reflect omission of federal subsection (a)(2); and 5) the second sentence in section (f) of the federal rule, which authorizes an attorney to file papers and appear in a district court where s/he may not be barred, has been rejected as locally inapplicable.

COMMENT

Identical to *Federal Rule of Civil Procedure 45*, as amended in 2007, except for: (1) references to 100 mile limits in the federal rule have been changed to 25 miles, which preserves the geographic proportionality originally expressed by Congress in D.C. Code § 11-942; (2) the omission of the inapplicable subsection (a)(2); (3) the addition of language in subsection (a)(1)(A)(iii) providing that the deposition, production, or inspection of documents must be in the District of Columbia, unless otherwise agreed or ordered by the court; and (4) the substitution of specific local language for inapplicable federal language in subsections (a)(1)(A)(i)–(ii), (a)(3), (b)(2), and (c)(3)(A)(ii).

This rule provides a means for issuing deposition subpoenas for nonresidents of the District of Columbia in cases which qualify, but does not preclude the alternatives of filing with the court a motion for appointment of an examiner under Rule 28-I or resorting directly to the courts of another jurisdiction under its rules and statutes.

Subpoenas issued by attorneys under subsection (a)(3) must be substantially in the format of Civil Action Form 14.

Rule 46. Objecting to a Ruling or Order

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

COMMENT TO 2017 AMENDMENTS

Rule 46 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 46*.

COMMENT

Identical to *Federal Rule of Civil Procedure 46*.

Rule 47. Selecting Jurors

(a) EXAMINING JURORS. The court may permit the parties or their attorneys to examine prospective jurors or may itself do so. If the court examines the jurors, it must permit the parties or their attorneys to make any further inquiry it considers proper, or must itself ask any of their additional questions it considers proper.

(b) PEREMPTORY CHALLENGES. The court must allow each party to exercise 3 peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly. All challenges for cause or favor, whether to the array or panel or to individual jurors, must be determined by the court.

(c) EXCUSING A JUROR. During trial or deliberation, the court may excuse a juror for good cause.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 47*, as amended in 2007, except that section (b) includes language from *28 U.S.C. § 1870* instead of just a reference to the statute.

COMMENT

Identical to *Federal Rule of Civil Procedure 47***.**

Rule 47-I. [Deleted].

COMMENT TO 2017 AMENDMENTS

The substance of Rule 47-I has been moved to Rule 47(b), where peremptory challenges are addressed in the federal rules.

Rule 48. Number of Jurors; Verdict; Polling

(a) NUMBER OF JURORS. A jury must begin with at least 6 jurors, but the court may empanel up to 6 additional jurors as it deems necessary. Each juror must participate in the verdict unless excused under Rule 47(c).

(b) VERDICT. Unless the parties stipulate otherwise, the verdict must be unanimous and must be returned by a jury of at least 6 members.

(c) POLLING. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 48*, as amended in 2007 and 2009, except for language in section (a), which specifies that the decision to empanel additional jurors rests with the court.

Section (c) regarding polling is new to the federal and Superior Court civil rules. In *Harris v. United States*, 622 A.2d 697 (D.C. 1993), the District of Columbia Court of Appeals examined under what conditions a trial court should require a jury to resume deliberations after a juror dissents in open court during a jury poll. The court noted that there is less coercive potential if the dissenting juror is earlier in line and the poll is terminated. *Id*. at 703.

COMMENT

Identical to *Federal Rule of Civil Procedure 48* except that a jury demand under SCR Civ 38 is conclusively presumed to be to a jury of 6 persons unless the demand expressly states otherwise**.**

Rule 49. Special Verdict; General Verdict and Questions

(a) SPECIAL VERDICT.

(1) *In General.* The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) submitting written questions susceptible of a categorical or other brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) *Instructions.* The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) *Issues Not Submitted.* A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) GENERAL VERDICT WITH ANSWERS TO WRITTEN QUESTIONS.

(1) *In General.* The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both..

(2) *Verdict and Answers Consistent.* When the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.

(3) *Answers Inconsistent with the Verdict.* When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:

(A) approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

(4) *Answers Inconsistent with Each Other and the Verdict.* When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

COMMENT TO 2017 AMENDMENTS

Rule 49 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 49*.

COMMENT

Identical to *Federal Rule of Civil Procedure 49*.

Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

(a) JUDGMENT AS A MATTER OF LAW.

(1) *In General*. If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) *Motion*. A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) RENEWING THE MOTION AFTER TRIAL; ALTERNATIVE MOTION FOR A NEW TRIAL. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

(1) allow judgment on the verdict, if a verdict was returned;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

(c) GRANTING THE RENEWED MOTION; CONDITIONAL RULING ON A MOTION FOR A NEW TRIAL.

(1) *In General*. If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) *Effect of a Conditional Ruling*. Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) TIME FOR A LOSING PARTY'S NEW-TRIAL MOTION. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after the entry of the judgment.

(e) DENYING THE MOTION FOR JUDGMENT AS A MATTER OF LAW; REVERSAL ON APPEAL. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted; or direct the entry of judgment.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 50*, as amended in 2007 and 2009. Consistent with the federal rule, language has been added to section (e) recognizing the authority of the appellate court to direct the entry of judgment in accordance with the decisions in *Weisgram v. Marley Co.*, 528 U.S. 440 (2000), and *Neely v. Martin K. Eby Constr. Co.*, 386 U.S. 317 (1967). Also, as in the federal rule, the 10-day deadline for parties to file post-judgment motions has been expanded to 28 days. This was necessitated by the Rule 6(b) prohibition on an extension of this deadline. The change is intended to give parties more time to prepare a satisfactory post-judgment motion while maintaining certainty in appeal times.

COMMENT

Identical to *Federal Rule of Civil Procedure 50*.

Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error

(a) REQUESTS.

(1) *Before or at the Close of the Evidence*. At the close of evidence or at any earlier reasonable time that the court orders, a party may file and furnish to every other party written requests for the jury instructions it wants the court to give.

(2) *After the Close of the Evidence*. After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and

(B) with the court's permission, file untimely requests for instructions on any issue.

(b) INSTRUCTIONS. The court:

(1) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(2) must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered; and

(3) may instruct the jury at any time before the jury is discharged.

(c) OBJECTIONS.

(1) *How to Make*. A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection.

(2) *When to Make*. An objection is timely if:

(A) a party objects at the opportunity provided under Rule 51(b)(2); or

(B) a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) ASSIGNING ERROR; PLAIN ERROR.

(1) *Assigning Error*. A party may assign as error:

(A) an error in an instruction actually given, if that party properly objected; or

(B) a failure to give an instruction, if that party properly requested it and—unless the court rejected the request in a definitive ruling on the record—also properly objected.

(2) *Plain Error*. A court may consider a plain error in the instructions that has not been preserved as required by Rule 51(d)(1) if the error affects substantial rights.

COMMENT TO 2017 AMENDMENTS

Rule 51 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 51*.

COMMENT

Identical to *Federal Rule of Civil Procedure 51*.

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

(a) FINDINGS AND CONCLUSIONS.

(1) *In General*. Unless expressly waived by all parties, in an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record or may appear in an opinion or a memorandum of decision filed by the court and are sufficient if they state the controlling factual and legal grounds of decision. Judgment must be entered under Rule 58.

(2) *For an Interlocutory Injunction*. In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) *For a Motion*. The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) *Effect of a Master's Findings*. A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) *Questioning the Evidentiary Support*. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) *Setting Aside the Findings*. Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(b) AMENDED OR ADDITIONAL FINDINGS. On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(c) JUDGMENT ON PARTIAL FINDINGS. If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 52*, as amended in 2007 and 2009, but maintains the following local distinctions in subsection (a)(1): 1) the parties can expressly waive the requirement that the court state its findings of fact and conclusions of law in a nonjury action; 2) the phrase "after the close of evidence" has been deleted to permit the court to make partial findings and conclusions as the case progresses; and 3) the findings and conclusions need only state the controlling grounds for the decision.

Consistent with the federal rule, the 10-day deadline for parties to file post-judgment motions has been expanded to 28 days. This was necessitated by the Rule 6(b) prohibition on an extension of this deadline. The change is intended to give parties more

time to prepare a satisfactory post-judgment motion while maintaining certainty in appeal times.

COMMENT

Identical to *Federal Rule of Civil Procedure 52* except that section (a) has been revised to eliminate the requirement of stating findings of facts and conclusions of law in non-jury actions where the necessity of making the same is expressly waived by the parties and to indicate that such findings and conclusions may be written or oral and need only state the controlling grounds of decision. These provisions are necessitated by the time demands of a massive volume of litigation and are designed to insure that all litigants who desire it receive a fair and adequate statement of the grounds of decision applied in their case while at the same time making clear that such statements of fact and law need not be unduly lengthy nor presented in written form if the Court prefers to dictate them from the bench.

Rule 53. Masters

(a) APPOINTMENT.

(1) *Definition*. The term "master" also refers to the Auditor-Master as established by D.C. Code § 11-1724 (2012 Repl.) unless otherwise noted.

(2) *Scope*. Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available judge or magistrate judge.

(3) *Disqualification*. A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under Rule 63-I, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(4) *Possible Expense or Delay*. In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) ORDER APPOINTING A MASTER.

(1) *Notice*. Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.

(2) *Contents*. The appointing order must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);

(B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

(3) *Issuing*. The court may issue the order only after:

(A) the master files an affidavit disclosing whether there is any ground for disqualification under Rule 63-I; and

(B) if a ground is disclosed, the parties, with the court's approval, waive the disqualification.

(4) *Amending*. The order may be amended at any time after notice to the parties and an opportunity to be heard.

(c) MASTER’S AUTHORITY.

(1) *In General*. Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and

efficiently; and

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

(2) *Sanctions*. The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) MASTER'S ORDERS. A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.

(e) MASTER'S REPORTS. A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.

(f) ACTION ON THE MASTER'S ORDER, REPORT, OR RECOMMENDATIONS.

(1) *Opportunity for a Hearing; Action in General*. In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(2) *Time to Object or Move to Adopt or Modify*. A party may file objections to—or a motion to adopt or modify—the master's order, report, or recommendations no later than 21 days after a copy is served, unless the court sets a different time.

(3) *Reviewing Factual Findings*. The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:

(A) the findings will be reviewed for clear error; or

(B) the findings of a master appointed under Rule 53(a)(2)(A) or (C) will be final.

(4) *Reviewing Legal Conclusions*. The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) *Reviewing Procedural Matters*. Unless the appointing order establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(g) COMPENSATION.

(1) *Fixing Compensation*. Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

(2) *Auditor-Master Costs*. The Auditor-Master may not be compensated, but is entitled to recover costs.

(3) *Payment*. The compensation must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(4) *Allocating Payment*. The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

(h) APPOINTING A MAGISTRATE JUDGE. A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge states that the reference is made under this rule.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 53*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) section (a) indicates that the rule is applicable to the Auditor-Master; 2) subsection (g)(2) allows the Auditor-Master to recover costs; and 3) references to *28 U.S.C. § 455* are replaced by references to Rule 63-I.

COMMENT

Rule 53 identical to Fed. Rule of Civil Procedure 53 except that section (a) has been modified to recognize the existence of the office of Auditor-Master and to allow the court to fix fees for the work performed by the Auditor-Master as well as compensation for services rendered by special masters. For the statutory description of the appointment and duties of the Auditor-Master see D.C.Code (1967 Edition, Supplement IV) §§ 11-1724 and 11-1725.

A master may also recommend the institution of contempt proceedings by the Court against a nonparty under SCR Civ. 53(c). The service requirement in SCR Civ. 53(e) refers to orders issued out of the presence of the parties.

Rule 53-I. Auditor-Master Fees

(a) In General. Fees for work performed by the Auditor-Master shall bear a reasonable relation to the value of the service thus rendered.

(b) Exceptions. In appropriate cases, the court, in its discretion, may order that a party or parties shall be charged no fee or only a reduced fee for work performed by the Auditor-Master.

COMMENT

This rule makes clear that normally parties shall be required to bear the cost of services rendered in their cases by the Auditor-Master's office but that in exceptional instances the court may order the Auditor-Master to perform work in cases in which the parties cannot afford to pay the full, or perhaps any fee. In all cases the Auditor-Master shall, upon completion of the work performed, furnish to the parties and the court a brief statement of the work done and a recommendation as to the fee to be charged. The court will consider this recommendation, and any objections thereto filed by the parties, and will then order that fees in a specified amount be charged to specified parties. For litigants or attorneys who wish to secure an estimate of what fees might be charged for performance of certain prospective work, the Auditor-Master is available on appointment to render an informal opinion.

Rule 53-II. Deposit for Expenses

The Auditor-Master or a Special Master may require the deposit of funds sufficient to defray the expenses of a reference, including a stenographic report of the testimony.

Rule 54. Judgment; Costs

(a) DEFINITION; FORM. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) JUDGMENT ON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES. When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) DEMAND FOR JUDGMENT; RELIEF TO BE GRANTED. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) COSTS; ATTORNEY'S FEES.

(1) *Costs Other Than Attorneys' Fees*. Unless an applicable statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party. But costs against the United States, the District of Columbia, or officers and agencies of either may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action.

(2) *Attorneys' Fees*.

(A) *Claims to Be by Motion*. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) *Timing and Contents of the Motion.* Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) *Proceedings*. Subject to Rule 23(h), the court must, on a party's request, give an opportunity for adversary submissions on the motion in accordance with Rule 12-I or 43(f). The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).

(D) *Reference to a Magistrate Judge or a Master*. The following rules govern reference to a magistrate judge or a master:

(i) The Chief Judge may refer a motion for attorney's fees to a magistrate judge under Rule 73 as if it were a dispositive pretrial matter.

(ii) The court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a)(2).

(E) *Exceptions*. Rule 54(d)(2)(A)–(D) do not apply to claims for fees and expenses as sanctions for violating these rules.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 54*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) in subsection (d)(1), "applicable statute" has been substituted for "federal statute" and a reference to District of Columbia and its officers or agencies has been added; 2) in subsection (d)(2)(C), the reference to Rule 78 has been replaced with a reference to Rule 12-I; 3) subsection (d)(2)(D) has been modified to reflect local practice; and 4) in subsection (d)(2)(E), the reference to *28 U.S.C. § 1927* has been omitted.

Rule 54-I. Witness Fees; Costs of Depositions, Transcripts, and Bonds

(a) Witness Fees. Proof of the attendance of witnesses shall be by certificate of the attorney of record in the form prescribed in CA Form 104. The certificate must be served upon the opposing party or counsel and filed within 5 days after the entry of any final order or judgment, otherwise witness fees shall not be taxed or recovered as costs. Within 5 days after the certificate is served any party may move to amend or strike the same.

(b) Costs of Depositions, Transcripts, and Bonds. Costs of depositions, reporters' transcripts on appeal, and premiums on bonds may be taxed at the discretion of the trial court.

Rule 54-II. Waiver of Costs, Fees, or Security

(a) IN GENERAL. The court may waive the prepayment of costs, fees, or security or the payment of costs, fees, or security accruing during any action on the presentation of Civil Action Form 106A (Application to Proceed Without Prepayment of Costs, Fees, or Security) and a finding that the party is unable to pay such costs, fees, or security without substantial hardship to the applicant or the applicant's family. The court must not deny an application solely because the applicant is at or above the federal poverty guidelines. An application may be submitted at any point in the proceedings. Unless the court orders otherwise, the application need not be served on the other parties and will be resolved ex parte. When an application is granted in whole or in part, a notation will be made in the record of that action.

(b) PUBLIC BENEFITS. If an applicant receives Temporary Assistance for Needy Families, General Assistance for Children, Program on Work, Employment, and Responsibility, or Supplemental Security Income, the court or the clerk must grant the application without requiring additional information from the applicant.

(c) HEALTH CARE BENEFITS. Consistent with Civil Action Form 106A, if an applicant receives Interim Disability Assistance, Medicaid, or the D.C. HealthCare Alliance, the court may grant the application without requiring additional information from the applicant.

(d) SIGNIFICANT COSTS. In determining whether to waive the prepayment of costs, fees, or security, the court must take into account the likelihood that the matter may entail significant costs to the litigant, such as the costs of e-filing.

(e) MERIT OF UNDERLYING ACTION. The court may not refuse to waive the prepayment of costs, fees, or security based on the perceived lack of merit of the underlying action.

(f) DISMISSING ACTIONS; ENJOINING REPEAT FILERS OF FRIVOLOUS MATTERS. Nothing in this rule should be construed to limit the authority of courts to dismiss actions or to enjoin repeat filers of frivolous matters from filing future cases without prior approval of the court.

(g) REQUIRING ADDITIONAL INFORMATION. If there is good cause to believe the information contained in Civil Action Form 106A is inaccurate or misleading, or that the applicant has undergone a change of circumstances or submitted an incomplete application, the court may require additional evidence in support of the request to waive prepayment of costs, fees, or security accruing during any action.

(h) DECLARATION. The application must include the signed declaration in Civil Action Form 106A. Notarization is not required.

(i) SERVICE OF COMPLAINT; SERVICE ON MINOR OR INCOMPETENT PERSON; SERVICE OF WITNESS SUBPOENA; WITNESS FEES. Where an application to proceed without prepayment of costs, fees, or security is granted, the following provisions apply:

(1) *Service of Complaint*. The clerk will attempt to serve a defendant—other than a minor or incompetent person—with the materials listed in Rule 4(c)(1) by:

(A) registered or certified mail, return receipt requested, under Rule 4(c)(4);

(B) first-class mail with notice and acknowledgment under Rule 4(c)(5); or

(C) both methods listed in Rule 54-II(i)(1)(A) and (B).

(2) *Service on Minor or Incompetent Person*. Where the defendant is a minor or incompetent person within the meaning of D.C. Code §§ 13-332 and -333 (2012 Repl.), the court may, on motion, appoint a person to serve the materials listed in Rule 4(c)(1) by the methods described in Rule 4(g).

(3) *Service of Witness Subpoena; Witness Fees*. On motion, the court may in its discretion appoint a person to serve witness subpoenas. Witnesses will be subpoenaed without prepayment of witness fees, and the same remedies will be available as are provided for by law in other cases.

(j) RULING IN WRITING OR ON THE RECORD. If the court denies the application to proceed without prepayment of costs, fees, or security, the court must state its reason(s) for denial in writing or on the record in the presence of the applicant or his or her counsel.

(k) MOTION FOR FREE TRANSCRIPTS. An applicant who has received a waiver of the prepayment of costs, fees, or security may file a motion requesting that free transcripts be prepared for appeal and explaining the basis for the motion. The court may not refuse to provide free transcripts unless the appeal is frivolous. In making this determination, the court must resolve doubt about the merits of the appeal in favor of the applicant. The court may order that only those portions of the trial proceedings necessary to resolution of the appeal be transcribed.

COMMENT TO 2019 AMENDMENTS

Section (b) was amended to permit the clerk to grant applications when the applicant receives Temporary Assistance for Needy Families, General Assistance for Children, Program on Work, Employment, and Responsibility, or Supplemental Security Income.

COMMENT TO 2017 AMENDMENTS

Section (i) has been amended to clarify and limit the types of service that the court is required to undertake on behalf of *in forma pauperis* litigants. Generally, the court will attempt service of the complaint and related materials by registered or certified mail, return receipt requested, or by first-class mail with notice and acknowledgment. By motion, the court may appoint a process server to serve witness subpoenas or to serve a complaint and related materials on an incompetent or minor defendant as required by statute.

By limiting the types of service and reducing corresponding costs, the court also helps to limit the *in forma pauperis* litigant's potential liability where "[c]osts may be assessed against a party proceeding *in forma pauperis* at the conclusion of an unsuccessful suit." *Robinson v. Howard University*, 455 A.2d 1363, 1367 (D.C. 1983). Additionally, these amendments address a concern first raised in *Atherton v. Brooks*, 728 A.2d 1195 (D.C. 1999), in which the District of Columbia Court of Appeals opined that the language in Rule 54-II related to the waiver of prepayment of witness fees could be interpreted as imposing a corresponding obligation on the trial court to serve witness subpoenas—"an administrative burden" that might not have been considered when the rule was adopted.

COMMENT

D.C. Code § 15-712 governs in forma pauperis applications. There is no Federal Rule of Civil Procedure addressing such applications, but *28 U.S.C. § 1915* does. The District of Columbia statute, unlike the federal statute, does not provide the court with discretion to deny an application for in forma pauperis based upon the merit of the underlying action. *Compare* D.C. Code § 15-712 *with 28 U.S.C. § 1915 (e)(2)*; *see In re Turkowski*, 741 A.2d 406, 407 (D.C. 1999) (per curiam) ("the court must grant the request for in forma pauperis status if a proper application is made, and, having done so, thereafter treat the case as any other, including, of course, any appropriate dispositive actions"); accord *Lewis v. Fulwood*, 569 A.2d 594, 595 (D.C. 1990) (per curiam). The Rule requires applicants seeking in forma pauperis status to submit their request utilizing Form 106A (Application to Proceed Without Prepayment of Costs, Fees or Security), which includes citations to pertinent statutes and case law. Subsection (k) sets forth the standards for ruling upon a motion for free transcripts. *See, e.g., P.F. v. N.C.*, 953 A.2d 1107, 1119 (D.C. 2008) (noting that an appellant proceeding in forma pauperis is entitled to a free transcript "if the trial judge ... certifies that the appeal is not frivolous" and that "[d]oubts about [the] substantiality of the questions on appeal and the need for a transcript to explore them should be resolved in favor of the petitioner") (internal quotation marks and citations omitted); *Hancock v. Mut. of Omaha Ins. Co.*, 472 A.2d 867 (D.C. 1984), as discussed in *P.F.*, 953 A.2d at 1119.

