SUPERIOR COURT RULES GOVERNING DOMESTIC RELATIONS PROCEEDINGS

TITLE I. SCOPE OF RULES; FORM OF ACTION

Rule 1. Title, Scope, and Purpose

(a) TITLE. These rules may be known and cited as the Rules Governing Domestic Relations Proceedings of the Superior Court of the District of Columbia, as the Rules Governing Domestic Relations Proceedings, or as "Super. Ct. Dom. Rel. R. __."

(b) SCOPE. These rules govern the procedure in all actions and proceedings in the Domestic Relations Branch of the Family Court of the Superior Court of the District of Columbia, including:

(1) actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony and for support and custody of minor children;

(2) applications for revocation of divorce from bed and board;

(3) actions to enforce support of any person as required by law, including proceedings to register an order from another jurisdiction for enforcement or modification under D.C. Code §§ 46-356.01 to -.16 (2018 Supp.);

(4) actions involving custody of minor children, including proceedings to register an order from another jurisdiction under D.C. Code § 16-4603.05 (2012 Repl.), petitions for appointment of standby guardian under D.C. Code §§ 16-4801 to -4810 (2012 Repl.), writs of habeas corpus under D.C. Code § 16-1908 (2018 Supp.), and incidental proceedings for support of the minor children;

(5) actions to declare marriages void;

(6) actions to declare marriages valid;

(7) actions for annulments of marriage;

(8) determinations and adjudications of property rights, both real and personal, in any action referred to in this rule;

(9) proceedings for interstate or reciprocal support under D.C. Code §§ 46-351.01 to -359.03 (2018 Supp.);

(10) proceedings to determine parentage.

(c) PURPOSE. These rules should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

(d) APPLICABILITY OF CIVIL RULES. When a civil claim is raised with a domestic relations action in a complaint, counterclaim, or motion, the Superior Court Rules of Civil Procedure apply to that claim. At any time during the pendency of the domestic relations case, the judge or magistrate judge who is assigned to the domestic relations action may bifurcate the civil claim for trial purposes or may certify the civil claim to the Civil Division for adjudication under existing civil rules. The judge or magistrate judge may also refer the civil claim for any type of alternative dispute resolution regardless of the litigation status of the domestic relations case.

COMMENT TO 2018 AMENDMENTS

Section (b) was amended to clarify that the Rules Governing Domestic Relations Proceedings apply to proceedings in the Domestic Relations Branch of the Family Court. Proceedings in the Parentage and Support Branch are governed by the Superior Court Rules Governing Parentage and Support Proceedings and any domestic relations rules that are made applicable by Parentage and Support Rule 1.

Former section (d) was deleted. Section (d) provided that if the domestic relations rules did not specifically prescribe a procedure, the Superior Court Rules of Civil Procedure applied to the extent and in the manner permitted by the judicial officer assigned to the case. This section was deleted because the domestic relations rules include any procedure contained in the civil rules that is generally appropriate for domestic relations cases. The deletion of this section does not affect the authority of a judge or magistrate judge to adopt procedures that are consistent with the domestic relations rules.

COMMENT

The Domestic Relations Rules are often similar to the corresponding civil rules. Where the nature of domestic relations practice calls for a different procedure, the rule's variance is noted in the comment.

Any civil claim that is raised in a domestic relations action that is assigned to a hearing commissioner must be adjudicated according to the Rules of the Superior Court and administrative orders of the Chief Judge that govern the powers of hearing commissioners and their authority to certify matters elsewhere in the court system.

Where alternative dispute resolution is concerned, the judicial officer may determine that such resources would speed the resolution of the civil claim even while discovery is ongoing with respect to the specific domestic relations allegations or claims. Paragraph (c) is designed to encourage timely resolution of all claims that may arise within a single action.

Pursuant to paragraph (d), where no procedure is specifically prescribed by the domestic relations rules, current Superior Court civil rules may be applied.

Rule 2. Form of Action; Definitions; Unsworn Declarations

(a) FORM OF ACTION. There is one form of action—the domestic relations action.

(b) DEFINITIONS. The following definitions apply to these rules:

(1) Affidavit. A written declaration or statement of facts confirmed by the oath of the party making it.