Rule 55. Default; Default Judgment

(a) ENTERING A DEFAULT.

(1) *In General*. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, the clerk or the court must enter the party's default.

(2) *Effective Date of Default; Motion by Defendant*. Any order of default entered on the court's or the clerk's own initiative, including a default for failure to respond to the complaint within the time prescribed in Rule 12(a), will not take effect until 14 days after the date on which it is docketed and must be vacated if the court grants a motion filed by defendant within the 14-day period showing good cause why the default should not be entered.

(3) *Extension of Time to Plead or Otherwise Defend*. Before an order of default is issued, the time to plead or otherwise defend may be extended by one of the following:

(A) an order granting a motion, which shows good cause for the extension; or

(B) a praecipe, signed by the parties or their representatives, and filed with the court, which provides for a one-time extension of not more than 21 days within which to plead or otherwise respond.

(b) ENTERING A DEFAULT JUDGMENT.

(1) *By the Clerk*. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request—must enter judgment for that amount and costs against a defendant who has been defaulted for not responding as provided in Rule 12 if:

(A) the plaintiff filed and served a verified complaint or an affidavit verifying the complaint at least 21 days prior to the request for judgment;

(B) the verified complaint or affidavit sets out the sum claimed to be due, exclusive of all set-offs and defenses;

(C) the request for judgment is made no more than 60 days after default is entered; and

(D) the plaintiff, at the time of requesting the judgment, properly filed, for each defendant who is an individual, a Civil Action Form 114 that complies with the Servicemembers Civil Relief Act (*50 U.S.C. §§ 3901-4043*).

(2) *By the Court*. In all other cases, and no more than 60 days after default is entered, the party must apply to the court for a default judgment either by motion or by praecipe, served on all parties, requesting the setting of an ex parte proof hearing.

(A) *Notice of Motion*. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the motion at least 7 days before the hearing.

(B) *Servicemembers Civil Relief Act Affidavit*. If the party against whom a default judgment is sought has not appeared in the action, a Civil Action Form 114 that complies with the Servicemembers Civil Relief Act (*50 U.S.C. §§ 3901-4043*), must be filed for each defendant who is an individual before the court may enter a default judgment.

(C) *Hearings or Referrals*. The court may conduct hearings or make referrals—preserving any applicable statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

(i) conduct an accounting;

(ii) determine the amount of damages;
(iii) establish the truth of any allegation by evidence; or
(iv) investigate any other matter.

(3) *Minors and Incompetents*. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, committee, conservator, or other like fiduciary who has appeared.

(4) *Members of the Military; Military Status Unknown*. If the Civil Action Form 114 filed by the plaintiff under Rule 55(b)(1) or (2) indicates that the defendant is in the military or that his or her military status is unknown, the court must follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (*50 U.S.C. § 3931*).

(5) *Dismissal*. A plaintiff's failure to comply with Rule 55(b)(1) or (2) will result in the dismissal without prejudice of the complaint.

(c) SETTING ASIDE A DEFAULT OR A DEFAULT JUDGMENT.

(1) *By the Clerk.* The clerk may set aside an entry of default or a default judgment by consent pursuant to Rule 55-III.

(2) *By the Court.* The court may set aside an entry of default for good cause on the filing of a verified answer setting up a defense sufficient, if proved, to bar the claim in whole or in part. The movant does not need to file an answer if the motion is accompanied by a settlement agreement or a proposed consent judgment signed by both parties. In addition, an answer is not required when the movant asserts a lack of subject-matter or personal jurisdiction or when the default was entered after the movant had filed an answer. The court may set aside a final default judgment under Rule 60(b).

(d) JUDGMENT AGAINST THE UNITED STATES OR THE DISTRICT OF COLUMBIA. A default judgment may be entered against the United States, the District of Columbia, or an officer or agency of either only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

COMMENT TO 2017 AMENDMENTS

This rule continues to differ substantially from *Federal Rule of Civil Procedure 55*. However, this rule has been amended consistent with the 2007 stylistic changes to the federal rule, and it incorporates other 2007, 2009, and 2015 federal amendments. Specifically, in accordance with the 2007 federal amendments, former section (d) was eliminated. It included two provisions—one stating that Rule 55 applied to the described claimants, which was an incomplete list, and one reminding parties that Rule 54(c) limited the relief available for a default judgment. Also, time periods were revised in accordance with the 2009 federal amendments. Finally, consistent with 2015 amendments to the federal rule, the word "final" was added to the provision in subsection (c)(2) that indicated the court "may set aside a final default judgment under Rule 60(b)." This amendment helped to clarify the difference between a final default judgment that could be reviewed under Rule 60(b) and a default judgment that does not dispose of all of the claims. The latter is not final until the court directs entry under Rule 54.

COMMENT

Paragraph (b)(1) has been revised to conform to the prior practice in the Court of General Sessions of requiring a verified complaint or affidavit stating the amount due before entry of default by the Clerk. Paragraph (b)(1) has been modified to add the requirement that plaintiff provide a proposed order with the request for judgment within 60 days after default is entered. A Form CA 114 in compliance with the Servicemembers Civil Relief Act (2003) (*50 U.S.C. App. § 501 et seq.*) must be filed in all cases, whether the default judgment is to be entered by the clerk or the Court, where defendant has failed to appear. A request for judgment under paragraph (b)(2) must now be made by way of a motion. Moreover, paragraph (c) has also been revised to conform to the prior practice in the Court of General Sessions of requiring a verified and sufficient answer before setting aside a default except in those cases in which the parties have entered into a settlement agreement or consent judgment or where either the movant asserts a lack of subject matter or personal jurisdiction or when the default was entered after the movant has filed an answer. In addition, paragraph (e) has been revised to reflect reference to the District of Columbia as well as the United States and paragraph (b)(2) has been revised to refer to any "applicable statute" in place of "statute of the United States".

Rule 55-I. Withdrawal of Jury Demand After Default

If a default is entered against a party, an opposing party may withdraw its jury demand.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 55-II. Ex Parte Proof by Motion of Pecuniary Losses; Deficiency Judgment

(a) EX PARTE PROOF OF PECUNIARY LOSSES.

(1) *Procedural Requirements; Motion and Affidavit*. In any action in which a default has been entered and the only remaining claims are for property damage or other pecuniary losses, judgment may be entered if, within 60 days of the default, a motion for judgment is filed along with an affidavit meeting the requirements of Rule 56(c)(4) and setting forth:

(A) the specific pecuniary loss sustained;

(B) its causal relationship to the factual situation set forth in the complaint; and

(C) that a copy of the motion was sent to the defendant at the defendant's last known address notifying the defendant that any objections to the motion must be received by the clerk within 21 days.

(2) *Supporting Papers*. The affidavit provided with the motion must be accompanied by:

(A) a paid bill for the work done or an estimate of value from a person, firm or company regularly engaged in the business of doing such work or in the event of total loss, regularly engaged in the estimation of such losses;

(B) a sworn statement from plaintiff's employer setting forth plaintiff's rate of compensation and the days and hours plaintiff was unable to work on account of the matters alleged in the complaint; or

(C) a statement of account from a health care provider or facility setting forth the reasonable and necessary charges incurred by plaintiff for treatment of injuries received as a result of the occurrence alleged in the complaint.

(3) *Compliance with Servicemembers Civil Relief Act.* Where applicable, the filing party must attach a Civil Action Form 114 that complies with the Servicemembers Civil Relief Act (*50 U.S.C. §§ 3901-4043*).

(4) *Judicial Action*. The judge or magistrate judge may enter judgment for the amount alleged in the affidavit or for such lesser sum as may be warranted by all materials of record, including defendant's objection, if any, or may schedule the matter for an ex parte proof hearing, as appropriate. If Civil Action Form 114 indicates that the defendant is in the military or that his or her military status is unknown, the court must follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (*50 U.S.C. § 3931*).

(b) DEFICIENCY JUDGMENT. A deficiency judgment after repossession of personal property may be granted as provided in Rule 55-II(a). However, the motion, affidavit, and supporting documents, or the proof presented at an ex parte proof hearing, must set forth a basis on which the court can reasonably conclude that the plaintiff complied with applicable law and that the property was resold for a fair and reasonable price.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

Rule 55-II provides an optional method for proving the amount of pecuniary losses in cases of defaults governed by Rule 55(b)(2). In cases to which Rule 55-II is applicable, plaintiff may elect to proceed under that Rule or may await the scheduling of an ex parte proof hearing in the normal course. Since the reach of Rule 55-II has been expanded to cover not only property damage claims but also claims involving other types of pecuniary losses (e.g. wage losses, medical bills, deficiency judgments, repair costs incurred to make good work improperly performed by a home repairman or contractor), the time for defendant to object to plaintiff's affidavit of loss has been enlarged from 10 to 20 days. This amendment also makes Rule 55-II consistent with amended Rule 55(b) which effectively affords defendants 20 days to object to any newly filed affidavit concerning the sum to be entered in a default judgment pursuant to that Rule.

Rule 55-III. Vacating Default or Default Judgment by Consent

The clerk may vacate a default or default judgment, within 60 days after its entry, if the claimant and the defaulted party, or their attorneys, file a signed praecipe so requesting and bearing evidence of its service on all parties that have appeared. When required by Rule 55(c), the praecipe must be accompanied by a verified answer.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

Rule 55-III provides a procedure, alternative to that of a Rule 55(c) motion, for vacating defaults by consent in specified situations. The procedure is applicable to a default or default judgment entered on any claim, whether that claim is contained in a complaint, counterclaim, cross-claim, or 3rd-party claim.

Rule 56. Summary Judgment

(a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) TIME TO FILE A MOTION; FORMAT.

(1) *Time to File.* Unless the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(2) *Format: Parties' Statements of Fact*.

(A) *Movant's Statement*. In addition to the points and authorities required by Rule 12-I(d)(2), the movant must file a statement of the material facts that the movant contends are not genuinely disputed. Each material fact must be stated in a separate numbered paragraph.

(B) *Opponent's Statement*. A party opposing the motion must file a statement of the material facts that the opponent contends are genuinely disputed. The disputed material facts must be stated in separate numbered paragraphs that correspond to the extent possible with the numbering of the paragraphs in the movant's statement.

(c) PROCEDURES.

(1) *Supporting Factual Positions*. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) WHEN FACTS ARE UNAVAILABLE TO THE NONMOVANT. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) FAILING TO PROPERLY SUPPORT OR ADDRESS A FACT. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) JUDGMENT INDEPENDENT OF THE MOTION. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) FAILING TO GRANT ALL THE REQUESTED RELIEF. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITH. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 56*, as amended in 2010, except that 1) a reference to local district court rules is omitted from the language in subsection (b)(1) and 2) subsection (b)(2), which is unique to the Superior Court rule, requires parties to submit statements of material facts with each material fact stated in a separate, numbered paragraph (a requirement previously found in Rule 12-I(k)). In 2010, the federal rule underwent substantial revisions in order to improve the procedures for presenting and deciding summary judgment motions, but the standard for granting summary judgment remained unchanged. Parties and counsel should refer to the Federal Rules of Civil Procedure Advisory Committee Notes for a detailed explanation of these amendments.

COMMENT

Identical to *Federal Rule of Civil Procedure 56* except for the provision in paragraphs (a) and (b) of Rule 56 that the time period for filing the motion shall be set by Court order. For further requirements with respect to summary judgment procedure, see Rule 12-I(k).

Rule 57. Declaratory Judgment

These rules govern the procedure for obtaining a declaratory judgment under *28 U.S.C. § 2201* or otherwise. Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action.

COMMENT TO 2017 AMENDMENTS

Rule 57 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 57*. One local distinction has been retained—the language “or otherwise” follows *28 U.S.C. § 2201*.

COMMENT

Identical to *Federal Rule of Civil Procedure 57* except for addition of the words "or otherwise" following reference to *28 U.S.C. § 2201* so as to comprehend also authority for issuance of declaratory judgments founded on the Congressional grant to the Superior Court of general equity powers and the related prescription that the Court conduct its business according to the Federal Rules of Civil Procedure wherever possible. *See* D.C. Code §§ 11-921 and 11-946 (1973 Ed.). Note, however, that a declaratory judgment, like any other remedy, may only be granted in cases properly within the Court's jurisdiction.

Rule 58. Entering Judgment

(a) SEPARATE DOCUMENT. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

(1) for judgment under Rule 50(b);

(2) to amend or make additional findings under Rule 52(b);

(3) for attorney's fees under Rule 54;

(4) for a new trial, or to alter or amend the judgment, under Rule 59; or

(5) for relief under Rule 60.

(b) ENTERING JUDGMENT.

(1) *Without the Court's Direction.* Subject to Rule 54(b) and unless the court or administrative order requires otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter judgment when:

(A) the jury returns a general verdict;

(B) the court awards only costs or a sum certain; or

(C) the court denies all relief.

(2) *Court's Approval Required*. Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(A) the jury returns a special verdict or a general verdict with answers to questions; or

(B) the court grants other relief not described in Rule 58(b).

(c) TIME OF ENTRY. For purposes of these rules, judgment is entered at the following times:

(1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or

(2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:

(A) it is set out in a separate document; or

(B) 150 days have run from the entry in the civil docket.

(d) REQUEST FOR ENTRY. A party may request that judgment be set out in a separate document as required by Rule 58(a).

(e) COST OR FEE AWARDS. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under District of Columbia Court of Appeals Rule 4(a)(4) as a timely motion under Rule 59.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 58*, as amended in 2007, except that subsection (b)(1) references administrative orders and section (e) references the District of Columbia Court of Appeals rule.

COMMENT

Identical to *Federal Rule of Civil Procedure 58*.

Rule 59. New Trial; Altering or Amending a Judgment

(a) IN GENERAL.

(1) *Grounds for New Trial*. The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court or District of Columbia courts; or

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court or District of Columbia courts.

(2) *Further Action After a Nonjury Trial.* After a nonjury trial, the court may, on motion for a new trial:

(A) open the judgment if one has been entered;

(B) take additional testimony;

(C) amend findings of fact and conclusions of law or make new ones; and

(D) direct the entry of a new judgment.

(b) TIME TO FILE A MOTION FOR A NEW TRIAL. A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) TIME TO SERVE AFFIDAVITS. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) NEW TRIAL ON THE COURT'S INITIATIVE OR FOR REASONS NOT IN THE MOTION. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) MOTION TO ALTER OR AMEND A JUDGMENT. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 59*, as amended in 2007 and 2009, except that subsection (a)(1) references District of Columbia courts and subsection (a)(2) is divided into smaller subsections so that it is easier to read. Consistent with the federal rule, the 10-day deadline for parties to file post-judgment motions has been expanded to 28 days. This was necessitated by the Rule 6(b) prohibition on an extension of this deadline. The change is intended to give parties more time to prepare a satisfactory post-judgment motion while maintaining certainty in appeal times.

COMMENT

Identical to *Federal Rule of Civil Procedure 59* except for insertion in section (a) thereof of reference to courts of the District of Columbia as well as courts of the United States.

Rule 60. Relief from a Judgment or Order

(a) CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, 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.

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

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

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) TIMING AND EFFECT OF THE MOTION.

(1) *Timing*. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality*. The motion does not affect the judgment's finality or suspend its operation.

(d) OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding; or

(2) set aside a judgment for fraud on the court.

(e) BILLS AND WRITS ABOLISHED. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 60*, as amended in 2007, except that the reference to relief under *28 U.S.C. § 1655* remains omitted.

COMMENT

Identical to *Federal Rule of Civil Procedure 60* except for deletion from section (b) of the inapplicable reference to *28 U.S.C. § 1655* dealing with lien actions in the United States District Courts. With respect to motions made under this Rule for reinstatement of actions previously dismissed through inexcusable neglect or dereliction of counsel, *see also* Rule 41-I. *See* Rule 55-III for procedure governing the vacating of defaults by consent.

Rule 61. Harmless Error

Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

COMMENT TO 2017 AMENDMENTS

Rule 61 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 61*.

COMMENT

Identical to *Federal Rule of Civil Procedure 61*.

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) AUTOMATIC STAY; EXCEPTIONS FOR INJUNCTIONS AND RECEIVERSHIPS. Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. But unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction or a receivership is not stayed after being entered, even if an appeal is taken.

(b) STAY PENDING THE DISPOSITION OF A MOTION. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment—or any proceedings to enforce it—pending the disposition of any of the following motions:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or to alter or amend a judgment; or

(4) under Rule 60, for relief from a judgment or order.

(c) INJUNCTION PENDING AN APPEAL. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

(d) STAY WITH BOND ON APPEAL. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a). The bond may be given on or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) STAY WITHOUT BOND ON AN APPEAL BY THE UNITED STATES, THE DISTRICT OF COLUMBIA, OR AN OFFICER OR AGENCY OF EITHER. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, the District of Columbia, or an officer or agency of either or on an appeal directed by a department of either.

(f) [Deleted].

(g) APPELLATE COURT'S POWER NOT LIMITED. This rule does not limit the power of the appellate court or one of its judges or justices:

(1) to stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) STAY WITH MULTIPLE CLAIMS OR PARTIES. A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 62*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) the addition of the District of Columbia to section (e), which exempts the government from the requirement of posting security to stay enforcement of a judgment on appeal; and 2) the deletion of inapplicable references to patent accountings, three judge District Court panels, and

state law on stay of judgments in sections (a), (c) and (f) of the federal rule, respectively.

Rule 62-I. Supersedeas Bond

(a) IN GENERAL.

(1) *Court Approval*. An appellant who is entitled to a stay on appeal may present a supersedeas bond or undertaking to the court for its approval.

(2) *Requirements*. The bond or undertaking must:

(A) have a surety or sureties if the court so requires; and

(B) be conditioned to satisfy the judgment in full, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full any modification of the judgment and the costs, interest, and damages awarded by the appellate court, if any.

(3) *Value of Bond or Undertaking*.

(A) *Unsecured Monetary Judgments*. When the judgment is for the recovery of money not otherwise secured, the amount of the bond or undertaking will be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond.

(B) *Judgments Determining the Disposition of Property in Controversy*. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the marshal or when the proceeds of the property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond or undertaking must be fixed at a sum that will secure but not exceed the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay.

When the defendant in an action to recover possession of real estate seeks review, the undertaking must also provide for the payment of all intervening damages to the property sought to be recovered and compensation for its use and occupation from the date of the judgment to the date of the satisfaction if the judgment is not reversed.

(4) *Supplementing a Bond or Undertaking*. Unless the court orders otherwise, when the appellant has already filed, in the trial court, security that was intended to include adequate security in the event of an appeal, a separate supersedeas bond need not be given, except for the difference in amount, if any.

(b) EVIDENCE OF FINANCIAL ABILITY. Before the court approves any bond or undertaking, the party offering the bond or undertaking must furnish to the court any evidence establishing the financial ability of the surety or sureties to discharge the financial obligations of the bond as might be required by the court.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

This Rule contemplates that although the party securing the bond must make diligent efforts to provide adequate security, the ultimate burden is on prevailing parties to assure themselves that the surety is solvent and to bring any issues to the Court's attention.

Rule 62-II. Application for Termination of Stay or for Entry of Judgment

(a) PLAINTIFF'S APPLICATION. If either entry or execution of the judgment has been stayed on condition that the defendant make certain periodic payments to the plaintiff or perform other acts, and the defendant at any time fails to make the payments or perform the acts, the plaintiff may apply for termination of the stay or entry of judgment by mailing to the defendant and the defendant's attorney, if any, a verified copy of Civil Action Form 110, accompanied by proof of service as provided in Rule 5-I.

(b) ACTION BY THE CLERK.

(1) *When the Defendant Fails to Respond*. If the defendant fails to oppose the termination, the clerk may terminate the stay and issue execution or enter judgment in accordance with the notice given by Civil Action Form 110, in the manner provided in Rule 55(b)(1) with respect to defaults.

(2) *When the Defendant Files an Opposition*. If the defendant files an opposition, the notice must be treated as an opposed motion pursuant to Rule 12.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 62-III. Enforcing Foreign Judgments; Recognizing Foreign-Country Money Judgments

(a) FOREIGN JUDGMENTS ENTITLED TO FULL FAITH AND CREDIT.

(1) *Filing Requirements*. A copy of a judgment, decree or order of a court of the United States, or of any other court entitled to full faith and credit in the District of Columbia, may be filed with the clerk by the judgment creditor or the judgment creditor's lawyer only if:

(A) the judgment is authenticated in accordance with District of Columbia law;

(B) the judgment is accompanied by a completed version of Civil Action Form 112, "Request to File Foreign Judgment"; and

(C) the filing fee established by the court has been paid.

(2) *Effect, Enforcement, and Satisfaction*. A foreign judgment, decree, or order of a court of the United States or of any other court entitled to full faith and credit in the District of Columbia, which is filed with the clerk, has the same effect and is subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner, subject to the provisions of the Uniform Enforcement of Foreign Judgments Act of 1990, D.C. Code §§ 15-351 to -357 (2012 Repl.).

(b) FOREIGN-COUNTRY MONEY JUDGMENTS ENTITLED TO RECOGNITION. The judgment of a court of a foreign country may be entitled to recognition under the Uniform Foreign-Country Money Judgments Recognition Act of 2011, D.C. Code §§ 15-361 to -371 (2012 Repl.). Recognition may be sought in a pending action or as an original matter.

COMMENT TO 2017 AMENDMENTS

Former Superior Court Rule 72 has been renumbered as Rule 62-III in order to reflect that there is no Superior Court rule that corresponds to *Federal Rule of Civil Procedure 72.* This rule has been amended to conform with the 2007 restyling of the Federal Rules of Civil Procedure.

The rule was also amended to clarify that the procedures for foreign judgments entitled to full faith and credit differ from the procedures for foreign-country money judgments entitled to recognition.

COMMENT

Rule 72 is intended to implement the Uniform Enforcement of Foreign Judgments Act of 1990, (D.C. Code §§ 15-351 -- 15-357) which has been adopted by the District of Columbia. As a "Uniform Act," it should be construed to effectuate its general purpose to make consistent the law of all jurisdictions that enact it. Accordingly, where there are no interpretations of the Act's provisions in this jurisdiction, guidance may be found in the decisions of other jurisdictions that have adopted this Act. While the Act was intended to provide a simple and expeditious procedure to enforce a foreign judgment in the District of Columbia, it does not impair the right of a judgment creditor to resort to the cumbersome prior practice of bringing suit to enforce a foreign judgment.

Rule 62.1. Indicative Ruling on a Motion for Relief That Is Barred by a Pending Appeal

(a) RELIEF PENDING APPEAL. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state that it would grant the motion if the District of Columbia Court of Appeals remands for that purpose.

(b) NOTICE TO THE COURT OF APPEALS. The movant must promptly notify the District of Columbia Court of Appeals under District of Columbia Court of Appeals Rule 4(f) if the trial court states that it would grant the motion.

(c) REMAND. The trial court may decide the motion if the District of Columbia Court of Appeals remands for that purpose.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 62.1*, which was introduced in 2009, but it contains two local differences—1) it references the District of Columbia Court of Appeals and its applicable rule; and 2) the language “or that the motion raises a substantial issue” has been omitted as inconsistent with local appellate rules.

Rule 63. Judge's or Magistrate Judge's Inability to Proceed

If a judge or magistrate judge conducting a hearing or trial is unable to proceed, any other judge or magistrate judge (if authorized by law) may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge or magistrate judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge or magistrate judge may also recall any other witness.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 63*, as amended in 2007, except for the addition of "magistrate judge."

Rule 63-I. Bias or Prejudice of a Judge or Magistrate Judge

(a) RECUSAL FOR BIAS OR PREJUDICE. Whenever a party to any proceeding makes and files a sufficient affidavit that the judge or magistrate judge before whom the matter is to be heard has a personal bias or prejudice either against the party or in favor of any adverse party, the judge or magistrate judge must proceed no further, and another judge or magistrate judge must be assigned, in accordance with Rule 40-I, to hear the proceeding.

(b) CONTENT OF AFFIDAVIT; FILING. The affidavit must state the facts and the reasons for the belief that bias or prejudice exists and must be accompanied by a certificate of counsel of record stating that it is made in good faith. The affidavit must be filed at least 24 hours prior to the time set for hearing of such matter unless good cause is shown for the failure to file by such time.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

Rule 63-I is substantially identical to *28 U.S.C. § 144*.

TITLE VIII. PROVISIONAL AND FINAL REMEDIES

Rule 64. Seizing a Person or Property

(a) IN GENERAL. At the commencement of and throughout an action, every remedy is available that, under District of Columbia law, provides for seizing a person or property to secure satisfaction of the potential judgment.

(b) SPECIFIC KINDS OF REMEDIES. The remedies available under this rule include the following—however designated:

(1) arrest;
(2) attachment;
(3) garnishment;
(4) replevin;
(5) sequestration; and
(6) other corresponding or equivalent remedies.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 64*, as amended in 2007, except for 1) substitution of "District of Columbia" for "state where the court is located" in section (a) 2) deletion of inapplicable phrases relating to state procedure and proceedings and federal statutes in sections (a) and (b); and 3) the use of numbers instead of bullets in section (b).

Rule 64-I. Attachment Before Judgment

(a) APPLICATION AND NOTICE TO DEFENDANT.

(1) *Requirements*. An application for a writ of attachment before judgment must be accompanied by:

(A) an affidavit setting forth specific facts meeting the requirements of D.C. Code § 16-501 (c) and (d) (2012 Repl.);

(B) a Notice to Defendant on a Civil Action Form 105; and

(C) if the defendant's address is unknown, an affidavit setting forth the plaintiff's reasonable efforts to ascertain the defendant's mailing address.

(2) *Actions by the Clerk*. The clerk must:

(A) send the notice to the defendant by first class mail at the address shown on the notice, or in the case of a foreign corporation, to its registered agent, if any; and

(B) note on the docket the date on which the notice is mailed.

(b) ISSUANCE. An application for a writ of attachment before judgment must be submitted as provided in Rule 12-I(b) to the judge—who may approve or deny issuance or direct further hearings before issuance as deemed appropriate.

(c) GARNISHEE'S ANSWER; APPLICANT'S RESPONSE. Within 10 days after accepting service of the writ of attachment, a garnishee must file an answer to the interrogatories with the clerk and serve a copy of the answer on the defendant and the party for whom the garnishment was issued. If within 14 days after service of the answer, or at a later time if the court allows, the party for whom the garnishment was issued fails to contest the answer to the interrogatories under D.C. Code § 16-522 (2012 Repl.), the garnishee's obligations under the attachment will be limited by his answer.

(d) HEARING. If a hearing is held as a result of the filing of a traversing affidavit by the defendant or the garnishee under D.C. Code § 16-506 (2012 Repl.), the plaintiff must establish the validity or probable validity of the underlying claim and the existence of the ground for issuing the attachment.

(e) PRIORITY OF LIENS. For purposes of determining priority of successive liens, a writ of attachment issued under Rule 64-I(b) becomes effective the date it is delivered to the United States marshal or deputy marshal.

(f) EXPEDITING MOTIONS TO QUASH. The court must hear all motions to quash attachments on an expedited basis. On at least 5 days notice to all parties, the court may, in appropriate cases, order that the action in which the motion was filed be tried on the merits at the same time the motion is heard.

(g) DISCOVERY. For good cause, the court may in its discretion permit discovery in attachment before judgment proceedings in the manner provided in Rule 69-I.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Also, some time periods were adjusted to reflect the new time computation method in Rule 6. However, the garnishee's time for filing answers to the interrogatories was not increased because it is statutory.

COMMENT

In connection with Rule 64-I, *see Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) and *Fuentes v. Shevin*, 407 U.S. 67 (1972).

Rule 64-II. Replevin Actions

(a) NOTIFYING THE JUDGE. On filing any action in replevin and before process is placed in the hands of the United States marshal or deputy marshal or other process server, the plaintiff, personally or by his attorney, will bring the action to the attention of the judge to whom the case is assigned under Rule 12-I(b).

(b) HEARING ON APPLICATION FOR WRIT; ORDER TO PRESERVE PROPERTY.

(1) *Setting a Hearing.* When notifying the judge of the action, the plaintiff may request that the judge set a date for a hearing at which the plaintiff will be required to establish the probable validity of his claim and the defendant will be given an opportunity to appear and be heard with respect to whether a writ of replevin should issue.

(2) *Order to Preserve Property*. If the judge determines the plaintiff has filed a verified complaint alleging the defendant is wrongfully detaining the specified property that the plaintiff is entitled to possess, he or she may issue an order:

(A) directing the defendant to preserve the property that is the subject of the action in his or her possession or under his or her control so as to keep it amenable to the process of the court pending further order of the court;

(B) indicating the date on which the plaintiff's application for a writ of replevin will be heard; and

(C) informing the defendant that he or she may be heard at that time, with or without witnesses, on whether the writ should issue.

(3) *Service of Process*. The order must direct the plaintiff to serve a copy of the summons, complaint, and order on the defendant at least 7 days prior to the hearing date. A plaintiff who does not effect service on time must apply to the judge to whom the case is assigned to set a later hearing date, which will provide the defendant with sufficient time to adequately prepare. The order may require actions by the plaintiff designed to accomplish prompt and expeditious notice to the defendant.

(c) ISSUING THE WRIT; REQUIRING A SECURITY FROM THE DEFENDANT. At the conclusion of the hearing, the judge may authorize the issuance and execution of a writ of replevin or may, if it appears just, permit all or part of the property to remain in the possession of the defendant pending further order of the court. If the defendant remains in possession of the property, the court may require the defendant to post an appropriate surety bond or other undertaking or may otherwise provide for the protection of the property under D.C. Code § 16-3708 (2012 Repl.).

(d) FILING REQUIREMENTS. The Civil Division will not accept for filing any action of replevin unless the complaint is accompanied by an appropriate surety bond, approved by the clerk.

(e) GOVERNMENT APPLICATIONS FOR WRITS OF REPLEVIN WITHOUT PRIOR ADVERSARY HEARING.

(1) *In General*. In its initial application, counsel for a federal, District of Columbia, State or other governmental agency or official may apply for issuance of the writ without prior adversary hearing on the ground that there is an immediate danger that the defendant will destroy or conceal the property in dispute or on any other ground set forth in D.C. Code § 16-501 (d)(2)–(5) (2012 Repl.) as a basis for attachment before judgment

(2) *Filing Requirements*. The application must show:

(A) a direct necessity to secure an important governmental or general public interest; and

(B) a special need for prompt action under a specific statute or regulation authorizing seizure of property without opportunity for prior hearing.

(3) *Judicial Action*. The judge may authorize the immediate issuance of the writ prior to the hearing only if the application is supported by affidavit or sworn testimony reciting specific facts that tend to establish the required grounds. If the judge authorizes the issuance of the writ, findings of fact and conclusions of law, which state the basis of the need for immediate issuance must be entered on the record.

(4) *Vacating the Writ.* After at least 24 hours notice to the plaintiff, the defendant against whom a writ has been issued without a hearing may apply to the court to have the writ vacated. Regardless, if such writ issues, a hearing must take place on the 5th day after execution of the writ. It is the duty of plaintiff's counsel to notify the clerk's office promptly of the execution of the writ.

(f) EXPEDITED TRIAL. Trial of all actions in replevin, whether on the jury or nonjury calendar, must be expedited.

(g) TRIAL IN LIEU OF HEARING. If all of the parties consent, the judge conducting a hearing on the issuance vel non of a writ of replevin may try the entire proceeding on the merits in lieu of merely determining whether to issue the writ.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

See Fuentes v. Shevin, 407 U.S. 67 (1972).

Rule 65. Injunctions and Restraining Orders

(a) PRELIMINARY INJUNCTION.

(1) *Notice*. The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits*. Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) TEMPORARY RESTRAINING ORDER.

(1) *Issuing Without Notice*. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the court finds that the movant has made reasonable efforts under the circumstances to furnish to the adverse party or its attorney, at the earliest practicable time prior to the hearing on the motion for such order, actual notice of the hearing and copies of all pleadings and other papers filed in the action or to be presented to the court at the hearing.

(2) *Contents; Expiration*. Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence overall other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) *Motion to Dissolve*. On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) SECURITY. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, the District of Columbia, and officers or agencies of either are not required to give security.

(d) CONTENTS AND SCOPE OF EVERY INJUNCTION AND RESTRAINING ORDER.

(1) *Contents*. Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) *Persons Bound*. The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) OTHER LAWS NOT MODIFIED. These rules do not modify any applicable statute relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee.

(f) [Omitted].

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 65*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) in subsection (b)(1), the requirement for an attorney certification has been replaced with language requiring the court to find that the movant made reasonable efforts; 2) the District of Columbia has been added to the section exempting the government and its agents from posting security; 3) references to federal statutes have been omitted from section (e); and 4) section (f) of the federal rule has been omitted as inapplicable.

COMMENT

Identical to *Federal Rule of Civil Procedure 65* except for (1) revision of the 2nd prerequisite clause in section (b) so as to replace the attorney's written certificate with a Court finding and to require the applicant to make reasonable efforts to furnish to the adverse party's attorney not only notice of the hearing but also copies of any papers filed to date or to be presented to the Court at the hearing; (2) addition of the District of Columbia to the provision in section (c) exempting the government and its agents from the requirement of posting security in the course of obtaining any restraining order or preliminary injunction; and (3) deletion from section (e) thereof of inapplicable references to *28 U.S.C. §§ 2361* and 2384 and substitution therein of "applicable statute" for "statute of the United States [sic]".

The 1st change described above was prompted by experience in this jurisdiction with a substantial number of emergency applications for temporary restraining orders, particularly against the District of Columbia. In the case of any application for a temporary restraining order against the District of Columbia, an agency thereof, or an employee acting or purporting to act in his official capacity, the adverse party's attorney is, of course, the Corporation Counsel of the District of Columbia. Because it is most desirable to have the adverse party's attorney present, if possible, at the hearing on the motion for temporary restraining order, the revised 2nd prerequisite requires the applicant to make all reasonable efforts to notify the adverse party's attorney of the hearing and furnish him with appropriate papers; naturally, furnishing such notice and papers to the adverse party himself would be the next best step if the applicant does not

know who the adverse party's attorney is.

It should be noted, however, that the furnishing of pleadings and other papers called for in section (b) does not supplant the jurisdictional requirement of service of process on the defendant in accordance with Rule 4.

Rule 65.1. Proceedings Against a Surety

Whenever these rules require or allow a party to give security, and security is given through a bond or other undertaking with one or more sureties, each surety submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for receiving service of any papers that affect its liability on the bond or undertaking. The surety's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly mail a copy of each to every surety whose address is known.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 65.1*, as amended in 2007, except that it maintains one local distinction—the omission of a reference to the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

COMMENT

Identical to *Federal Rule of Civil Procedure 65.1* except for the deletion therefrom of the inapplicable reference to Supplemental Rules for Admiralty Cases in the federal District Courts.

Rule 66. Receivers

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in the United States District Court for the District of Columbia and this court. An action in which a receiver has been appointed may be dismissed only by court order.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 66*, but it maintains one local distinction—it references the historical practices of the Superior Court and the United States District Court for the District of Columbia.

COMMENT

Identical to *Federal Rule of Civil Procedure 66* except for change in title and change in designation on prior practice to be followed. The insertion of reference to practice heretofore followed in the United States District Court for the District of Columbia is designed to insure maximum possible continuity in the handling of District of Columbia receivership matters.

Rule 67. Deposit into Court

(a) DEPOSITING PROPERTY. If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party—on notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

(b) INVESTING AND WITHDRAWING FUNDS. Money paid into court under this rule must be deposited and withdrawn in accordance with D.C. Code § 11-1723 (b) (2012 Repl.) or any like statute.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 67*. The Superior Court rule retains two local distinctions—1) the applicable provision of the D.C. Code has been substituted for the federal statute; and 2) the requirement to deposit funds in an interest-bearing account has been omitted.

COMMENT

Substantially identical to *F. R. Civ. P. 67* except for the deletion of the requirement that all deposited funds be placed in an interest-bearing account or invested in an interest-bearing instrument. The decision to place funds in such an account or instrument and to disburse those funds with accrued interest is discretionary with the Court, after due consideration of the administrative burden imposed by the accounting of such funds.

Nothing in this rule is intended to restrict the authority of the Court, upon proper application, to appoint a trustee, escrow holder, or to establish some otherwise appropriate method to retain funds pendente lite.

Rule 67-I. Recording Money Paid to or by Clerk

The clerk must receive and keep proper account of all money deposited or paid into or out of the clerk's office and make such reports concerning the same as may be required by law or court order.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 68. Offer of Judgment

(a) MAKING AN OFFER; JUDGMENT ON AN ACCEPTED OFFER. At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

(b) UNACCEPTED OFFER. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) OFFER AFTER LIABILITY IS DETERMINED. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time—but at least 14 days—before the date set for a hearing to determine the extent of liability.

(d) PAYING COSTS AFTER AN UNACCEPTED OFFER. If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 68*, as amended in 2007 and 2009.

Rule 68-I. Judgment by Confession or Consent

(a) [Deleted].

(b) [Deleted].

(c) CONSENT OF COUNSEL. Once a complaint is filed, the clerk is authorized to enter judgment by confession or consent without judicial approval by stipulation signed by the attorneys for all parties in that case.

(d) COURT APPROVAL.

(1) *When Required*. All other requests for entry of judgment by confession or consent must be submitted by praecipe for approval by the court after the complaint is filed.

(2) *Form of Praecipe*. The praecipe must be entitled "Rule 68-I Praecipe Requesting a Hearing." A copy of the proposed judgment, signed by all parties to that judgment, must be attached to the praecipe with a blank line at the bottom for the judge's signature.

(3) *Hearing*. If the praecipe meets the requirements of Rule 68-I(d)(2), the clerk will set a hearing. At the hearing, the judge or magistrate judge must ascertain to his or her satisfaction that all self-represented parties understand the nature and consequences of the judgment.

COMMENT TO 2017 AMENDMENTS

This rule has been redrafted to allow the clerk to approve judgments for confession only where all parties are represented by counsel and to require court inquiry prior to any approval in all cases where any party is not represented by counsel. Previous versions of this rule required opposing counsel to certify that he or she had explained the nature and consequences of the confessed judgment to any self-represented opposing party. Having the court perform this function provides greater protection to both self-represented litigants and opposing counsel, and it ensures that all aspects of confessed judgments, including any claimed entitlement to attorney's fees, are supported by law.

Parties seeking a judgment under this rule must fully comply with the requirements of Rule 3 by filing a complaint with the clerk's office before requesting a judgment.

Rule 69. Execution

(a) IN GENERAL.

(1) *Money Judgment; Applicant Procedure.* A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of a judgment or execution—must accord with the procedure of the District of Columbia, but a federal statute governs to the extent that it applies.

(2) *Obtaining Discovery*. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in Rule 69-I.

(b) [Omitted].

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 69*.

COMMENT

[Moved from the comment to Rule 69-II.] Rule 69 is identical to *Federal Rule of Civil Procedure 69* except for the substitution in section (a) of "District of Columbia" for "state in which the district court is held", and modification of the last sentence of section (a) to indicate that discovery in aid of judgment or execution may be had as provided in Rule 69-I. The writ of execution referred to in Rule 69 includes, of course, the writ of fieri facias provided for in D.C. Code § 15-311 (1973 Ed.).

Rule 69-I. Attachment After Judgment

(a) DISCOVERY IN GENERAL. All discovery procedures authorized by Rules 26-37 are available to the judgment creditor in the manner prescribed by those rules, except that a subpoena ad testificandum addressed to a person other than the judgment debtor and a subpoena duces tecum may issue only on order of the court. The first subpoena ad testificandum or notice of deposition addressed to the judgment debtor may issue without court order, but any subsequent subpoena or notice so addressed may issue only on order of the court. This rule does not require that a party be paid a witness fee for attendance.

(b) ORAL EXAMINATION IN COURT. The plaintiff may summon the defendant and, on leave of court, any other person to appear in court on a date certain and submit to oral examination respecting execution of any judgment rendered. Any person so summoned may, on leave of court, be required to produce papers, records, or other documents at the examination. Any person summoned to appear for oral examination must appear first in the clerk's office. If the person summoned was personally served but fails to appear, the court may, on plaintiff's request, issue a bench warrant for the person's arrest. If the person summoned does appear, the clerk must present all pleadings and other documents in the case to the judge or magistrate judge assigned to preside at the examination.

(c) OTHER CLAIMS TO PROPERTY. Before the final disposition of the property attached or its proceeds—except where it is real property—any person may file a motion and affidavit setting forth a claim to, interest in, or lien on it. Without other pleadings, the court must try the issues raised by the claim and may make all orders necessary to protect any right of the claimant. Any party to the proceeding may demand a jury trial by filing a demand within 7 days of the filing of the motion and affidavit.

(d) GARNISHEE'S ANSWER; APPLICANT'S RESPONSE. Within 10 days after accepting service of the writ of attachment, a garnishee must file an answer to the interrogatories with the clerk and serve a copy of the answer on the defendant and the party for whom the garnishment was issued. If within 14 days after service of the answer, or at a later time if the court allows, the party for whom the garnishment was issued fails to contest the answer to the interrogatories under D.C. Code § 16-522 (2012 Repl.), the garnishee's obligations under the attachment will be limited by his answer.

(e) JUDGMENT AGAINST GARNISHEE. No judgment against a garnishee under D.C. Code § 16-556 or -575 (2012 Repl.) will be entered except by court order. Applications for a judgment must be filed:

(1) within 4 weeks after answers to the interrogatories are due and not filed;

(2) as to property other than "wages" as defined in D.C. Code § 16-571 (2012 Repl.), within 4 weeks after the garnishee has filed answers to the interrogatories;

(3) as to such "wages," within 15 weeks of the date on which a garnishee fails to make a payment due under the writ; or

(4) within a later time authorized by the court on a motion made within the applicable period.