(2) Clerk. Clerk of the Domestic Relations Branch of the Family Court.

(3) Minor. Any person under the age of 18 except:

(A) in cases involving the right to child support, any person under the age of 21; or

(B) in cases where a child support order has been issued in another jurisdiction, any person designated as a minor under the laws of that jurisdiction.

(c) 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 2(c)(1) does not apply to:

(A) a deposition;

(B) an oath of office; or

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

COMMENT TO 2018 AMENDMENTS

Section (c) is based on Civil Rule 9-I(e) and replaces the definition in former section (b) concerning oaths.

COMMENT

Subparagraph (b)(5)(A) of this rule permits the use of an unsworn statement where an oath or affidavit is required by the Domestic Relations rules, unless otherwise provided. In accordance with D.C. Code § 22-2405 (False Statements), the statement contains a warning clause which indicates that making a false statement will subject the person to criminal liability.

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

Rule 3. Commencing an Action

(a) IN GENERAL. The following domestic relations actions are commenced by filing a complaint or counterclaim with the court:

(1) actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, temporary and permanent, and for support and custody of minor children;

(2) actions for revocation of divorce from bed and board;

(3) actions seeking custody of minor children, including incidental proceedings for support of the minor children;

(4) actions to declare marriages void;

(5) actions to declare marriages valid;

(6) actions for annulments of marriage; and

(7) determinations and adjudications of property rights, both real and personal, in any action referred to in this rule.

(b) PETITIONS. Proceedings to determine parentage, to appoint a standby guardian, or for a writ of habeas corpus are commenced by filing a petition with the court.

(c) OTHER PROCEEDINGS.

(1) Except as provided by Rule 3(c)(3), a domestic relations action to enforce support of any person may be initiated by either complaint or petition.

(2) Proceedings to modify support or custody under D.C. Code §§ 16-831.11, -914, or -916.01 (2012 Repl.) may be brought by motion in the underlying case, if any, or by complaint.

(3) Proceedings for interstate or reciprocal support or to register an order from another jurisdiction under D.C. Code §§ 46-351.01 to -359.03 and 16-4603.05 (2012 Repl. & 2018 Supp.) are commenced by filing the documentation required by statute.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the general restyling of the civil rules. Additionally, new subsection (c)(3) clarifies that proceedings for interstate or reciprocal support or to register a foreign order are commenced in the manner required by statute.

COMMENT

This Rule provides for 3 divisions of actions within D.C. Code § 11-1101 and specifies the method or methods by which an action is commenced in each area. Those actions traditionally in the Domestic Relations Branch continue to be initiated by filing a complaint. All actions to obtain or modify custody of a child, other than those made for custody pendente lite, or in conjunction with a neglect or intrafamily case, must be initiated by complaint in the Domestic Relations Branch; custody cannot be determined pursuant to motion in a paternity and support action. A petition will be used for actions in which a greater speed of determination is desirable. In local support cases there is an option to proceed either by complaint or by petition. In these local support cases

Corporation Counsel will represent most of the persons seeking support pursuant to D.C. Code § 16-2341 and will use the petition form of commencement to handle the high volume of cases. However, the classic complaint is also available should private counsel (representing complainant where a public support burden is not incurred or threatened) prefer that form of commencement.

Rule 4. Process

(a) CONTENTS; AMENDMENTS.

(1) *Summons*. 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 file a response to the complaint and appear in court;

(E) notify the defendant that a failure to file a response to the complaint and to appear at any scheduled hearing 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) *Notice of Hearing and Order Directing Appearance*. A Notice of Hearing and Order Directing Appearance must:

(A) name the court and the parties;

(B) specify the date and time of the hearing;

(C) be directed to the defendant or individual whose attendance is required;

(D) state the name and address of the filer's attorney or, if unrepresented, of the filer;

(E) state the time period within which any response is required;

(F) notify the defendant or individual that failure to appear may result in issuance of a bench warrant and a default judgment or order;

(G) be signed by the clerk; and

(H) bear the court's seal.

(3) *Amendments*. The court may permit a summons or notice to be amended.

(4) *Service Outside the District of Columbia*. A summons, 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 service of a summons, notice, or order in lieu of summons on a party not an inhabitant of or found within the District of Columbia.