(f) DISMISSAL OF GARNISHMENT AND ATTACHMENT. If no judgment of condemnation or of recovery has been applied for or entered within the time provided by this rule, the garnishment and attachment must be dismissed. On oral or written

request, the clerk must enter a dismissal of the garnishment and attachment and must furnish a certificate of the dismissal to the garnishee, the defendant, or any other person.

(g) CONTENT OF WRIT OF ATTACHMENT ON NON-WAGES. The writ must:

(1) contain:

(A) the caption of the action;

(B) the name and last known address of the judgment debtor;

(C) the name and address of the judgment creditor; and

(D) the date of issuance;

(2) list the amount of the total balance due under the judgment;

(3) direct the garnishee to hold, subject to further proceedings, the non-exempt property of the judgment debtor up to the amount of the total balance due at the time of the issuance of the writ and which is in the possession or charge of the garnishee at the time of service of the writ;

(4) direct the garnishee not to hold, and to make available to the account holder, all funds from an account that consists solely of direct deposited benefits that are exempt:

(A) under federal law, including:

(i) Social Security benefits;

(ii) Supplemental Security Income;

(iii) Social Security disability benefits;

(iv) veterans' benefits;

(v) Civil Service Retirement System benefits;

(vi) Federal Employee Retirement System benefits;

(vii) Black Lung or Railroad Retirement benefits; or

(B) under District of Columbia law, including:

(i) disability or unemployment benefits;

(ii) public assistance/Temporary Assistance for Needy Families benefits; or

(iii) workers' compensation benefits;

(5) direct the garnishee, in any account that consists in part of benefits that are exempt under federal law, not to hold, and to make available to the account holder, an amount equal to the total amount of exempt funds deposited into the account in the two months prior to the service of a writ of attachment; and

(6) contain interrogatories to be answered by the garnishee regarding the nature of the property in possession of the garnishee and indebtedness of the garnishee to the judgment debtor.

(h) NOTICE TO THE JUDGMENT DEBTOR. The judgment creditor must mail to the judgment debtor at his or her last known address, by certified and first-class mail, a copy of the writ and the Notice to Debtor of Non-Wage Garnishment and Exemptions on the form available in the clerk's office, no more than 3 days after service of the writ on the garnishee.

(i) FUNDS EXEMPT FROM ATTACHMENT.

(1) *Motion Claiming Exemption*. A party may raise a claim that funds are exempt from a writ of attachment by filing a motion with the Presiding Judge, or his or her designee, claiming an exemption and requesting a hearing.

(2) *Hearing on Motion*. On the filing of a motion, the clerk must set a hearing before the Presiding Judge of the Civil Division, or his or her designee, as soon as practicable, but no later than 7 days after the motion is filed unless:

(A) the moving party requests a later date; or

(B) the parties otherwise agree.

(3) *Effect of Filing Motion*. On the filing of a motion, any further action on the writ of attachment, including any condemnation of funds, must be stayed until a decision is made by the Presiding Judge, or his or her designee, on the merits of the motion.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Also, some time periods were adjusted to reflect the new time computation method in Rule 6. However, the garnishee's time for filing answers to the interrogatories was not increased because it is statutory. Additionally, the rule now specifies the contents of the writ of attachment on non-wages, which includes a list of funds that are exempt from attachment. Finally, new section (i) establishes procedures for filing a motion claiming that funds are exempt from a writ of attachment.

COMMENT

[Moved from the comment to Rule 69-II.] Rule 69-I states the local attachment procedures available in the Superior Court and comprehended by the Rule 69 phrase "shall be in accordance with the practice and procedure of the District of Columbia". Section 69-I(a) modifies the broad authorization of unlimited discovery by providing that a subpoena duces tecum, a subpoena ad testificandum ad-dressed to a person other than the judgment debtor, or more than 1 subpoena ad testificandum or deposition notice ad-dressed to the judgment debtor may issue only upon order of the Court. This provision was based on extensive experience in the Court of General Sessions with execution proceedings and the desire to provide a safeguard against harassment of the judgment debtor and other persons, especially the judgment debtor's employer. Section (e) has been amended in order to conform to *Household Finance Corporation v. Training Research and Development, Inc., 316 A. 2d 850 (D.C. App. 1973)* which held that the time period within which a judgment of recovery must be applied for should not be measured from any act or requirement relating to the answering of interrogatories when the attachment is an attachment on wages, salary or commissions and the judgment of recovery is being sought for failure to remit a payment due under the writ. The section now provides that in such cases the time period should begin from the time that a payment is due and not paid. The length of the time period in such cases was made far longer than for other cases be-cause of the Advisory Committee's recognition that in attachments on wages, salary and commissions, there are frequently uncertain intervals during which the debtor is temporarily laid off or does not appear for work. See *D.C. Code § 16-576* (1973 Ed.).

Rule 69-II. Particular Provisions for Attachments of Wages After Judgment

(a) APPLICABILITY. The provisions of this rule do not supersede or repeal any other rule of this court unless in express conflict and must apply only to attachments issued pursuant to D.C. Code §§ 16-571 to -584 (2012 Repl.) and *15 U.S.C. § 1601 et seq.*

(b) REPORTING CREDITS AGAINST JUDGMENT. It is the duty of a judgment creditor who is receiving payments on account of the judgment from an employer-garnishee and who will receive credits upon said judgment from a source other than said employer-garnishee to notify said employer-garnishee and the clerk in writing of such receipt within 14 days, including the date, amount, and source.

(c) SCHEDULE AND RECEIPT FOR PAYMENTS. Every judgment creditor receiving payments from an employer-garnishee pursuant to the issuance of a wage attachment is obligated to credit the payments first against the accrued interest on the unpaid balance of the judgment, if any, second on the principal amount of the judgment, and third on those attorney's fees and costs actually assessed in the cause, and must send a receipt to the garnishee within 7 days after such payment, which receipt must set forth the application of such payment pursuant to the schedule above.

(d) NONCOMPLIANCE. If any judgment creditor fails to comply with this rule or with the statutory provisions cited in Rule 69-II(a), the court may in its discretion, on motion of any interested party:

(1) enter an order vacating and setting aside the attachment and continuing levy of said judgment creditor then in force and effect, but without prejudice to the refiling and serving of another attachment, which must follow prior attachment of wages of the judgment debtor in the hands of the same employer-garnishee; and

(2) enter a judgment of a reasonable attorney's fee and tax costs in favor of the party filing the motion to vacate and set aside the attachment.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Also, time periods were adjusted to reflect the new time computation method in Rule 6. Finally, the section regarding dockets cards has been eliminated as obsolete.

COMMENT

Rule 69-II contains certain specific provisions with respect to post judgment attachments.

Rule 70. Enforcing a Judgment for a Specific Act

(a) PARTY'S FAILURE TO ACT; ORDERING ANOTHER TO ACT. If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done—at the disobedient party's expense—by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) VESTING TITLE. If the real or personal property is within the District of Columbia, the court—instead of ordering a conveyance—may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) OBTAINING A WRIT OF ATTACHMENT OR SEQUESTRATION. On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) OBTAINING A WRIT OF EXECUTION OR ASSISTANCE. On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) HOLDING IN CONTEMPT. The court may also hold the disobedient party in contempt.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 70*.

COMMENT

Identical to *Federal Rule of Civil Procedure 70* except for substitution of "District of Columbia" for "district".

Rule 70-I. Confirming, Vacating, or Modifying Arbitration Awards Under the Arbitration Amendments Act of 2007 (Revised Uniform Arbitration Act)

(a) Form and Service of Applications.

(1) *Form.* Applications to the court under D.C. Code 16-4405 (2010 Supp.) must be in the form of a motion and be accompanied by a proposed order. The motion must set forth that:

(A) there was a written agreement or order to arbitrate;

(B) there was an award rendered pursuant to the arbitration; and

(C) there are annexed to the pleading copies of the following:

(i) the agreement or order to arbitrate;

(ii) the selection or appointment, if any, of any arbitrator or umpire other than that designated in the agreement or order;

(iii) the award; and

(iv) each motion, notice, affidavit or other paper used in conjunction with any motion filed with the arbitrator to correct or modify the award (D.C. Code § 16-4420 (2010 Supp.)) and a copy of any order issued by the arbitrator in conjunction with such motion.

(2) *Service.* The motion and a summons must be served in accordance with Rule 4, except that service of the motion may be made in accordance with Rule 5 on any party over whom the court has already acquired jurisdiction. Proof of service must be in accordance with Rule 4 or 5, whichever applies.

(b) Summary Proceedings. Proceedings under this rule are summary in nature with discovery permitted only upon a showing of good cause.

(c) Opposition. All objections to the motion at law or in equity must be in the form of an opposition to the motion and stated with particularity. The opposition must be served within 21 days (60 days if opponent is the District of Columbia, the United States or an officer or agency of either) after service of the motion.

(d) Rehearing. Where the court vacates an award, it may in its discretion and upon a finding that such rehearing is not contrary to law or equity, direct an arbitration rehearing.

COMMENT

As of July 1, 2009, the Arbitration Amendments Act of 2007 (Revised Uniform Arbitration Act) controls all arbitration agreements whether made before or after that date.

For the relevant statutory provisions concerning applications to confirm, vacate or modify arbitration awards, *see* D. C. Code § 16-4405, -4422 to -4425 (2010 Supp.).

The rule does not cover arbitration awards under court-sponsored civil arbitration programs. For these awards, *see* Rules of the Civil Arbitration Program of the Superior Court.

"[F]ederal court decisions construing and applying the federal arbitration act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia arbitration act, so long as there is no material difference in the statutory language between the two acts." *Hercules & Co. v. Beltway*

Carpet Serv., Inc., 592 A.2d 1069, 1073 (D.C. 1991) and *Wash. Auto. Co. v. 1828 L St. Assocs.*, 906 A.2d 869, 875 (D.C. 2006).

See Civil Action Form 107 for a form of a motion to confirm an arbitration award.

Finally, the language of this rule has been amended to conform with the 2007 restyling of the *Federal Rules of Civil Procedure*.

Rule 71. Enforcing Relief for or Against a Nonparty

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

COMMENT TO 2017 AMENDMENTS

Rule 71 has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 71*.

COMMENT

Identical to Federal Rule of Civil Procedure 71.

TITLE IX. SPECIAL PROCEEDINGS

Rule 71.1. Condemning Real or Personal Property

(a) APPLICABILITY OF OTHER RULES. These rules govern proceedings to condemn real and personal property by eminent domain, except as this rule provides otherwise.

(b) JOINDER OF PROPERTIES. The plaintiff may join separate pieces of property in a single action, no matter whether they are owned by the same persons or sought for the same use.

(c) COMPLAINT.

(1) *Caption*. The complaint must contain a caption as provided in Rule 10(a). The plaintiff must, however, name as defendants both the property—designated generally by kind, quantity, and location—and at least one owner of some part of or interest in the property.

(2) *Contents*. The complaint must contain a short and plain statement of the following:

(A) the authority for the taking;

(B) the uses for which the property is to be taken;

(C) a description sufficient to identify the property;

(D) the interests to be acquired; and

(E) for each piece of property, a designation of each defendant who has been joined as an owner or owner of an interest in it.

(3) *Parties*. When the action commences, the plaintiff need join as defendants only those persons who have or claim an interest in the property and whose names are then known. But before any hearing on compensation, the plaintiff must add as defendants all those persons who have or claim an interest and whose names have become known or can be found by a reasonably diligent search of the records, considering both the property's character and value and the interests to be acquired. All others may be made defendants under the designation "Unknown Owners."

(4) *Procedure*. Notice must be served on all defendants as provided in Rule 71.1(d), whether they were named as defendants when the action commenced or were added later. A defendant may answer as provided in Rule 71.1(e). The court, meanwhile, may order any distribution of a deposit that the facts warrant.

(5) *Filing; Additional Copies*. In addition to filing the complaint, the plaintiff must give the clerk at least one copy for the defendants' use and additional copies at the request of the clerk or a defendant.

(d) PROCESS.

(1) *Delivering Notice to the Clerk*. On filing a complaint, the plaintiff must promptly deliver to the clerk joint or several notices directed to the named defendants. When adding defendants, the plaintiff must deliver to the clerk additional notices directed to the new defendants.

(2) *Contents of the Notice*.

(A) *Main Contents*. Each notice must name the court, the title of the action, and the defendant to whom it is directed. It must describe the property sufficiently to identify it, but need not describe any property other than that to be taken from the named defendant. The notice must also state:

(i) that the action is to condemn property;

(ii) the interest to be taken;

(iii) the authority for the taking;

(iv) the uses for which the property is to be taken;

(v) that the defendant may serve an answer on the plaintiff's attorney within 21 days after being served with the notice;

(vi) that the failure to so serve an answer constitutes consent to the taking and to the court's authority to proceed with the action and fix the compensation; and

(vii) that a defendant who does not serve an answer may file notice of appearance.

(B) *Conclusion*. The notice must conclude with the name, telephone number, and e-mail address of the plaintiff's attorney and an address within the District of Columbia where the attorney may be served.

(3) *Serving the Notice*.

(A) *Personal Service*. When a defendant whose address is known resides within the United States or a territory subject to the administrative or judicial jurisdiction of the United States, personal service of the notice (without a copy of the complaint) must be made in accordance with Rule 4.

(B) *Service by Publication*.

(i) A defendant may be served by publication only when the plaintiff's attorney files a certificate stating that the attorney believes the defendant cannot be personally served, because after diligent inquiry, the defendant's place of residence is still unknown or, if known, that it is beyond the territorial limits of personal service. Service is then made by publishing the notice—once a week for at least 3 successive weeks—in a newspaper published in the District of Columbia or, if there is no such newspaper, in a newspaper with general circulation where the property is located. Before the last publication, a copy of the notice must also be mailed to every defendant who cannot be personally served but whose place of residence is then known. Unknown owners may be served by publication in the same manner by a notice addressed to "Unknown Owners".

(ii) Service by publication is complete on the date of the last publication. The plaintiff's attorney must prove publication and mailing by a certificate, attach a printed copy of the published notice, and mark on the copy the newspaper's name and the dates of publication.

(4) *Effect of Delivery and Service*. Delivering the notice to the clerk and serving it have the same effect as serving a summons under Rule 4.

(5) *Proof of Service; Amending the Proof or Notice.* Rule 4(*l*) governs proof of service. The court may permit the proof or the notice to be amended.

(e) APPEARANCE OR ANSWER.

(1) *Notice of Appearance*. A defendant that has no objection or defense to the taking of its property may serve a notice of appearance designating the property in which it claims an interest. The defendant must then be given notice of all later proceedings affecting the defendant.

(2) *Answer*. A defendant that has an objection or defense to the taking must serve an answer within 21 days after being served with the notice. The answer must:

(A) identify the property in which the defendant claims an interest;

(B) state the nature and extent of the interest; and

(C) state all the defendant's objections and defenses to the taking.

(3) *Waiver of Other Objections and Defenses; Evidence on Compensation*. A defendant waives all objections and defenses not stated in its answer. No other pleading or motion asserting an additional objection or defense is allowed. But at the trial on compensation, a defendant—whether or not it has previously appeared or answered—may present evidence on the amount of compensation to be paid and may share in the award.

(f) AMENDING PLEADINGS. Without leave of court, the plaintiff may—as often as it wants—amend the complaint at any time before the trial on compensation. But no amendment may be made if it would result in a dismissal inconsistent with Rule 71.1(i)(1) or (2). The plaintiff need not serve a copy of an amendment, but must serve notice of the filing, as provided in Rule 5(b), on every affected party who has appeared and, as provided in Rule 71.1(d), on every affected party who has not appeared. In addition, the plaintiff must give the clerk at least one copy of each amendment for the defendants' use, and additional copies at the request of the clerk or a defendant. A defendant may appear or answer in the time and manner and with the same effect as provided in Rule 71.1(e).

(g) SUBSTITUTING PARTIES. If a defendant dies, becomes incompetent, or transfers an interest after being joined, the court may, on motion and notice of hearing, order that the proper party be substituted. Service of the motion and notice on a nonparty must be made as provided in Rule 71.1(d)(3).

(h) TRIAL OF THE ISSUES. The trial must be conducted pursuant to applicable statutes.

(i) DISMISSAL OF THE ACTION OR A DEFENDANT.

(1) *Dismissing the Action*.

(A) *By the Plaintiff*. If no compensation hearing on a piece of property has begun, and if the plaintiff has not acquired title or a lesser interest or taken possession, the plaintiff may, without a court order, dismiss the action as to that property by filing a notice of dismissal briefly describing the property.

(B) *By Stipulation*. Before a judgment is entered vesting the plaintiff with title or a lesser interest in or possession of property, the plaintiff and affected defendants may, without a court order, dismiss the action in whole or in part by filing a stipulation of dismissal. And if the parties so stipulate, the court may vacate a judgment already entered.

(C) *By Court Order*. At any time before compensation has been determined and paid, the court may, after a motion and hearing, dismiss the action as to a piece of property. But if the plaintiff has already taken title, a lesser interest, or possession as to any part of it, the court must award compensation for the title, lesser interest, or possession taken.

(2) *Dismissing a Defendant*. The court may at any time dismiss a defendant who was unnecessarily or improperly joined.

(3) *Effect*. A dismissal is without prejudice unless otherwise stated in the notice, stipulation, or court order.

(j) DEPOSIT AND ITS DISTRIBUTION.

(1) *Deposit*. The plaintiff must deposit with the court any money required by law as a condition to the exercise of eminent domain and may make a deposit when allowed by statute.

(2) *Distribution; Adjusting Distribution*. After a deposit, the court and attorneys must expedite the proceedings so as to distribute the deposit and to determine and pay compensation. If the compensation finally awarded to a defendant exceeds the amount distributed to that defendant, the court must enter judgment against the plaintiff for the deficiency. If the compensation awarded to a defendant is less than the amount distributed to that defendant, the court must enter judgment against that defendant for the overpayment.

(k) [Omitted].

(*l*) COSTS. Costs are not subject to Rule 54(d).

COMMENT TO 2017 AMENDMENTS

Former Rule 71A has been redesignated as Rule 71.1 to conform to the renumbering in the federal rules. Rule 71.1 is substantially similar to *Federal Rule of Civil Procedure 71.1*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) a unique section (h); 2) the continued omission of section (k), which relates to a state's power of eminent domain; and 3) the references to the District of Columbia throughout the rule.

Rule 71.1-I. Proceedings for Forfeiture of Property

(a) LIBEL OF INFORMATION. In all cases involving forfeiture of property for violation of any provision of the D.C. Code, the cause, unless otherwise provided by statute, must be commenced by the filing of a libel of information that alleges:

(1) a description of the property seized;

(2) the date and place of the seizure;

(3) the person or persons from whom the property was seized; and

(4) the property was used, or was to be used, in violation of the D.C. Code, specifying the applicable section(s).

(b) PROCESS. Process must be issued only on the court's order. The order must direct:

(1) the issuance of a warrant of arrest with a return date addressed to the Chief of the Metropolitan Police Department or the Chief's designee directing the Metropolitan Police Department to seize the property described in the libel of information;

(2) the Metropolitan Police Department, upon seizure, to publish public notice of the seizure and of the time assigned for return of the process:

(A) in a legal newspaper or periodical of daily circulation as prescribed in Rule 4-I; and

(B) in any other newspaper or periodical specifically designated by the court.

(c) RETURN OF PROCESS. The date of return of process must be at least 21 days from the date of publication. Publication must be provided by an affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the order as published.

(d) COPIES. The libellant must send a copy of the libel of information and of the warrant issued by first class mail to:

(1) any lienholder of record;

(2) any person who has made written claim to the res to the office of the Attorney General of the District of Columbia; and

(3) any other person who is known or in the exercise of reasonable diligence should be known to the Attorney General to have a right of claim to the res, at the person's last known address. The envelope containing this material must be marked "please forward to addressee."

(e) DEFAULT. If no answer or claim is filed upon the return of the process, a default decree of forfeiture must be entered against the property, and the court must order the condemnation and forfeiture of the property.

(f) INTERVENTION. The procedures in Rule 24 govern where there is a right to intervene in a forfeiture action. However, if all parties consent to the motion to intervene, the court must grant the motion without formal hearing.

(g) OTHER MATTERS. The Superior Court Rules of Civil Procedure govern actions for the forfeiture of property not set forth in this rule.

COMMENT TO 2017 AMENDMENTS

Former Rule 71A-I has been redesignated as Rule 71.1-I based on the redesignation of former Rule 71A as Rule 71.1. Also, stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

The provisions regarding the authority of the District of Columbia to acquire property by eminent domain are now found in D.C. Code §§ 16-1311 to -1337 (2012 Repl.).

COMMENT

The authority of the District of Columbia to acquire property by eminent domain is found in Section 16-311 et seq. D.C. Code 1967 Edition (transferred to Superior Court by Section 11-921 (a)(3)(A)(ii) page 12 Public Law 91-358) and by Section 7-202 et seq. D.C. Code 1967 Edition (transferred to Superior Court by Section 155 (c)(1)(A) page 98 Public Law 91-358).

The practice of eminent domain in the District Court has followed these statutory requirements as implemented by the Federal Rules of Civil Procedure. Thus, in adapting Federal Rule 71A to use by the Superior Court, only minor editorial changes have been made in the language of that Rule.

Rule 72. [Deleted].

COMMENT TO 2017 AMENDMENTS

The substance of former Superior Court Rule 72, which is unique to the Superior Court, has been moved to Rule 62-III so that the Superior Court rule numbers better align with the federal rules. Federal Rule 72, which addresses referral of pretrial matters to magistrate judges, is not incorporated.

Rule 73. Magistrate Judges: Trial by Consent; Appeal

(a) TRIAL BY CONSENT; POWERS; PROCEDURE.

(1) *In General*. When authorized under D.C. Code § 11-1732 (a) and (j)(5) (2017 Supp.) and specifically designated to exercise such jurisdiction by the Chief Judge, a magistrate judge may, if all parties consent, conduct any or all uncontested or contested proceedings, determine nondispositive and dispositive pretrial matters, make findings and enter final judgments and orders in a civil case. Rule 62 applies to judgments entered by a magistrate judge. A record of the proceedings must be made in accordance with Rule 201.

(2) *Limitations on Power*. A magistrate judge may not preside over a jury trial or exercise the contempt power.

(3) *Waiver of Consent*. A party who fails both to file an answer, if an answer is required, and to otherwise appear in an action, is deemed to have consented that a magistrate judge conduct all proceedings in the case.

(4) *Vacating a Referral*. On its own for good cause—or when a party shows extraordinary circumstances—the court may vacate a referral to a magistrate judge under this rule.

(b) APPEALING A JUDGMENT.

(1) *Initial Judicial Review*. Judicial review of a final order or judgment entered on the direction of a magistrate judge is available:

(A) on motion of a party to the Superior Court judge designated by the Chief Judge to conduct such reviews; or

(B) on the initiative of the judge so designated.

(2) *Further Appeal*. After the Superior Court judge completes judicial review, a party may appeal to the District of Columbia Court of Appeals.

(3) *Standard of Review*. The Superior Court judge reviewing a magistrate judge's final order or judgment must apply the same standard of review used by the District of Columbia Court of Appeals when reviewing a judgment or order of the Superior Court.

(4) *On Motion*

(A) *Motion Requirements*. The motion for review must:

(i) be filed and served within 14 days after entry of the order or judgment;

(ii) designate the order or judgment, or part of the order or judgment, for which review is sought; and

(iii) specify the grounds for objection to the magistrate judge's order or judgment, or part of the order or judgment.

(B) *Answer to Motion.* Within 14 days after being served with the motion for review, a party may file and serve a response.

(C) *Judicial Review*. The judge designated by the Chief Judge must review those portions of the magistrate judge's order or judgment to which objection is made. The judge may decide the motion for review with or without a hearing and may affirm, reverse, modify, or remand, in whole or in part, the magistrate judge's order or judgment.

(5) *Review on Initiative of the Court*. Not later than 30 days after entry of a magistrate judge's final order or judgment, the judge designated by the Chief Judge may sua sponte review the order or judgment in whole or in part. After giving the parties due notice and opportunity to make written submissions on the matter, the judge, with or

without a hearing, may affirm, reverse, modify, or remand, in whole or in part, the magistrate judge's order or judgment.

(6) *Termination of Time for Filing Motion for Review*. The running of the time for filing a motion for review or for a judge to undertake review on the judge's own initiative is terminated as to all parties by the timely filing of any of the following motions with the magistrate judge by any party, and the full time for review from the judgment entered by the magistrate judge commences to run anew from entry of the order disposing of the last such remaining motion:

(A) for judgment as a matter of law;

(B) to amend or make additional factual findings, whether or not granting the motion would alter the judgment;

(C) to vacate, alter, or amend the order or judgment;

(D) for a new trial; or

(E) for relief from a judgment or order if the motion is filed no later than 14 days after the judgment is entered.

(7) *Interlocutory Motion for Review*. An interlocutory decision or order by a magistrate judge, which, if made by a judge of this court, could be appealed under any provision of law, may be reviewed by the judge designated by the Chief Judge by filing a motion for review within 14 days after entry of the decision or order. Review of such interlocutory decisions or orders will not stay the proceedings before the magistrate judge unless the magistrate judge or the reviewing judge so orders.

(8) *Extension of Time to File Motion for Review*. On a showing of excusable neglect and notice to the parties, the judge designated by the Chief Judge may, before or after the time prescribed by Rule 73(b)(4)(A)(i) or (b)(7) has expired, extend the time for filing a motion for review of a magistrate judge's order or judgment for a period not to exceed 21 days from the expiration of the time otherwise prescribed by this rule.

(9) *Stay Pending Review*. On a showing that the magistrate judge has refused or otherwise failed to stay the judgment pending review under this rule, the movant may, with reasonable notice to all parties, apply to the judge designated by the Chief Judge for a stay. The stay may be conditioned on the filing of a bond or other appropriate security.

(10) *Dismissal*. For failure to comply with this rule or any other rule or order, the judge may take any action as is deemed appropriate, including dismissal of the motion for review. The judge also may dismiss the motion for review on the filing of a stipulation signed by all parties, or on motion and notice by the movant.

(c) CONTEMPT.

(1) *Show Cause Hearing*. A magistrate judge may order a person to show cause before the Presiding Judge of the Civil Division, or his or her designee, why the person should not be held in civil or criminal contempt for disobedience or resistance to any lawful order, process, or writ issued by the magistrate judge or for any other act or conduct committed before a magistrate judge, which if committed before a Superior Court judge would constitute contempt.

(2) *Show Cause Order Requirements*. An order to show cause why the person should not be held in contempt must:

(A) state the time and place of hearing, allowing a reasonable time for the preparation of the defense; and

(B) state the essential facts constituting the contempt charged and describe it.

(d) OTHER POWERS. The authority of a magistrate judge in the Civil Division includes the power to:

(1) refer cases, where a jury demand is filed or a party does not consent to a magistrate judge, previously assigned to a magistrate judge's calendar to the clerk's office for redistribution pursuant to Rule 40-I;

(2) issue or quash a bench warrant for parties who fail to appear in court on a magistrate judge's calendar;

(3) conduct oral examinations; and

(4) rule on the following motions in cases assigned to any magistrate judge's calendar:

(A) to continue trial or hearing dates;

(B) to extend any period of time prescribed or allowed by these rules or by order of the court; and

(C) to enter or withdraw appearances.

(e) CERTIFICATION. In the interest of justice, the Presiding Judge may, on his or her own initiative or on the recommendation of the magistrate judge presiding over the case, certify a case for assignment to a judge in the Civil Division.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 73*, but the substance of the Superior Court rule continues to differ substantially from its federal counterpart. The Superior Court rule is based on the requirements of D.C. Code § 11-1732 (2017 Supp.).

Section (e), regarding the Presiding Judge's certification of a case from a magistrate judge to an associate judge, is new to this rule.

COMMENT

Although several of the provisions of this Rule are similar to provisions of *Federal Rules of Civil Procedure 73* and *74*, a number of changes have been made to this Court's Rule to reflect the requirements of D.C. Code § 11-1732 and the procedural variances in the use of hearing commissioners and magistrates. Pursuant to D.C. Code § 11-1732, this Rule is applicable to proceedings in all branches of the Civil Division.

Paragraph (a). This paragraph has been modified to reflect the statutory authority of hearing commissioners in the Civil Division of the Superior Court. Unlike magistrates, hearing commissioners may not conduct jury trials. The written consent procedures contained in *Federal Rule of Civil Procedure 73(b)* have not been incorporated into the Superior Court Rule. Under this Rule, a party who neither files an answer nor otherwise appears will be deemed to have consented to having the matter heard by a hearing commissioner.

Paragraph (b). This paragraph modifies *Federal Rule of Civil Procedure 73(c)* and (d) to reflect the availability of judicial review and appeal of a hearing commissioner's decision pursuant to D.C. Code § 11-1732 (k). As with appeals to a district judge from decisions of magistrates exercising consensual civil jurisdiction under *Federal Rule of Civil Procedure 73*, reviews of decisions of hearing commissioners to Superior Court

judges are governed by the same standards that obtain in an appeal from a judgment of a judge to the Court of Appeals. *See Federal Rule of Civil Procedure 74*, Notes of Advisory Committee on Rules, subdivision (a); *28 U.S.C. § 636*(c)(4). In accordance with that standard, a hearing commissioner's findings of fact may not be set aside unless clearly erroneous; nor may the commissioner's judgment or order be set aside except for legal error or abuse of discretion. Paragraph (c). This paragraph describes the procedure for review of a hearing commissioner's order or judgment by a judge pursuant to D.C. Code § 11-1732 (k). Subparagraphs (c)(1) and (c)(2) replace the appeal procedure set forth in *Federal Rules of Civil Procedure 74(a)*, *74(b)*, *75*, and *76* with a procedure whereby review is conducted upon the motion of a party filed within 10 days of entry of the hearing commissioner's final order or judgment, or on the initiative of the reviewing judge within 30 days of entry of the hearing commissioner's final order or judgment. The term "final order or judgment" as used in this Rule embraces the final decision concept of D.C. Code § 11-721 (a) and permits review of a hearing commissioner's decisions by a Superior Court judge in those situations in which an appeal from this Court to the Court of Appeals would lie. In lieu of the federal provisions for transcripts and briefs, the Superior Court Rule provides that the motion for review shall designate the grounds for the objection to a hearing commissioner's order, judgment, or part thereof, and shall include a written summary of any evidence presented before the hearing commissioner relating to the grounds for objection.

Subparagraphs (c)(3) and (4) modify the provisions for tolling of the time for appeal and interlocutory appeals contained in *Federal Rule of Civil Procedure 74(a)* to reflect their application to reviews of decisions of hearing commissioners by a judge upon motion of a party. Subparagraph (c)(4), permitting reviews of certain interlocutory orders, embraces the provisions of D.C. Code § 11-721 (d), providing for a certification procedure for otherwise unreviewable orders where "the ruling or order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate [review of the ruling or order] may materially advance the ultimate termination of the litigation...." Although no specific certification procedure is set forth, the Rule contemplates that a hearing com-missioner may certify such a motion for review, and the Superior Court judge, in the judge's discretion, may allow the review. In the interest of expediting the trial, interlocutory reviews of any kind will not stay the proceedings unless the hearing commissioner or the judge finds that the nature of the review sought or its relation to the remaining proceedings requires a stay.

Subparagraph (c)(5) modifies the provision for extension of time to file a notice of appeal in *Federal Rule of Civil Procedure 74(a)* to provide that the time to file motions for review may be extended for a period not to exceed 20 days from the date otherwise prescribed by the Rule.

Subparagraphs (c)(6) and (7) modify the stay and dismissal provisions of *Federal Rule of Civil Procedure 74(c)* and (d) to reflect their application to reviews of a hearing commissioner's decision by a judge designated by the Chief Judge.

Paragraph (d). This paragraph has been added to the Superior Court Rule to provide a procedure for the adjudication of contempts committed before a hearing commissioner. Similar to *28 U.S.C. § 636*(e), this provision allows a hearing commissioner to order a person to show cause before the Presiding Judge of the Civil Division, or his or her designee, why the person should not be held in contempt. For

purposes of this Rule, the term "person" includes any person, corporation, or other entity.

Paragraph (e). D.C. Code § 11-1732 (a) authorizes hearing commissioners to perform functions incidental to their authorized duties. Paragraph (e) lists these incidental functions in the Civil Division. Consent of the parties is not required for the exercise of these functions.

Rule 74. [Omitted].

Rule 75. [Omitted].

Rule 76. [Omitted].

TITLE X. SUPERIOR COURT AND CLERK

Rule 77. Conducting Business; Clerk's Authority; Notice of an Order or Judgment

(a) WHEN THE SUPERIOR COURT IS OPEN. The Superior Court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(b) PLACE FOR TRIAL AND OTHER PROCEEDINGS. Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom. Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, and anywhere inside or outside the District of Columbia. But no hearing—other than one ex parte—may be conducted outside the District of Columbia unless all affected parties consent.

(c) CLERK'S OFFICE HOURS; CLERK'S ORDERS.

(1) *Hours*. The clerk's office—with a clerk or deputy on duty to assist the public—must be open during normal business hours as set by the Chief Judge. When practicable, those hours will comport with the hours of operation posted on the Superior Court's website.

(2) *Orders*. Subject to the court's power to suspend, alter or rescind the clerk's action for good cause, the clerk may:

(A) issue process;

(B) grant applications under Rule 54-II(b);

(C) enter a default;

(D) enter a default judgment under Rule 55(b)(1); and

(E) act on any other matter that does not require the court's action.

(d) SERVING NOTICE OF AN ORDER OR JUDGMENT.

(1) *Service*. Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Rule 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Rule 5(b).

(2) *Time to Appeal Not Affected by Lack of Notice*. Lack of notice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by the District of Columbia Court of Appeals Rules.

(3) *Who Can Perform the Clerk's Function*. Nothing in this rule precludes a judge or magistrate judge or his or her authorized staff member from performing the function of the clerk prescribed in Rule 77(d).

COMMENT TO 2019 AMENDMENTS

Subsection (c)(2) was amended to reflect the amendment to Rule 54-II, which now permits the clerk to grant applications when the applicant receives Temporary Assistance for Needy Families, General Assistance for Children, Program on Work, Employment, and Responsibility, or Supplemental Security Income.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 77*, as amended in 2007, but maintains the following local distinctions: 1) "Superior Court" has been substituted for "district courts" and "District of Columbia" for "district" where appropriate; 2) the language in subsection (c)(1) has been modified to reflect local practice, including the Chief Judge's authority to set the hours of the clerk's office and the practice of posting the hours on the Superior Court's website; and 3) in section (d), "District of Columbia Court of Appeals Rules" has been substituted for "Federal Rule of Appellate Procedure (4)(a)." Also, the 2014 federal amendment that updated a cross-reference in subsection (c)(1) has not been incorporated because the cross-reference was previously omitted.

New subsection (c)(1) replaces Rule 77-I. The new language in subsection (c)(1) regarding the hours posted on the Superior Court's website allows some flexibility for the Chief Judge to change the hours of operation in case of emergency or otherwise.

COMMENT

[Moved from the comment to Rule 77-II.] Rule 77 identical to Federal Rule of Civil Procedure 77 except for; (1) substitution of "Superior Court" for "district courts" and "District of Columbia" for "district" where appropriate; (2) addition of the phrase "after 12:00 noon" to section (c) to reflect the fact that the Clerk's Office will be open Saturday mornings; (3) deletion of the authorization in section (c) for promulgation of local rules; (4) substitution in section (d) for reference to the Rules for the District of Columbia Court of Appeals in place of reference to the Federal Rules of Appellate Procedure; and (5) modification of the 1st sentence of section (d) to require the Clerk to mail notice of the entry of an order or judgment only when the same was signed or decided out of the presence of the parties or their counsel. This last modification is intended to save the Clerk substantial time by eliminating the needless administrative burden of mailing notice of orders or judgments to parties who are already aware of those orders or judgments by virtue of their presence at the time the same were made.

Rule 77-I.[Deleted].

COMMENT TO 2017 AMENDMENTS

Rule 77-I has been deleted. New language has been added to Rule 77(c)(1) to replace this rule.

Rule 77-II. Uncontested Motions for Security for Costs

The clerk has authority to make appropriate entries granting uncontested motions for security for costs on the basis of $100 cash or $200 bond where the amount claimed is $5,000 or over; $50 cash or $100 bond where the amount claimed is $3,000 or more but less than $5,000; $25 cash or $50 bond in all cases where the amount claimed is more than $750 but less than $3,000. The clerk also has authority to accept a praecipe confessing judgment for costs.

COMMENT TO 2017 AMENDMENTS

Sections (a) and (c) were deleted, and the rule was renamed to reflect the substance of the remaining provision (formerly section (b)). Subsections (a)(2) and (3) were deleted because only a judge or magistrate judge has the authority to order substitution of attorneys or to approve/set the amount of supersedeas bonds or undertakings. Remaining subsection (a)(4) was deemed unnecessary as it did not give the clerk any additional authority beyond what was already addressed by other rules and statutes. Section (c) was deleted because the bond requirement for motor vehicle cases was eliminated when the Motor Vehicle Owners' Financial Responsibility Act was repealed in 1982. For the current requirements for proof of financial responsibility in motor vehicle cases, see D.C. Code §§ 50-1301.01 to -.86 (2014 Repl.). Stylistic changes were also made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 78. [Omitted].

Rule 78-I. [Deleted].

Rule 79. Records Kept by the Clerk

(a) CIVIL DOCKET.

(1) *In General*. The clerk must keep a record known as the "civil docket" in the form and manner prescribed by the Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge. The clerk must enter each civil action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.

(2) *Items to Be Entered*. The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk;

(B) process issued, and proofs of service or other returns showing execution; and

(C) appearances, orders, verdicts, and judgments.

(3) *Contents of Entries; Jury Trial Demanded*. Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the substance and date of entry of each order and judgment. When a jury trial has been properly demanded or ordered, the clerk must enter the word "jury" in the docket.

(b) CIVIL JUDGMENTS AND ORDERS. The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The Executive Officer of the District of Columbia Courts will, subject to the supervision of the Chief Judge, prescribe the form and manner in which such copies must be kept.

(c) INDEXES; CALENDARS. Under the court's direction, the clerk must:

(1) keep indexes of the docket and of the judgments and orders described in Rule 79(b); and

(2) prepare calendars of all actions ready for trial, distinguishing jury trials from nonjury trials.

(d) OTHER RECORDS. The clerk must keep any other records required by the Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge.

(e) ENTRY ON DOCKET. Nothing in these rules precludes a judge or magistrate judge or his or her authorized judicial staff member from making entries on the docket.

COMMENT TO 2017 AMENDMENTS

This rule is substantially similar to *Federal Rule of Civil Procedure 79*, as amended in 2007, but maintains two local distinctions—1) references to "Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States" have been changed to "Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge"; and 2) section (e), allowing entries by judges or magistrate judges and their staff, has been added.

COMMENT

Rule 79 identical to *Federal Rule of Civil Procedure 79* except for substitution of local administrative references throughout and deletion of the requirement in section (a) that the civil docket be in the form of a book.

Rule 79-I. Copies and Custody of Filed Papers

(a) CERTIFIED COPIES.

(1) *In Person Filings*. When a paper is received and filed, the clerk must stamp the date of filing on the face of the paper next to the title of the cause and must also stamp the date of filing separately on any exhibit. If a person filing a paper requests a certification of such filing, a copy of the paper provided by the person must be marked to show the time and date of the filing and initialed by the person with whom the paper was filed. Such certified copy is prima facie evidence in any proceeding that the original of the paper was filed as shown by the certification.

(2) *Electronic Filings*. Any filings made electronically, as permitted by these rules or by administrative order, is considered date stamped as specified by rule or administrative order.

(b) CUSTODY OF DOCUMENTS. The clerk or his or her designee is the custodian of all papers filed in all civil cases. No original paper, document, or record in any case may be removed from its place of filing or custody, except under the following conditions:

(1) Except with approval of the court, no paper, document, or record may be taken from the courthouse by any person other than the custodian of the paper, document, or record, who must retain possession of it and must return it to its place of filing immediately upon completion of the purpose for which it was removed.

(2) When required for use before a division of the court or a person to whom the case has been referred for consideration, or when ordered by a judge of the court, the custodian, the custodian's designee, any attorney or party to the case, or any person designated by a judge may be permitted to remove such paper, document, or record for the use required or ordered.

(3) In any case where the paper, document or record is removed by any person other than the custodian, or the custodian's designee, a receipt must be given to the custodian and the paper, document, or record, must be returned to its place of filing or custody immediately upon completion of the purposes for which it was removed.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

Rule 80. Stenographic or Digitally Recorded Transcript as Evidence

If digitally recorded or stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified in accordance with Rule 201(c).

COMMENT TO 2017 AMENDMENTS

This rule is similar to *Federal Rule of Civil Procedure 80*, as amended in 2007, except that the Superior Court rule includes digitally recorded testimony as well as a reference to Rule 201.

COMMENT

Identical to *Federal Rule of Civil Procedure 80*, except for substitution of the word "vacant" in sections (a) and (b) in place of the titles and abrogation dates of those sections.

TITLE XI. GENERAL PROVISIONS

Rule 81. Applicability of the Rules in General

(a) APPLICABILITY TO PARTICULAR PROCEEDINGS.

(1) [Omitted].

(2) [Deleted].

(3) [Deleted].

(4) *Special Writs.* These rules apply to proceedings for habeas corpus and for quo warranto to the extent that the practice in those proceedings:

(A) is not specified in applicable statutes or the Rules Governing Proceedings Under D.C. Code § 23-110; and

(B) has previously conformed to the practice in civil actions.

(5) *Proceedings Involving a Subpoena.* These rules apply to proceedings to compel testimony or the production of documents through a subpoena issued by an officer or agency of the United States or the District of Columbia under any applicable statute, except as otherwise provided by statute, by rule, or by court order in the proceedings.

(6) *Other Proceedings.* In proceedings relating to arbitration, these rules apply only to the extent that matters of procedure are not provided for in applicable statutes.