(b) ISSUANCE.

(1) *Summons*. At the time the complaint is filed, the clerk must issue a summons for each defendant named in the complaint and must provide to the plaintiff or the plaintiff's agent a copy of each summons for service of process in accordance with Rule 4(c).

(2) *Notice of Hearing and Order Directing Appearance*.

(A) *Support or Parentage Case*. In a case in which a party seeks permanent or temporary support of a child, to modify a child support order, or to establish parentage, the clerk must issue a Notice of Hearing and Order Directing Appearance to each named defendant or individual whose attendance is required and must provide to the plaintiff, petitioner, or movant, a copy of the notice for service of process in accordance with Rule 4(d).

(B) *Motion for Contempt or Post-Judgment Motion*. When a judge or magistrate judge orders a hearing on a motion for contempt or a post-judgment motion, the clerk must issue and mail a Notice of Hearing and Order Directing Appearance to each

named defendant or individual whose attendance is required.

(c) SERVING A SUMMONS AND COMPLAINT.

(1) *In General*. A summons must be served with a copy of the complaint and any scheduling or other order directed to the parties at the time of filing. The plaintiff is responsible for having the summons, complaint, and any order directed to the parties at the time of filing served within the time allowed by Rule 4(i) and for furnishing the necessary copies to the person who makes service.

(2) *Methods of Service*. Service of the summons, complaint, and any order must be made in one of the following ways:

(A) by any person who is at least 18 years of age and not a party:

(i) delivering a copy of each to an individual personally; or

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

(B) by mailing a copy of each to the person to be served by registered or certified mail, return receipt requested;

(C) by mailing a copy of each by first-class mail, postage prepaid, to the person to be served, together with 2 copies of a Notice and Acknowledgment conforming substantially to the form maintained by the clerk's office and a return envelope, postage prepaid, addressed to the sender, and unless good cause is shown for not doing so, the court must order the party served to pay the costs incurred in securing an alternative method of service authorized by this rule if the person served does not complete and return, within 21 days after mailing, the Notice and Acknowledgment of receipt of the summons;

(D) by the Metropolitan Police Department as authorized by D.C. Code § 13-302.01 (b) (2012 Repl.);

(E) by a United States marshal or deputy marshal as authorized by D.C. Code § 13-302 (2012 Repl.);

(F) in any manner authorized by Rule 4(f);

(G) in any other manner authorized by statute; or

(H) by any other method to which the person to be served consents in writing, with an acknowledgement that the person:

(i) received the summons, complaint, and any order;

(ii) understands that the person must answer the complaint within 21 days after signing the consent; and

(iii) understands that judgment by default may be entered against the person if the person fails to answer the complaint within that time.

(3) *Alternative Methods of Service*. If the court determines that, after diligent effort, a plaintiff or petitioner has been unable to accomplish service by a method prescribed in Rule 4(c)(2), the court may permit an alternative method of service reasonably calculated to give actual notice of the action to the defendant or respondent. The court may specify how the plaintiff or petitioner must prove that service was accomplished by the alternative method. Alternative methods of service include, but are not limited to:

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

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

(C) posting on the court's website; or

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

(4) *Service by Publication*.

(A) *When Allowed*. The court may permit service by publication, instead of service under Rule 4(c)(2) or (3), if:

(i) a summons for the defendant has been issued and returned "not to be found," and an affidavit establishes that the defendant is a nonresident or has been absent from the District of Columbia for at least 6 months;

(ii) the defendant cannot be found after diligent efforts; or

(iii) the defendant, by concealment, seeks to avoid service of process.

(B) *Manner of Publication*. An order of publication must be published in at least one legal newspaper or periodical of daily circulation and any other newspaper or periodical specifically designated by the court, at least once a week for 3 successive weeks or as otherwise ordered by the court.

(C) *Definition of Legal Newspaper or Periodical*. A legal newspaper or periodical means a publication designated by the court that is:

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

(ii) circulated generally to the legal community; and

(iii) published at least on each weekday that the court is in session.

(D) *Posting Order of Publication in the Clerk's Office*. In accordance with D.C. Code § 13-340 (2018 Supp.), in a divorce or child custody proceeding, on a finding that the plaintiff is unable to pay the cost of publishing without substantial hardship to the plaintiff or the plaintiff's family, the court may permit publication to be made by posting the order of publication in the clerk's office for 21 days.

(5) *Serving a Minor or 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, -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(g)(2)(A), (g)(2)(B), or (g)(3).

(6) *Manner of Conducting Service*. Service of process under Rule 4(c)(2)(A)-(H) may, at the plaintiff's or the court's election, be attempted either concurrently or successively.

(d) SERVING A NOTICE OF HEARING AND ORDER DIRECTING APPEARANCE. A Notice of Hearing and Order Directing Appearance must be served on the defendant, respondent, or other named person, along with the complaint, petition, or motion, in one of the following ways:

(1) by any person who is at least 18 years of age and not a party:

(A) delivering a copy of each to that 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) leaving a copy of each at the individual's place of employment with someone of suitable age and discretion;

(2) by mailing a copy of each to the person to be served at the person's dwelling or usual place of abode or at the person's place of employment, by certified mail, return receipt requested, and also by separate first-class mail;

(3) by the Metropolitan Police Department as authorized by D.C. Code § 13-302.01 (2012 Repl.);

(4) by a United States marshal or deputy marshal as authorized by D.C. Code § 13-302 (2012 Repl.); or

(5) in any manner authorized by applicable statute.

(e) TERRITORIAL LIMITS OF EFFECTIVE SERVICE. Serving a summons, complaint, and any order or a Notice of Hearing and Order Directing Appearance establishes personal jurisdiction over a defendant:

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

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

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

(f) 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 or, if applicable, in courts with jurisdiction over domestic relations proceedings, in the state where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons, complaint, and any 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.

(g) 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 to the individual personally a copy of the summons, complaint, and any order directed by the court to the parties at the time of filing; 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.

(h) PROVING SERVICE.

(1) *In General*. Unless service is waived, 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)(A), (c)(2)(D), (c)(2)(E), (c)(2)(F), (d)(1), (d)(3), or (d)(4), 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 eighteen (18) years of age or older;

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

(iv) the fact that a summons, a copy of the complaint, and any order directed by the court to the parties at the time of filing setting the case for a hearing 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(c)(2)(A)(ii), (d)(1)(B), or (d)(1)(C).

(B) *Service by Registered or Certified Mail*. If service is made by registered or certified mail under Rule 4(c)(2)(B), 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 a summons, a copy of the complaint, and any order directed by the court to the parties at the time of filing setting the case for a hearing; 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(c)(2)(A)(ii).

(C) *Service by Publication*. Proof of service by publication must be made by affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the document as published.

(D) *Service of a Notice of Hearing and Order Directing Appearance Under Rule 4(d)(2)*. Proof of service of a Notice of Hearing and Order Directing Appearance by certified mail and first-class mail under Rule 4(d)(2) must be made by filing, with the clerk, the signed return receipt, when available, and an affidavit, which must state:

(i) the caption and number of the case;

(ii) the name and address of the person who posted the certified and first-class mail;

(iii) the fact that the mailing contained a Notice of Hearing and Order Directing Appearance and the complaint, petition, or motion;

(iv) if the return receipt does not purport to be signed by the party named in the notice, 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(d);

(v) if the return receipt is not available, whether the certified mail was unclaimed or refused; and

(vi) whether the first-class mail was returned.

(2) *Proving Service by Acknowledgement*. Proof of service by acknowledgment must be made by notice to the clerk filed by the serving party or the person to be served.

(3) *Proving Service by Alternative Methods*. Proof of service by an alternative method specified in Rule 4(c)(3) must demonstrate that the plaintiff or petitioner complied with the order authorizing the alternative method.

(4) *Validity of Service*. Failure to prove service does not affect the validity of service.

(5) *Amending Proof*. The court may permit proof of service to be amended.

(i) TIME LIMIT FOR SERVICE.

(1) *In General*. Within 60 days of the filing of the complaint, the plaintiff must file proof of service of the summons, the complaint, and any order directed by the court to the parties at the time of filing. A separate proof must be filed as to each defendant who has not responded to the complaint.

(2) *Motion for Extension of Time*. Prior to the expiration of the 60-day time period, the party may file a motion to extend the time for service.