(b) SCIRE FACIAS AND MANDAMUS. The writs of scire facias and mandamus are abolished. Relief previously available through them may be obtained by appropriate action or motion under these rules.

(c) [Omitted].

(d) LAW APPLICABLE.

(1) *"State Law" Defined.* When these rules refer to state law, the term "law" includes the state's statutes and the state's judicial decisions.

(2) *"State" Defined*. The term "state" includes, where appropriate, the District of Columbia and any United States commonwealth or territory.

(3) *"Federal Statute" Defined*. The term "federal statute" encompasses any Act of Congress, including one that applies locally to the District of Columbia.

(e) [Deleted].

(f) [Deleted].

(g) [Deleted].

COMMENT TO 2017 AMENDMENTS

This rule is similar to *Federal Rule of Civil Procedure 81*, as amended in 2007 and 2009, but maintains the following local distinctions: 1) subsections (a)(1)-(3) have been omitted or deleted; 2) subsections (a)(4)-(6) have been amended to reference the District of Columbia and its local rules; 3) section (c) has been omitted; and 4) language in subsection (d)(3) has been adapted for the Superior Court rules.

COMMENT

Federal Rule of Civil Procedure 81 has been modified considerably because of differences in the jurisdictions of the Superior Court and the United States District Courts.

Section (a) describing the proceedings to which these Rules are applicable has been extensively revised.

Subsection (a)(1) relating to prize proceedings in admiralty, bankruptcy, copyright, and District of Columbia mental health proceedings has been deleted. The Rules governing mental health proceedings are found in the Superior Court Rules of Procedure for Mental Health.

Subsection (a)(2) is identical to the Federal Rule counterpart except that "applicable statutes" has been substituted for "statutes of the United States" and the reference to citizenship admissions has been deleted.

Subsection (a)(3) has been modified to reflect appropriate applicability to arbitration cases, but the inapplicable reference to Title 9, U.S.C. (governing cases in the courts of the United States arising out of disputes over arbitration agreements) has been deleted. Also deleted from the Federal Rule is reference to *45 U.S.C. § 159* which deals with railway labor cases in the United States District Courts. In conformity with these modifications, "those statutes" has been changed to "applicable statutes" in the 1st sentence of (a)(3). The 2nd sentence of subsection (a)(3) has been revised to comprehend all proceedings to compel whether based on a subpoena issued by a United States officer or agency or a District of Columbia officer or agency.

Subsection (a)(4) dealing with federal District Court review of orders of the Secretary of Agriculture, orders of the Secretary of the Interior, and orders of petroleum control boards is deleted.

Subsection (a)(5) dealing with proceedings in the federal District Courts for enforcement of National Labor Relations Board orders is deleted.

Subsection (a)(6) dealing with District Court proceedings under the Longshoremen's and Harbor Workers Compensation Act and provisions relative to cancellation of citizenship certificates is deleted.

Subsection (a)(7) of the Federal Rule has been abrogated and is thus left vacant in these Rules.

Section (b) of this rule is identical to *Federal Rule of Civil Procedure 81(b)*.

Section (c) of the Federal Rule dealing with the procedure in cases that have been removed from state courts to United States District Courts is thus inappropriate material for inclusion in Superior Court Rules and has been deleted.

Section (d) of the Federal Rule has been abrogated and that section is thus left vacant in these Rules.

Section (e) has been modified slightly in order to be appropriate for use in this Court. The 1st sentence of the Federal Rule section prescribes a principle of applicability for cases in the United States District Court for the District of Columbia and is thus deleted. (That applicability is, of course, properly secured by Rule 81 (e) of the Federal Rules as followed in the U.S. District Court for this District and is not affected by Rule 81 of the Superior Court.)The inclusive provision with respect to "statute of the United States" in the 2nd [3rd] sentence of the Federal Rule is made applicable to proceedings in the Superior Court by deletion of the phrase "so far as concerns proceedings in the United States District Court for the District of Columbia".

Section (f) is identical to *Federal Rule of Civil Procedure 81(f)*.

Rule 82. Jurisdiction Unaffected

These rules do not extend or limit the jurisdiction of this court.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 82*, but references to venue and admiralty and maritime claims have been omitted.

COMMENT

Identical to Federal Rule of Civil Procedure 82 except for deletion of inapplicable references to venue and to admiralty and maritime claims.

Rule 83. Directives by Judge or Magistrate Judge

A judge or magistrate judge may regulate practice in any manner consistent with applicable law, these rules, and administrative orders. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in applicable law or these rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 83*. However, it retains the following local distinctions: 1) section (a) of the federal rule has been omitted; and 2) references to federal law and local rules have been replaced by references to applicable law, these rules, and/or administrative orders.

COMMENT

This Rule is substantially similar to Federal Rule of Civil Procedure 83(b). Federal Rule of Civil Procedure 83(a), which addresses the promulgation, amendment, and enforcement of local rules by district courts, has been deleted. Substituted therefor is Rule 83-I which prescribes the rulemaking procedure for subsequent rules in accordance with D.C. Code § 11-946.

Rule 83-I. Amendments of or Additions to Superior Court Rules of Civil Procedure

(a) EFFECT OF AMENDMENTS OR ADDITIONS TO FEDERAL RULES OF CIVIL PROCEDURE. Any amendments or additions to the Federal Rules of Civil Procedure promulgated after February 1, 1971, will, on their effective date, take effect as amendments of or additions to the Superior Court Rules of Civil Procedure unless the Board of Judges adopts a resolution modifying the federal rule amendments or additions in whole or in part. The resolution must be submitted to the District of Columbia Court of Appeals for approval.

(b) INITIATION BY THE SUPERIOR COURT OF AMENDMENTS OR ADDITIONS. In addition, the Superior Court by action of the Board of Judges may, on its own initiative, adopt additional rules or amendments to existing Superior Court rules, provided that any additions or amendments that modify the Federal Rules of Civil Procedure are submitted to the District of Columbia Court of Appeals for approval.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

Federal Rule of Civil Procedure 83(a), which addresses the promulgation, amendment, and enforcement of local rules by district courts, has been deleted. Substituted therefor is Rule 83-I which prescribes the rulemaking procedure for subsequent rules in accordance with D.C. Code § 11-946.

Rule 84. Forms

The forms in the Appendix of Forms suffice under these rules and illustrate the simplicity and brevity that these rules contemplate.

COMMENT TO 2017 AMENDMENTS

In 2015, *Federal Rule of Civil Procedure 84* was abrogated because there were other sources for forms—including court websites and law libraries. Any necessary forms were directly incorporated into the relevant rule (for example, former federal Forms 5 and 6 were incorporated into Federal Rule 4). This approach was rejected as inconsistent with the needs and processes of the Superior Court.

COMMENT

Identical to Federal Rule of Civil Procedure 84

Rule 85. Title

These rules may be cited as “Super. Ct. Civ. R. __.”

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2007 stylistic changes to *Federal Rule of Civil Procedure 85*. The citation for the Superior Court Rules of Civil Procedure has been updated to conform to the District of Columbia Court of Appeals Citation and Style Guide.

COMMENT

Federal Rule of Civil Procedure 85 has been deleted and a rule substituted therefor which provides a convenient way of describing and citing these Rules.

Rule 86. Effective Dates

(a) IN GENERAL. These rules and any amendments take effect at the time specified by the Chief Judge in promulgation orders. They govern:

(1) proceedings in an action commenced after their effective date; and

(2) proceedings after that date in an action then pending unless:

(A) the Chief Judge in the promulgation orders specifies otherwise; or

(B) the court determines that applying them in a particular action would be infeasible or work an injustice.

(b)[Omitted.]

COMMENT TO 2017 AMENDMENTS

This rule differs from the federal rule, as amended in 2007, by substituting the phrase “Chief Judge in the promulgation orders” for “Supreme Court.” Also, the statutory reference to the United States Code and section (b) of the federal rule are omitted as inapplicable.

Rule 86-I. [Deleted].

COMMENT TO 2017 AMENDMENTS

Rule 86-I has been deleted as it has been incorporated into Rule 86.

Rule 101. Appearance and Withdrawal of Attorneys

(a) Who May Practice.

(1) An attorney who is a member in good standing of the District of Columbia Bar may enter an appearance, file pleadings and practice in this Court.

(2) No person other than one authorized by this Rule shall be permitted to appear in this Court in a representative capacity for any purpose other than securing a continuance. No corporation shall appear in the Division except through a person authorized by this Rule. However, nothing in this Rule shall be construed to prevent any natural person from prosecuting or defending any action in the person's own behalf if the person is without counsel.

(3) An attorney who is a member in good standing of the bar of any United States court or of the highest court of any state but who is not a member in good standing of the District of Columbia Bar may enter an appearance, and file pleadings in this Court, and if granted permission by the Court may participate in proceedings in this Court, pro hac vice, provided that such attorney joins of record a member in good standing of the District of Columbia Bar who will at all times be prepared to go forward with the case, and who shall sign all documents subsequently filed and shall attend all subsequent proceedings in the action unless this latter requirement is waived by the judge presiding at the proceeding in question. An attorney seeking permission to appear under this section shall file a praecipe indicating the attorney's name, address, telephone number, the jurisdiction(s) where the attorney is a member of a bar and the number of times the attorney has previously sought to appear under this Rule. Any attorney seeking to appear on a pro hac vice basis must comply with the restrictions prescribed in District of Columbia Court of Appeals Rule 49(c). The attorney shall also serve a copy of the praecipe on the District of Columbia Court of Appeals' Committee on Unauthorized Practice in the manner provided in SCR Civil 5. Proof of service shall be made by the filing of a certificate of the attorney showing the date and manner of service. Any member of the District of Columbia Bar who joins the attorney seeking special permission to appear shall also sign the praecipe and the certificate.

(4) An attorney who is employed or retained by the United States or one of its agencies who wishes to enter an appearance shall conform to the provisions of Rule 49(c) of the General Rules of the District of Columbia Court of Appeals.

(5) A State Attorney General or the attorney general's designee, who is a member in good standing of the bar of the highest court in any state or of any United States court, may appear and represent the state or any agency thereof, irrespective of (1)-(3) above.

(b) Entry of Appearance.

(1) If, after the first pleading or other paper is filed on behalf of any party, any additional attorney wishes to enter an appearance for that party, such attorney must file a praecipe noting the entry of the attorney's appearance and listing the attorney's correct address, e-mail address, telephone number and Unified Bar number.

(2) The Clerk shall not accept any paper signed by an attorney for filing unless the attorney is eligible to appear and has entered the attorney's appearance as provided herein.

(c) Withdrawal of Appearance.

(1) If a trial date has not been set, an attorney may withdraw the attorney's appearance in a civil action by filing a praecipe signed by the attorney and the attorney's

client, noting such withdrawal, provided that another attorney enters or has entered an appearance on behalf of the client at that time.

(2) If a trial date has been set or if the client's written consent is not obtained, or if the client is not represented by another attorney, an attorney may withdraw the attorney's appearance only by order of the Court upon motion by the attorney served upon all parties to the case or their attorneys. Unless the client is represented by another attorney or the motion is made in open court in the client's presence, a motion to withdraw an appearance shall be accompanied by a certificate of the moving attorney listing the client's last known address and stating that the attorney has served upon the client a copy of the motion and a notice advising the client to obtain other counsel, or, if the client intends to represent himself or herself or to object to the withdrawal, to so notify the clerk in writing within 10 days of service of the motion upon the client.

(3) Except where leave to withdraw has been granted in open court in the presence of the affected client, the clerk shall send to the affected client by 1st class mail, postage prepaid, a copy of any order granting leave to withdraw. In cases where (1) no new counsel has entered an appearance, and (2) the client has not notified the Clerk of the client's intention to represent himself or herself, the Clerk shall include with a copy of the order a notice instructing the client to arrange for 1 of the 2 foregoing actions with respect to appearance to be promptly accomplished.

(4) The Court may deny an attorney's motion for leave to withdraw if the withdrawal would unduly delay trial of the case, be unduly prejudicial to any party, or otherwise not be in the interests of justice.

(d) Appearances by Attorneys in Pro Bono Cases. An inactive member of the District of Columbia Bar who is affiliated with a legal services or referral program may appear, file pleadings and practice in any particular case that is handled without fee, upon filing with this Court, and the District of Columbia Court of Appeals' Committee on Unauthorized Practice a certificate that the attorney is providing representation in that particular case without compensation.

(e) Law Students.

(1) *Practice.*

(A) Any law student admitted to the limited practice of law pursuant to Rule 48 of the General Rules of the District of Columbia Court of Appeals, and certified and registered as therein required, may engage in the limited practice of law in the Superior Court of the District of Columbia, in connection with any case arising in the Civil Division, on behalf of any indigent person who has consented in writing to that appearance, provided that a “supervising lawyer,” as hereinafter defined, has approved such action and also entered an appearance, and provided that the case would not generally be undertaken by a member of the bar on a contingent fee or retained basis as may be determined by the Court at any point in the litigation.

(B) In each case, the written consent and approval referred to above shall be filed in the record of the case.

(2) *Requirements and Limitations.*

(A) The law student must be enrolled in a clinical program. A clinical program for purposes of this rule shall be a law school program for credit of at least 4 semester hours held under the direction of a full-time faculty member of such law school, or an adjunct professor for a consortium of law schools, whose primary duty is the conduct of

such program in which a law student obtains practical experience in the operation of the District of Columbia legal system by participating in cases and matters pending before the courts or administrative tribunals. A student need not be so enrolled if that student has satisfactorily completed a clinical program and is continuing in the representation of a program's client.

(B) The law student must be registered and certified by the Admissions Committee of the District of Columbia Court of Appeals as eligible to engage in the limited practice of law as authorized by the District of Columbia Court of Appeals General Rule 48.

(C) Certified law students shall not schedule more than 1 trial for any single date except on notice to and with permission of the Court.

(3) *Supervision.* The “supervising lawyer” referred to in this rule shall:

(A) Be a lawyer whose service as a supervising lawyer for the clinical program is approved by the law school by which the law student is enrolled and who is an active practitioner of law in this Court.

(B) Assume full responsibility for guiding the student's work in any pending case or matter or any case-related activity in which he or she participates, and for supervising the quality of that student's work.

(C) Assist the student in his or her participation to the extent necessary in the supervising lawyer's professional judgment to insure that the student participation is effective on behalf of the person represented.

(D) Sign each pleading, memorandum, or other document filed by the student, and appear with the student at each court appearance, except that a supervisor need not be present for a non-adversary matter so long as he or she is available to the Court within one-half hour after such supervisor's presence is requested by the Court.

(E) Not schedule more than 3 cases for trial on any given day for law students being supervised by him or her.

(F) No fee shall be paid to any supervising lawyer or law student under this rule. The Court shall be empowered, however, to permit clinical programs to receive fees, costs and penalties prescribed by law, so long as original eligibility requirements for representation are enforced.

Rule 102. Disciplinary Proceedings Against Attorneys

Any judge, attorney, or other person who believes that a member of the bar of this court should be censured, suspended, or expelled from the practice of law at the bar of this court for a crime, misdemeanor, fraud, deceit, malpractice, professional misconduct or conduct prejudicial to the administration of justice may proceed against such member of the bar as provided in Rule XI of the Rules of the District of Columbia Court of Appeals Governing the Bar of the District of Columbia. Nothing herein shall be construed to deprive this court of any inherent disciplinary powers possessed by it.

Rule 103. Employees Not to Practice Law

Neither the Clerk nor the Clerk's assistants, nor anyone serving as a law clerk or secretary to a judge of this Court, or employed in any other capacity in this Court, shall engage in the practice of law while continuing in such position.

Rule 104. Avoidance and Resolution of Conflicts in Engagements of Counsel Among the Courts in the District of Columbia

The following provisions, which implement the “Procedures for Avoiding and Resolving Conflicts in Engagements of Counsel to Appear Before the Courts in the District of Columbia” dated April 18, 1973, adopted by and applicable to the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals, and the Superior Court of the District of Columbia, shall apply to matters scheduled in this Court:

(a) Priority to Be Accorded Appellate Courts. Trial proceedings in this court will yield, and if under way will be held in abeyance, during argument by trial counsel in an appellate court.

(b) Priorities in Trial Courts. Actual trials of civil or criminal cases in this Court or in the U.S. District Court for the District of Columbia will be accorded priority over any nontrial matters in either Court. For the purpose of this Rule, a hearing on a preliminary injunction shall be regarded as a trial. A judge shall set a date for trial only after ascertaining that trial counsel have no conflicting trial or appellate engagement in any court within the District of Columbia. If, despite the foregoing and the obligations imposed on counsel by section (c) of this Rule counsel should have more than one trial set on 1 day, the following priorities will be recognized:

(1) That case which is first set to commence trial on a specific day will receive priority over cases which are later set to commence trial on that day. A continued case shall be treated as set as of the last setting date.

(2) Any trial in progress, including a trial in progress from day to day, shall take precedence over trial or nontrial engagements of counsel which are set for times during which the trial is still in progress.

(3) Nontrial matters in a trial court will yield to trials in any court.

(4) If a scheduled trial conflicts with a previously set nontrial matter and, because of the urgency or complexity of the nontrial matter or the number of persons involved, it would be difficult to reschedule the nontrial matter, counsel shall immediately advise the court in which or the judge before whom the conflicting trial is scheduled. The court or the judge will be receptive to counsel's application for a change of the trial date or an adjustment of the hours of trial, but shall retain discretion to grant or deny such an application.

(5) The judges of this court, insofar as practical, will attempt to adjust their schedules to enable an attorney to attend to brief nontrial matters such as pleas, sentences, or status and pretrial conferences pending in another court. It is recognized that emergency situations will arise and that certain types of cases may require special consideration. The judges of this court will attempt to accommodate these situations by recognizing the need to depart, on occasion, from rigid scheduling rules when such situations are brought to their attention by counsel.

(c) Responsibilities of Counsel. It is the professional responsibility of attorneys to avoid the setting of conflicting engagements in the courts, to inform the courts of expected difficulties or conflicts which may arise, and to achieve the resolution of such conflicts or problems at the earliest possible time. The following particular obligations are imposed upon counsel:

(1) Attorneys are expected to carry with them at all times they are in court a calendar of their future court appearances.

(2) Attorneys shall appear personally before the judge when a case is being set, reset, or continued except as otherwise specified below. They shall in every case inform the court fully as to any matters which may conflict with a setting, resetting, or continued date being considered by the court. Counsel shall not schedule engagements which they cannot reasonably expect to attend at the time scheduled. They shall observe such limitations on the number of matters they schedule as are imposed herein, or are imposed by the individual courts of this jurisdiction, or which arise by reason of their professional obligations to their clients. The sole exception to the requirement that counsel appear personally before the judge when a case is being reset or continued arises when counsel is physically unable to be present. In such event counsel should leave 3 open dates with the judge in question, and the trial may be reset in counsel's absence. It shall, however, be the attorney's duty to appear personally as soon as possible before the judge who reset the case to confirm the reset date.

(3) Attorneys are obliged to take action immediately upon becoming aware of any conflict and specifically to call the conflicting engagements to the attention of the judge being asked to yield, and to pursue the matter until the conflict is resolved. Such matters may be presented to the judge in open court as a preliminary matter, with advance notice to other counsel.

(4) If counsel cannot avoid being unexpectedly late for or absent from any scheduled appearance before any judge, they shall in advance of the scheduled appearance personally inform the judge of that fact, the reason therefor, and the nature and duration of the conflicting engagements.

(5) If an attorney has a felony case set for trial in any court on a given day, the attorney shall not schedule any other case for trial on that day or for any day thereafter during which that felony trial may reasonably be expected to continue. If an attorney has a misdemeanor case set for jury trial on a given date, the attorney shall not schedule more than 1 other misdemeanor case for trial on that day. These restrictions do not apply to cases as to which an attorney is certain there will be a nontrial disposition.

(6) This Court will take appropriate disciplinary action when an attorney fails to conduct himself or herself in accordance with the requirements and obligations imposed by this Rule.

Rule 201. Recording of Court Proceedings; Release of Transcripts

(a) All Proceedings Recorded. All proceedings shall be simultaneously recorded verbatim by a reporter engaged by the court, by shorthand or mechanical means, or when permitted by rule of court by an electronic sound recording device.

(b) Obtaining Transcripts.

(1) Any person who has made suitable arrangements to pay the appropriate fee, shall be entitled to obtain a transcript of all or any part of any recorded proceedings in open court. As used in this Rule, proceedings in open court shall constitute all recorded judicial proceedings in a non-jury case, and in a case tried by a jury shall constitute all recorded judicial proceedings except discussions in which the jury does not participate.

(2) In a case tried to a jury, any party to the proceedings who has made suitable arrangements to pay the fee specified, or any judge of the District of Columbia Court of Appeals or any judge of this court, shall be entitled to obtain a transcript of any part of the recorded proceedings, whether or not held in open court. In a case tried to a jury, prior to rendition of a verdict or discharge of the jury, any person other than a party to the proceedings shall apply to the judge presiding for permission to obtain a transcript of any part of the recorded proceedings not held in open court. In determining whether such an application should be granted in whole or in part, the presiding judge shall consider the parties' right to a fair trial and the public's interest in a free press. The presiding judge may condition the granting of such application upon such terms as may be appropriate, may sequester the jury, or may take such other approved procedures as seem necessary to insure a fair trial in the case. After rendition of a verdict or discharge of the jury, all recorded proceedings shall be treated as proceedings in open court.

(c) Endorsement on Transcript. Each transcript obtained in accordance with this rule shall bear the following endorsement upon its cover page:

“This transcript represents the product of an official reporter or transcriber, engaged by the Court, who has personally certified that it represents the testimony and proceedings of the case as recorded.”

(d) Transcript on Appeal. Upon the completion of any transcript in a matter to be brought before the appellate court, the reporter or transcriber shall notify the trial court and counsel that the transcript has been completed and will be forwarded to the Court of Appeals 5 days hence. The said notice shall inform counsel that any objections to the transcript must within the said 5 days be presented to the trial court and served on opposing counsel in the manner prescribed in Rule 5. Objections raised by the Court sua sponte shall be made known to the parties who shall be given an opportunity to make appropriate representations to the Court before the objections are resolved. All objections shall be resolved by the trial court on the basis of the best available evidence as to what actually occurred in the proceedings.

(e) Security of Original Transcript. In a case in which a transcript is ordered by any person, the reporter or transcriber shall deliver to said person a carbon copy or copies of any transcript prepared. The original of the transcript bearing the required certificate, shall be filed by the reporter or transcriber with the Clerk of the Court and shall not be changed in any respect except pursuant to rule of court. No change in any transcript may be made by the presiding judge except on notice to the parties to the proceeding. Where any changes are made in the transcription of proceedings the corrections and deletions shall be shown.

(f) Private Reporters. Except as provided in paragraphs (g) and (h) of this Rule, only a court reporter who is a court employee, or who is under contract to the Court to provide reporting services, is permitted to record proceedings held before a judge or hearing commissioner.
(g) Electronic Recording Devices. The use of court operated electronic recording devices may be permitted by the Chief Judge of the Superior Court for the perpetuation of a record in any court proceeding without the presence of a court reporter during such proceeding.
(h) Restriction on the Use of Electronic Recording Devices. No electronic recording equipment, other than that in the custody and control of official court reporters or court personnel in the performance of their official duties, may be used to record proceedings held before a judge or hearing commissioner.

COMMENT

Section (b)(2) requires that during trial persons other than parties apply to the court for transcripts of those portions of jury trials not held in open court. In this connection, see A.B.A. Standards on Fair Trial-Free Press § 3.1 and § 3.5.

For administrative rules concerning transcripts see Court Reporter Rules, District of Columbia Courts.

Rule 202. Fees

(a) Court Fees. Court fees shall be as indicated below for actions in the Civil Division (CA), and for actions in the Small Claims and Conciliation Branch and the Landlord and Tenant Branch (SC & LT) (where fee is applicable).

	CA	SC & LT
(1) INITIAL FILING FEES		
Filing a new civil action	$120	$..
Filing a new landlord-tenant action	..	15
Filing a new housing code enforcement action (CA Form 116)	15	..
Filing a new small claims action	..	
For Claims for Damages for $500 or Less	..	5
For Claims over $500 and up to $2500	..	10
For Claims in excess of $2500	..	45
Filing intervening petition	120	25
Filing arbitration agreement and entering award	120	25
Filing jury demand	..	75
Filing change of name case	60	..
Filing petition to change birth certificate	60	..
Filing petition to release mechanics' lien	60	..
Filing petition to enter administrative order as judgment	60	..
Filing for enforcement of foreign judgment	60	..
Filing petition to perpetuate testimony (Rule 27)	60	..
Filing a Merit Personnel Action review	60	..
Filing an appeal from the Traffic Adjudication Appeals Board	30	..
Filing counterclaim, crossclaim, or 3rd party claim	20	10
Filing petition to serve subpoena (Rule 28-I)	10	..
(2) MISCELLANEOUS FEES		
For issuing each alias summons or alias writ	10	5
For attachment before judgment (including issuing writ)	20	10
For filing motion (except motion under Rule 41-I)	20	10
For motion to reinstate after dismissal under Rule 41-I	35	25
For services of a judge as arbitrator	120/hr	..
For appointment of special process server	5	5
For each photocopy supplied by clerk, per page	.50	.50
For certified copy or true seal copy	5	5
For search of record, for each name searched	10	10

(3) POST JUDGMENT FEES		
For issuing attachment on judgment	20	10
For issuing writ of fieri facias or writ of execution	20	10
For issuing writ of replevin	20	..
For writ of restitution	20	10
For oral examination of debtor	20	10
For issuing transcript of record	10	5
For making and comparing a transcript of record on appeal, per page	1	1
For issuing triple seal	20	10
For filing notice of appeal	5	5

(b) Marshal's Fees. The fees for services by the United States Marshals for processes issued by the Superior Court shall be the same as those service of processes issued by the United States District Court for the District of Columbia.

COMMENT

Attention is called to the provisions of D. C. Code 1981, § 15-713 which prohibit in any class of case return of a jury fee if demand for jury trial is withdrawn less than 3 days before the trial date.

Rule 203. Free Press--Fair Trial

(a) No courthouse personnel, including among others, marshals, court clerks, law clerks, messengers, and court reporters, shall disclose to any person information relating to any civil proceeding that is not part of the public records of the court without specific authorization of the court, nor shall any such personnel discuss the merits or personalities involved in any such proceeding with any members of the public.

(b) No photographs, radio or television broadcasts, or tapes for public replay, shall be made inside the courthouse in connection with any civil proceeding, whether or not the court is in session. Contents of official tapes that are made as a part of the record in a case will be treated in the same manner as official stenographic notes.

(c) No attorney who has undertaken the representation of a litigant in a civil case, whether that case is in progress or imminent, shall release or authorize the release of information not in the public record for dissemination by any means of public communication which is likely to interfere with a fair trial or otherwise prejudice the due administration of justice. No statement shall be disseminated which contains an attorney's opinion as to liability of the parties, credibility of witnesses, motives of the other party, or similar matters bearing on the conduct of the litigation.

(d) In any case which is or is likely to become widely publicized, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the parties to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

Rule 204. Administrative Searches and Inspections

(a) Authority to Issue Warrants. Administrative search warrants (hereinafter denominated “warrant(s)”) authorized by this rule may be issued by a judge of the Superior Court.

(b) Grounds for Issuance. A warrant may be issued authorizing the administrative inspection and search of any property or premises, private, commercial or public. Property (including premises) is subject to administrative inspection and search, if there is probable cause to believe that:

(1) the property is subject to 1 or more statutes relating to the public health, safety or welfare;

(2) entry to said property has been denied to officials authorized by civil authority to enforce such statutes or regulations unless it be shown that special circumstances exist so that such prior denial of entry should not be required; and

(3) reasonable grounds exist for such administrative search and inspection.

(c) Application for Warrants. Application for a warrant shall be in writing upon oath to a judge. It shall include the name and title of the applicant and a statement of the facts demonstrating the prior inability of the applicant or other authorized official to enter said premises for purposes of administrative inspection; allegations of fact supporting such statements; and a request that a warrant be issued authorizing an inspection of said property. Depositions, affidavits, or other proof to support the allegations contained in the application shall be submitted. Such proof shall be on personal knowledge or in the absence thereof, shall demonstrate the reliability of the allegations and information. Applications for warrants shall be filed with the clerk and maintained in the Civil Miscellaneous Docket.

(d) Issuance and Contents. Upon application by a law enforcement officer, prosecutor, or person authorized to enforce laws or regulations relating to health, safety, or welfare, a judge may issue a warrant if the judge is satisfied that ground for its issuance exists or that there is probable cause to believe that it exists. A warrant shall contain:

(1) the name and signature of the issuing judge and the date of issuance;

(2) the names and affiliations or classifications of the persons to whom the warrant is addressed, at least one of whom shall be a member of the Metropolitan Police Department;

(3) a description of the premises, property or objects to be searched, and, where authorized by law, the property or objects to be seized, if any, sufficient for certainty of identification;

(4) the hours during which the warrant may be executed; and

(5) a provision that the warrant be returned to the court on the next court day after its execution.

(e) Execution; Return.

(1) *Time of Execution.* A warrant shall not be executed more than 10 days after the date of issuance. A warrant may be executed on any day of the week except Sunday during the hours of daylight unless, for good cause shown, the Court specifies other hours.

(2) *Place of Execution.* A warrant may be executed anywhere within the District of Columbia.

(3) *Manner of Execution.* A person executing a warrant authorizing an administrative inspection and search of a dwelling, house, other building or vehicle may break and enter any of these premises. Such breaking and entry shall not be made until after such person makes an announcement of the person's identity and purposes and the person reasonably believes that admittance to the dwelling, house, other buildings, or vehicle is being denied or unreasonably delayed.

(4) *Inventory and Return.* A person executing a warrant shall write and subscribe a return, setting forth the time of its execution and any property seized concomitant with its execution. The return shall include the names and capacities of all persons participating in the inspection(s), the nature and scope of the inspection made by each, and the office or administrator from whom reports of the inspection(s) may be obtained. A copy of the warrant and return shall be given to the owner of the premises, if present, or if the owner is not, to an occupant, custodian, or other person present; or if no person is present, the person executing the warrant shall post a copy of the warrant and return on the place, vehicle, or object searched.

(f) Filing of Papers: Disposition of Seized Property. A copy of the warrant shall be filed with the court on the next court day after its execution, together with a copy of the return. The warrant and return shall be maintained in the Civil Miscellaneous Docket. Property seized concomitant with the execution of the warrant shall be kept as provided by law governing the person who made said seizure.

(g) Scope and Definition. This rule in no way limits the right of any person executing such warrant to seize property which the person may otherwise have a right to seize. As used in this rule, the term property includes documents, books, papers and any other tangible objects. Nothing in this rule is intended to limit the authority of a duly authorized official to enter and inspect premises in emergency situations without warrant.

COMMENT

See *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967); *See v. Seattle*, 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943 (1967) and D. C. Code § 11-941 (1973 Ed.).

Rule 205. Change of Name

(a) Application. Pursuant to D.C.Code 1973, § 16-2501, any person, being a resident of the District of Columbia and desiring a change of name, may file an application in the Superior Court of the District of Columbia seeking such relief. The application may include the applicant's spouse, if the spouse consents, the minor children of the applicant, and the minor children of the spouse, if the spouse consents. If the applicant is an infant, the application shall be filed by the infant's parent, guardian or next friend. An application shall be verified and shall include:

1. applicant's present name, social security number, and date of birth;
2. the name desired to be assumed;
3. the reasons for the change of name;
4. applicant's present residence and permanent domicile;
5. applicant's place of birth;
6. the full names of applicant's parents;
7. whether applicant's name has been previously changed and, if so, the dates, places, and reasons therefor;
8. whether applicant has ever been known by or used any other name not stated in this application, and, if so, what name and the dates, places and reasons therefor;
9. applicant's occupation;
10. whether applicant has been the subject of a bankruptcy, receivership, or insolvency proceeding;
11. whether applicant has been convicted of a felony;
12. whether any unsatisfied judgment or decree has been entered against applicant;
13. the names and addresses of any creditors to whom the applicant is presently indebted;
14. certification by the applicant (i) that the application has not been filed for any fraudulent or undisclosed purpose, status, past or present, (ii) that the granting of the application will not infringe upon the rights of others relating to any partnership, corporation, patent, trademark, copyright, goodwill, privacy or otherwise.

(b) Presentation of Application and Preliminary Hearing. At the time of filing of an application for change of name, the Court shall (i) require the applicant to make a prima facie showing of the applicant's right to relief, (ii) set a date for the final hearing, and (iii) inquire who, if anyone, is entitled to notice of the application and of the final hearing. Notice of said hearing, together with a copy of the application shall within 10 days thereafter be served personally upon the persons designated by the Court or shall be sent by the applicant or the applicant's attorney, by registered or certified mail to said persons. Proof of said service of mailing shall be by an affidavit which shall set forth the names and addresses of each person to whom notice was given, and the date of said mailing. Said affidavit shall be supported by the certified letter receipt.

(c) Publication. In addition to the notice prescribed pursuant to section (b) of this Rule, notice of the filing of the application, the substance and prayer thereof and the date of final hearing shall be published once a week for 3 consecutive weeks in a newspaper in general circulation in the District of Columbia. Publication shall be proved by affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the notice as published.

(d) Final Hearing. A final hearing shall be held on a date set by the Court. Upon proof of notice as required in sections (b) and (c), and after making inquiry as to whether all persons who appear to have an interest in the application have received proper notice, the Court may enter an order changing the name of the applicant. If the applicant has been convicted of a felony, the Court shall provide notice to appropriate law enforcement officials.

Rule 301. Compensation of Conservators and Guardians of Infants

(a) General Matters.

(1) *Assignment of Commission.* Assignment of commission as used in this Rule shall refer to those instances in which an attorney has, pursuant to an agreement with the fiduciary, performed some or all of the services normally expected of the fiduciary in administering the estate and has obtained an assignment from or written consent of the fiduciary to receive part or all of the fiduciary's commission as compensation for the attorney's services.

(2) *Compensation in Probate Matters.* Compensation of personal representatives and guardians ad litem and attorney fees in probate matters are governed by Probate Division Rules 122 and 124.

(3) *Discretion Reserved to Court.* Nothing contained in this Rule shall be construed to prevent the Court from requiring a statement of services or otherwise determining an appropriate commission in any particular case.

(4) *Court May Modify or Dispense With Notice.* The Court may modify the requirements of notice under this rule when the parties and persons whose interest may be affected are very numerous and may dispense therewith when it appears that the time, labor, and expense of complying will be disproportionate to the distributive shares of those having an interest in the matter.

(b) Compensation to a Conservator or Guardian for Ordinary Services. Compensation to a conservator or guardian for ordinary services shall be by commission which shall not exceed 5% of amounts disbursed from the estate. Ordinary services shall be those normally performed by a fiduciary in administering such an estate and shall include, but not be limited to, the following:

(1) Qualification as the fiduciary;

(2) Collection of the ward's assets and income;

(3) Payment of the ward's debts and costs of maintenance, as authorized or ratified by the Court;

(4) General supervision of the ward's investments and policy relating thereto, including safekeeping; and

(5) Preparation and filing of all inventories, accounts, and reports to the Court.

(c) Compensation to an Attorney for Ordinary Services. If an attorney performs on behalf of a conservator or guardian any of the above ordinary services in administering the estate, the Court may authorize the attorney to be compensated from the estate in the conservatorship or guardianship proceeding only by the conservator's or guardian's written assignment of the fiduciary's commission in whole or in part, which assignment shall be filed with the Court.

(d) Time and Method for Claiming Compensation for Ordinary Services. A claim for commission for ordinary services may only be made in an annual account and, except as otherwise provided in these rules, no statement of services is required. The amount or percentage of commission claimed need only be reflected in the account itself.

(e) Turnover Commission. The turnover commission shall be the commission to be paid upon the fiduciary's death, resignation, or incapacity or upon the death of the ward, restoration to competency, or attainment of the age of majority.

(1) *On Fiduciary's Death, Resignation, or Incapacity.* If services by a conservator or guardian are terminated by the fiduciary's death, resignation, or incapacity, in addition to

a commission on disbursements actually made, the fiduciary may be entitled to a commission on the net assets distributed to the successor fiduciary. The fiduciary shall file a statement of services in support of the turnover commission. That statement shall indicate what has been done by the fiduciary, what remains to be done by the successor and such other information as would justify the commission claimed.

(2) *On the Death of the Ward, Restoration to Competency, or Attainment of Age of Majority.* If a conservatorship or guardianship terminates within three (3) years of its commencement because of the death of the ward or other legal reason, the fiduciary shall either file a statement of services in support of the turnover commission claimed in estates exceeding $100,000 or, in such estates apply for a waiver of the requirement for a statement of services by filing a simple written request with the Court.

(f) Compensation to Fiduciary for Extraordinary Services. At the time of filing an annual account, a conservator or guardian may petition the Court for compensation for extraordinary services rendered. Extraordinary services shall be in addition to those services set forth in paragraph (b). The petition shall include the following:

(1) Statement of jurisdiction and controlling Court Rule;

(2) Statement of services rendered sufficiently complete on its face to establish that the requested payment is reasonable and, as appropriate, that the services are in fact extraordinary;

(3) The time devoted thereto, if records are available;

(4) Evidence of the necessity or purpose of the services;

(5) Results achieved, including the benefit to the estate or ward, if any;

(6) Statement of all prior allowances from the estate to the claimant or other fiduciary or counsel, to the extent known, and;

(7) The ability of the estate to meet future needs of the ward and to compensate fairly the fiduciary.

(g) Attorney Fees. At the time of the filing of an annual account, an attorney may petition for allowance of reasonable attorney's fees for preparing pleadings filed with the Court and for other necessary legal services rendered to the fiduciary in the administration of the estate. A petition for fees for legal services in connection with the qualification of the fiduciary may be submitted at any time, however. The petition for fees shall be accompanied by a statement of services which shall include those matters set forth in paragraph (f) above with respect to a petition for compensation for extraordinary services.

(h) Notice Required. Notice of the filing of a petition for compensation for extraordinary services by the fiduciary or for attorney's fees shall be given to the fiduciary (if appropriate) and to all other persons affected by the allowance of the requested compensation or fee. The consents of those entitled to notice may be filed with the Court within twenty (20) days of the date of mailing of said notice.

(i) Reference to Auditor-Master or Deputy. All petitions for attorney's fees (except those petitions requesting a fee for the appointment of a conservator or trustee) shall be referred to the Auditor-Master or Deputy Auditor-Master for appropriate recommendations.

COMMENT

No compensation shall be awarded for supervision of the ward's person.

With respect to turnover commissions as a result of the fiduciary's death, resignation or incapacity, pursuant to subparagraph (e)(1) of this rule, since ordinary commissions may not exceed five percent (5%) of disbursements and since the ward's funds will be disbursed again, the Court will be cautious and reserve a sufficient percentage commission to compensate fairly the successor fiduciary.

Although the amount of the commission for ordinary services will be considered in determining the appropriateness of compensation for extraordinary services under paragraph (f) of this rule, that amount alone will not be the determining factor.

Conservators and guardians serve as officers of the Court. There can be no assurance in any given case that a fiduciary will receive compensation or commissions which he or she considers adequate.

Payments for attorney's fees under paragraph (g) are independent of the fiduciary's commission for ordinary and extraordinary services and are designed to compensate the attorney for legal services consistent with the value of the services rendered and the ability of the estate to pay. The fact that the fiduciary is an attorney will in no way preclude the fiduciary from petitioning under this rule for payment for legal services to himself or herself.

Rule 302. Duties and Compensation of a Guardian Ad Litem in Conservatorship Proceedings

(a) Appointment. When the Court, in its discretion, appoints a guardian ad litem in a conservatorship proceeding, no person, other than a member of the District of Columbia Bar, shall be so appointed except for good cause shown.

(b) Duties. A guardian ad litem shall appear and represent the best interests of the proposed ward and shall answer allegations set forth in the petition by filing a written report with recommendations not less than seventy-two (72) hours prior to the hearing date and shall serve a copy on the petitioner. The guardian ad litem should compile information sufficient to support the conclusions reached in the written report. The guardian ad litem shall:

(1) Investigate the allegations of the petition.

(2) Interview the proposed ward on at least one occasion, if feasible and appropriate. During the course of the interview the guardian shall ascertain, if possible, the views of the proposed ward toward a conservatorship over the ward's person and estate.

(3) Interview such other person or persons as may be necessary in the formulation of the report with respect to the necessity for a conservatorship and who should be appointed.

(4) Prepare a written report which shall make recommendations as to whether the petition should be granted, including when applicable, who should be appointed to serve as a conservator and the amount of bond required, if relevant.

(5) Attend the hearing for the appointment of a conservator.

(c) Expansion or Limitation of Duties. Nothing in this Rule shall preclude the Court from expanding or limiting the duties of the guardian ad litem in any proceeding as may be appropriate.

(d) Termination of Appointment. The guardian ad litem shall serve until disposition by the Court of the petition for appointment of a conservator at which point the guardian shall automatically be discharged, unless discharged by prior Court order. Nothing in this rule, however, shall preclude the Court from considering at an appropriate time an application for fees and expenses of the guardian for services rendered upon proper application to the Court pursuant to paragraph (f) of this Rule.

(e) Reappointment of Guardian Ad Litem. As circumstances warrant, the Court may reappoint the guardian ad litem or appoint another member of the Bar to serve as guardian ad litem for a specified purpose at any time during the administration of the conservatorship.

(f) Compensation.

(1) *Petition.* Allowance by the Court of compensation to a guardian ad litem shall be made only upon petition supported by a detailed statement of services describing the work undertaken in performing the duties prescribed under paragraph (b) of this Rule and containing a certification that the written report was filed not less than seventy-two (72) hours prior to the hearing or, if not so filed, an explanation for late filing.

(2) *Notice.* When a claim is made by a guardian ad litem against any estate, notice need be given only to the conservator unless the Court directs that notice be given to others. When a claim is against a particular party to the suit, notice shall be given to the conservator and to that party and that party's attorney and to such others as the Court

may direct. Persons entitled to notice shall have twenty (20) days from the date of mailing of said notice in which to file objections with the Court.

COMMENT

The appointment of a guardian ad litem under this rule is not intended to preclude the retention by the proposed ward of independent counsel to oppose the petition for conservatorship.

Performance of excessive services is not looked upon with favor. However, if special circumstances exist, such as inadequate records or apparent conflict of interest, the guardian ad litem may consider ascertaining the following:

(a) Verification of names and addresses of heirs at law and next of kin;

(b) Names, addresses, and telephone numbers of physicians involved in the care and treatment of the proposed ward, including references to substantive medical and psychological reports and tests, including dates of examination;

(c) Description or verification of assets owned by the proposed ward and source of income, including the names, addresses and account numbers of financial institutions in which such assets and income are deposited;

(d) Description of the information obtained from interviews with persons having knowledge of the proposed ward and any other person of importance to the proposed ward, including the name, address and telephone number of persons interviewed, the date of the interview, and a summary of the information obtained.

The petition for compensation should ordinarily be filed within sixty (60) days after entry of the order granting or denying appointment of a conservator.

Rule 303. Bonds and Undertakings

(a) Fiduciaries Must Give Undertaking; How Amount Determined. In trust estates under the supervision of the court, where there is no specific statutory provision for the giving of an undertaking, all committees, trustees, and other fiduciaries appointed by the court, except trust companies as provided in D. C. Code (1967 edition) § 26-333 [§ 26-1333, 2001 Ed.] and national banks as provided in 12 U.S.C. § 92a(f), before entering upon the discharge of the duties as such fiduciary shall execute an undertaking with surety approved by the court in a penalty equal to the amount of the personal property, the annual income therefrom and the yearly rents to be derived from the real estate of such trust estate, conditioned for the faithful performance of such trust. Should it become necessary to sell real estate of the trust estate, the fiduciary shall execute such additional undertaking as may be required by the court before accepting in such fiduciary capacity the proceeds from the sale of real estate.

(b) Approval by Court: When. Any bond or undertaking required in an action or proceeding, which is not approvable by the clerk, must be approved by the court. Two days' written notice of an application to approve any such bond with the name and address of the surety shall be served on all parties to be secured.

(c) Persons Not Acceptable as Surety. No member of the bar in active practice or other officer of the court will be accepted as surety.

COMMENT

Identical to USDCDC [District Court] Rule 20, except for typographical changes.

Rule 304. Trustees, Conservators, Guardians Ad Litem, and Other Fiduciaries

(a) To Report Conflicting Interest. Whenever a trustee, conservator, guardian ad litem, or other fiduciary has occasion to sue or defend in behalf of an infant or incompetent person concerning a matter in which he or she has a possible conflicting interest, he or she shall report the facts in writing to the Court so that it may take appropriate action.

(b) Guardians Ad Litem: Members of Bar to Be Appointed. Except for special cause shown no person other than a member of the bar of this court shall be appointed guardian ad litem.

(c) No guardian ad litem shall be required in the appointment of a successor fiduciary.

(d) Except for good cause shown, only a person residing within the area of the subpoena power of the court or any bank or trust institution authorized to serve in a fiduciary capacity, or a member of the bar authorized to practice law before this court, shall be appointed by the court as conservator, committee, or trustee of another.

(e) No fiduciary appointed by this Court shall, without prior Court approval, remove or maintain outside the District of Columbia any personal assets held in a fiduciary capacity.

COMMENT

Substantially identical to USDCDC [District Court] Rule 21.

Rule 305. Trust Funds; Fiduciaries

(a) Accounts and Reports. A fiduciary charged with the care of administration of property, appointed by the Court or required to file bond with it for faithful discharge of the fiduciary's trust, or otherwise acting under the authority, supervision or direction of the Court, shall account and report as herein provided, unless said fiduciary be acting under the probate branch of the Court. An account and report, verified by the fiduciary's oath, shall be filed annually with the Clerk within 30 days after the anniversary date of the fiduciary's appointment, or if not appointed by the Court, within 30 days after the anniversary date of the order bringing the fiduciary under its authority, supervision or direction. The account shall contain an itemized statement of all receipts and disbursements for the preceding annual period. The report, to be made on a form furnished by the Clerk, shall list with detailed particularity (1) all real and personal assets of the estate, (2) where each item thereof is located, kept or deposited, (3) the name in which each is held, (4) the value of each, (5) any sale, transfer or other disposition of assets, (6) any investment or change in form of assets and the name in which it stands, (7) the penalty of the fiduciary's undertaking, (8) the date when the undertaking was filed, (9) the name of the surety, and (10) the value of the estate when the undertaking was filed. A similar report shall be filed by the fiduciary within 60 days after appointment by the Court or, if not so appointed, within 60 days after the order bringing the fiduciary under its authority, supervision or direction.

(b) Audit and Examination. Upon filing of an annual account and report the Clerk shall forthwith deliver the same to the Auditor-Master or his or her deputy, who shall promptly audit the account, examine all securities (except as provided in subparagraph (1) hereof), check them with the report and ascertain the correctness of all reported deposits. Thereupon he or she shall file a report of the findings with the Clerk. However, the Auditor-Master or his or her deputy shall not file with the Clerk the transcript of proceedings and of the evidence and the original exhibits as prescribed by SCR-Civil 53(e)(1).

(1) In those fiduciary cases where a bank is serving as fiduciary, in lieu of exhibiting all securities the bank may submit an affidavit from an official of the bank, other than the officer signing the account, verifying the correctness of the securities and cash accounts as set forth in the fiduciary's account, and that same are being held in the custody of the fiduciary.

(c) Expenditures, Irregularity or Default: Auditor-Master or His or Her Deputy to Report. All expenditures from an estate by a fiduciary, except those provided by statute and court costs, shall be made only upon prior authorization of the Court. Failure of a fiduciary to obtain prior Court authority for expenditures, other than those provided by statute and court costs, shall constitute an irregularity in the administration of the estate and such expenditures shall be disallowed as a charge to the estate upon annual accounting except for good cause shown. Whenever in any case there comes to the Auditor-Master's or his or her deputy's attention an apparent irregularity or default in administration of a trust estate or an insufficiency in the amount or security of an undertaking he or she shall immediately advise the Court thereof, which upon a summary hearing, shall remove the fiduciary and appoint a successor, unless for good cause shown the irregularity or default in administration or the insufficiency in the

amount or security of an undertaking is deemed excusable. The Court may also take such further summary action as the Court may see fit.

(d) Auditor-Master Fees for Review of Fiduciary Accounts. The Clerk shall be paid a fee for all audits and examinations made pursuant to this Rule according to the fee schedules hereinafter set forth, and in every such case the fee prescribed herein shall be deemed a reasonable fee for the services rendered by the Auditor-Master.

(1) *Audits and Examinations Under Paragraph (b).* The fee to be assessed by the Deputy Auditor-Master for audit and examination of an account and report to the Court pursuant to paragraph (b) of this Rule is set forth in the schedule below.

			Costs
$500	or less		No Cost
500.01	to	$2,500	$15
2,500.01	to	10,000	50
10,000	but less than	25,000	100
25,000	but less than	50,000	150
50,000	but less than	75,000	250
75,000	but less than	100,000	350
100,000	but less than	500,000	575
500,000	but less than	700,000	825
700,000	but less than	1,000,000	1,275
1,000,000	but less than	2,500,000	1,800
2,500,000	but less than	5,000,000	2,300
5,000,000	and over		2,300 plus 0.02% of excess over $5,000,000

In addition to the fee prescribed in the above schedule, in those instances where during the course of the audit, the Auditor-Master finds it necessary to take testimony and/or obtain records, documents or other written instruments not furnished by the fiduciary, the Court may allow such additional fees and costs as it may deem proper.

(2) *Examinations Under Paragraph (f).* In all cases where, pursuant to paragraph (f) of this Rule, the account of a fiduciary has been approved without audit the fee for examination of securities and verifying deposits upon the basis of their total value is in accordance with the following schedule:

Less than $2,500	No Cost
$2,500 but less than $10,000	$15
$10,000 but less than $50,000	$30
$50,000 plus	$60

provided, that the fiduciary may require securities to be examined where they are kept, in which event there shall be an additional fee of $25, but credit will not be allowed therefor unless in the Court's opinion the expenditure was justifiable.

(3) *Court Costs Attributable to Real Estate in the District of Columbia.* Additional court costs in the amount of $25 shall be assessed in all accounts wherein real property or

properties in the District of Columbia, of whatever value, are carried as an account asset. If proceeds of the sale of real property are included, court costs shall be assessed in accordance with subparagraphs (d)(1) and (d)(2) of this rule.

(4) *Computation of Court Costs.* For the purposes of determining the initial costs under paragraph (d) of this rule, the value of the account shall include: (1) the initial gross principal value of the assets of the account as determined by the Deputy Auditor-Master; (2) the gross value of any increase in the principal value of any account realized upon disposition (other than upon distribution to beneficiaries of the account) by the fiduciary; and (3) the gross value of any income reported by the fiduciary in periodic accounts to the Court, but shall exclude the value of real property in the account except as otherwise provided in subparagraph (d)(3) of this rule. In determining the court costs upon the audit of subsequent accounts, allowance shall be made for costs previously assessed.

(5) *Time of Payment.* The costs to be collected by the Deputy Auditor-Master under this paragraph shall be paid at the time of filing the first account except as otherwise provided herein. Subsequent costs, if any, determined under paragraph (d) of this rule shall be assessed and paid at the time of filing each subsequent annual account of the fiduciary.

(6) *Review of Fees.* Following the close of each fiscal year, the Auditor-Master shall review the fees assessed by the Auditor-Master's office during such year and shall file with the Chief Judge a report of fees assessed and collected so that the Court may make such changes, alterations or additions to the foregoing fee schedule as it considers appropriate.

(e) Failure to Account and Report; Removal of Fiduciary. The clerk for good cause shown may extend the time for filing an account or report. If an account or report is not filed within the prescribed time the clerk shall promptly report the fact to the Court, which upon a summary hearing shall remove the fiduciary and appoint a successor, unless for good cause shown the failure is deemed excusable. The Court may also take further summary action to compel filing of the account or report.

(f) Account; Approval Without Reference to Auditor-Master or His or Her Deputy. An account of the fiduciary may, in the Court's discretion, be approved without reference to the Auditor-Master or his or her deputy upon the filing of a petition with the Court setting forth that all beneficiaries in being, including remaindermen, have consented thereto, and attaching to said petition their written consents. A guardian or committee may consent for his or her ward except when he or she is the accounting fiduciary. In no event shall examination of securities and deposits by the Auditor-Master or his or her deputy be excused. At the time of filing the petition, the fiduciary shall submit a proposed order. No account shall be approved without reference to the Auditor-Master or his or her deputy in any case in which a beneficiary or remainderman has died, until a suggestion of death has been filed supported by a certificate of death and until said deceased beneficiary or remainderman's estate's representative has appeared and consented thereto.

(g) Statement of Distribution and Settlement. Promptly after full distribution and settlement of a trust estate the fiduciary shall file with the clerk a verified statement to that effect, together with vouchers, receipts, or cancelled checks evidencing final distribution.

(h) Nonresident or Absent Fiduciary to File Power of Attorney. A fiduciary who is or becomes a nonresident of the District of Columbia or is continuously absent therefrom for more than 60 days, shall within 10 days after qualifying as fiduciary or becoming such nonresident or absentee, file with the Clerk of the Court a like power of attorney to that provided by Title 20, Section 365 of the District of Columbia Code (1967) [§ 21-110, 2001 Ed.], except that the same shall run in the name of the Clerk and the Clerk's successor in office. Failure to file the power of attorney within the time provided shall be cause for removal of the fiduciary from office.

(i) Upon the death of the person for whom the fiduciary is appointed, the fiduciary shall file a suggestion of death forthwith, and shall file a final account and report verified by the fiduciary within 60 days from the date of death.

(j) Unless otherwise ordered by the court for good cause shown, this rule shall not apply to any proceeding, the purpose of which is (i) the appointment of a trustee, substituted trustee or successor trustee under an instrument in which the fiduciary was not otherwise under the authority, supervision or direction of the court, (ii) the judicial passing and approving of an accounting tendered to the court by a resigning trustee or by the personal representative of a deceased trustee, or (iii) an acting trustee seeking instructions or construction of the governing instrument.

(k) Appraisal. Within the period of 90 days from the date of appointment, a fiduciary shall engage the services of a qualified appraiser to inventory and appraise all tangible personal property in the ward's estate provided the value of said property, in the judgment of the fiduciary, exceeds the value of $1,000.00. If said property, in the judgment of the fiduciary, is valued at $1,000.00 or less, the fiduciary shall submit an affidavit setting forth the description and the value of the tangible personal property.

(*l*) Sale of Property. A conservator or committee shall not sell or otherwise dispose of estate property or encumber it without prior order of court.

Rule 306. Investments by a Fiduciary

(a) A fiduciary subject to the supervision of this court may make such investments as would be made by prudent persons of discretion and intelligence in such matters who are seeking a reasonable income and preservation of their capital; provided, however, that nothing in this Rule shall limit the effect of any will, agreement, court order or other instrument creating or defining the investment powers of a fiduciary or shall restrict the authority of the court to instruct the fiduciary in the interpretation or administration of the express powers of any will, agreement or other instrument or in the administration of the property under the fiduciary's care. This Rule shall apply to any investment, made on or after July 1, 1973 by a fiduciary subject to the supervision of this court at the time the investment is made.

(b) In all cases where a fiduciary is required to obtain court authority prior to make [making] investments, an order of court so authorizing investments under this Rule shall not constitute court approval of the particular investments nor shall the fiduciary be relieved of any fiduciary responsibility for having made the investments.

(c) No fiduciary shall purchase for fiduciary's personal account or for any account in which the fiduciary is personally interested any asset held by the fiduciary, nor shall the fiduciary sell to himself or herself, as fiduciary, any asset in which the fiduciary has any personal or financial interest.

Rule 307. Dower; Life Estate

(a) Commutation of Dower. The dower of a healthy person in land sold by judgment of the court will, unless otherwise adjudged, be commuted according to the following schedule:

Under 30 years of age	1/6th
Above 30 and under 35	2/13th
Above 35 and under 40	1/7th
Above 40 and under 45	2/15th
Above 45 and under 51	1/8th
Above 51 and under 56	1/9th
Above 56 and under 61	1/10th
Above 61 and under 67	1/12th
Above 67 and under 72	1/14th
Above 72 and under 77	1/18th
Above 77	1/20th

(b) Allowance for Life Estate. Allowance to a healthy tenant for life, unless otherwise adjudged, shall be 3 times the allowance in lieu of dower to a person of the same age.

COMMENT

Identical to USDCDC Rule 24.

Rule 308. Court Sales of Real and Personal Property

(a) Sale of Real Property. Unless otherwise herein provided, a sale of real estate or any interest in land under an order of this court shall be governed by the provisions of Title 28, Section 2001, U.S.Code in the same manner as if such provisions were, by the terms thereof, applicable to proceedings in this court.

(b) Public Sale: Procedure. Except when the order of Court otherwise provides, the officer making a public sale shall proceed in the manner following:

(1) *Publication.* The officer shall give previous notice of the sale by publication once a week for 4 weeks in a daily newspaper of general circulation in the District of Columbia. The notice shall describe the property substantially as in the order and shall state the time, place, manner and terms of sale and the deposit required.

(2) *Terms of Sale.* The terms shall be one-third of the purchase money in cash and the balance in 2 equal installments, payable on or before one and 2 years from date of settlement of sale, represented by the promissory notes of the purchaser with interest at 6 per cent per annum, payable semi-annually, secured by deed of trust on the property, or all cash at the option of the purchaser.

(3) *Place; Presence of Officer.* The sale shall be held upon the premises, and the officer making the sale shall be present and personally receive the deposit. If there be more than one officer the presence of 1 will be sufficient.

(4) *Report; Ratification.* A verified report of the sale shall be promptly made to the Court. Thereupon on motion and notice the Court may, in its discretion, ratify the same with or without further notice. If the sale be ratified settlement shall be made and the real estate conveyed by proper deed.

(5) *Form of Order of Sale.* The order of sale shall not contain detailed directions as to the manner of proceeding, but shall do so only by reference to this rule.

(6) *Compensation of Auctioneer.* The compensation of the auctioneer shall be one and one-half percent of the 1st $10,000 plus three-eighths of 1 per cent of any amount over $10,000, of the value of the equity in the property being sold. In the event that the property is unencumbered by indebtedness, the auctioneer's compensation shall be computed and paid at the same rate upon the entire sales price. In no case shall the auctioneer's compensation be less than $35 unless the property is withdrawn after being offered for sale, in which event the auctioneer's compensation shall be $25.

(c) Private Sale: Procedure.

(1) *Order for.* A private sale may be ordered after a hearing of which notice to all interested parties is given by publication or otherwise as the Court may direct, if the Court finds the best interests of the estate will be conserved thereby.

(2) *Appraisers.* Before confirmation of a private sale the Court shall appoint 3 disinterested persons to appraise the property, or different groups of 3 appraisers each to appraise properties of different classes or situated in different locations. Such appraisers are to be appointed from the list maintained by the Register of Wills pursuant to SCR-P.D. 113.

(3) *Minimum Sale Price.* A private sale shall not be confirmed at less than two-thirds of the appraised value.

(4) *Order Nisi, Increased Offer; Confirmation.* At least 10 days before confirmation of a private sale the terms thereof shall be published in such newspaper or newspapers of general circulation in the District of Columbia as the Court may direct, and the sale shall

not then be confirmed if a bona fide offer has been made, under such conditions as the Court may prescribe, which guarantees at least a 10 per cent net increase over the price specified in such published offer.
(d) Account; Distribution of Proceeds. Promptly after the settlement of a private or public sale made under this rule a full and detailed account shall be filed and presented to the Court and the proceeds distributed as the Court may direct.
(e) Compensation to Officer Making Sale. The compensation of the trustee or officer making a sale hereunder shall be 5 per cent on the 1st $3,000, plus two and one-half percent on the next $10,000, plus 1 percent on any amount in excess of $13,000 dollars of the value of the equity in the property being sold. In the event that the property is unencumbered by indebtedness, the compensation of the trustee or officer making the sale shall be computed and paid at the same rate upon the entire sales price. The compensation may be increased or reduced by the Court for special cause shown in writing.
(f) Sale of Personal Property. Unless otherwise herein provided, a sale of personal property under an order of this Court shall be governed by Title 28, Section 2004, U.S. Code, in the same manner as if such provisions were, by the terms thereof, applicable to proceedings in this Court. The officer making sale shall account and distribute as provided by paragraph (d) hereof. The officer shall be allowed such compensation and expenses as the court may fix.

COMMENT

Identical to USDCDC [District Court] Rule 28, except for changes in (a) and (f) caused by analogical application of U.S. Code provisions.

Rule 309. Conferences

The Court or the Auditor-Master or any special master may direct the attorneys for each party to meet with him or her to discuss the case informally, to entertain motions and, to the extent possible and desirable, to discuss settlement or to set a schedule for the case, including schedules for discovery, pretrial and trial.

COMMENT

Identical to USDCDC [District Court] Rule 78, except for omission of matter relating to pretrial, which is governed by SCR--Civil, Rule 16 and deletion of introductory time limitation.

Rule 310. Conservatorships

(a) Petition. A petition for Appointment of Conservator shall be filed in compliance with D. C. Code 1981, §§ 21-1501 and 1502 and shall be typewritten and double spaced. The Petition shall be sworn to by the Petitioner, unless filed by the proposed ward. The Petition shall set forth:

(1) The residence and the fitness of the proposed Conservator to serve;

(2) The relationship of the Petitioner to the proposed ward;

(3) The name, date, and place of birth, if known, and residence of the proposed ward;

(4) The names and addresses of the nearest known heirs-at-law, or the next-of-kin, if any, of the proposed ward;

(5) The reason(s) for the appointment of a Conservator;

(6) Whether a Conservator is sought for the person as well as the estate of the proposed ward;

(7) To the extent known to the Petitioner, the character, location, and estimated value of the real and personal estate to which the proposed ward is entitled, including annual income; and

(8) A statement of the relief requested.

(b) Order. At the time of filing, the Petition shall be accompanied by a proposed order setting forth the following:

(1) That a hearing be held before the Fiduciary Judge on _____ (a date to be set by the clerk), provided that notice thereof be given to the proposed ward, and to his or her heirs-at-law and next-of-kin, not less than fourteen (14) days prior thereto; and

(2) That _____ (name to be inserted by the Court) be appointed guardian ad litem to appear and represent the interests of the proposed ward and that a written report with recommendations be filed by the guardian ad litem not less than seventy-two (72) hours before the hearing date, and served upon the Petitioner.

(c) Order Appointing Conservator. An order for the appointment of a conservator shall be presented promptly after the hearing, and shall include the following:

(1) A finding that the person for whom the conservator is sought is incapable of caring for his or her property, and that his or her best interests would be best served by the appointment of a conservator, who shall have the charge and management of the property of the ward, subject to the direction of the Court;

(2) That _____ be appointed conservator of the estate of the ward upon filing of an undertaking in the amount of _____ (to be set by the Court) and if a non-resident, the power of attorney required by law;

(3) That _____ be appointed conservator of the person of the ward.