(3) *Dismissal*. The plaintiff's failure to comply with the requirements of this rule may result in the dismissal without prejudice of the complaint. The clerk may enter the dismissal and serve notice on all the parties.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the general restyling of the civil rules. The rule was also reorganized and expanded. While the rule is modeled after Civil Rule 4, the provisions concerning the method and proof of service reflect the statutes governing service in domestic relations cases, including cases involving child support and parentage.

Consistent with Civil Rule 4, subsection (a)(1)(D) now requires the summons to include the date and time of the initial hearing in a new case. Unlike Civil Rule 4, subsection (a)(1)(D) also requires the summons to state the time by which the defendant must file a response to a complaint so that self-represented defendants are aware of their obligation to file a written response to a complaint as well as to appear at the initial hearing.

Subsection (a)(1)(E) was added to require the summons to specify that not only a failure to answer on a timely basis but also a failure to appear at the initial or other scheduled hearing may result in entry of a default judgment against a defendant.

Subsection (b)(2)(B) was added to provide for issuance of a Notice of Hearing and order Directing Appearance ("NOHODA") if the court orders a hearing on a motion for contempt or a post-disposition motion. This provision was moved from Rule 7 and amended to reflect the fact that the court would schedule the hearing.

Subsection (d)(2) provides for service of a NOHODA by certified mail, return receipt requested, and first-class mail. However, D.C. Code § 46-206 (b)(2) (2012 Repl.) provides that "[s]ervice by certified mail that is unclaimed or refused and first-class mail

alone shall not be a sufficient basis to permit the entry of a default order of paternity in a case where the respondent fails to file an answer or otherwise fails to respond appropriately." *See also* Rule 55(b)(2)(B)(i) (requiring compliance with D.C. Code § 46-206 (b) for entry of default parentage order).

Subsection (c)(2)(C) was added consistent with Civil Rule 4(c)(5) to authorize service by first-class mail with notice and acknowledgement and to include a related cost-shifting provision if the defendant does not appear or respond.

New subsection (c)(2)(H) permits the parties to agree to other methods of service. New subsection (c)(3) authorizes alternative methods of service if the court makes the appropriate determination. Among the alternative methods listed are service by electronic means or posting on the court's website.

Finally, subsection (i)(2) now requires a party to file a motion if the party wants more time to serve. The provision allowing the clerk to grant one 60-day extension was deleted because it is unnecessary and created practical problems.

COMMENT

Subparagraph (a)(2) of this Rule provides for the use of a Notice of Hearing and Order Directing Appearance (NOHODA) in cases initiated by petition. Pursuant to SCR-General Family H, this process is signed by the Clerk of the Division and has the same force and effect as a civil subpoena. In cases seeking to establish paternity, D.C. Code § 46-206(b) permits personal service of the NOHODA by a combination of first class and certified mail. Such service is not, however, a sufficient basis for issuance of a bench warrant for failure of the defendant to appear.

Paragraph (i) incorporates the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, and other applicable international agreements on service of process. The applicability of an international agreement on service of process in a foreign country should be checked before other methods of service are attempted.

Where a party has been granted leave to proceed in forma pauperis, the 60-day time period in which proof of service of process must be filed under paragraph (l) will start to run at the time the summons is issued by the Clerk. See SCR-Dom. Rel.54(f). For waiver of prepayment of costs, including filing fees, see SCR-Dom. Rel. 54(f).

Rule 4-I. [Deleted].

COMMENT

SCR-Civil 4-I has been deleted since its requirement is already covered in SCR-Dom. Rel. 4(j).

Rule 5. Serving and Filing of Other Pleadings and 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 or petition, 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, or similar paper.

(2) *If a Party Fails to Appear*. A pleading or motion that asserts a new claim for relief against a party in default must be served on that party in the manner provided for service of summons in Rule 4.

(3) *Post-Judgment Motion Requiring Service Under Rule 4*. If a post-judgment motion is filed 60 days or more after judgment has been entered, the motion must be served in the manner provided for service of summons in Rule 4. If a post-judgment motion has been served and the motion is pending, any subsequent filings may be served in the manner provided in Rule 5(b).

(b) SERVICE: HOW MADE.

(1) *Serving an Attorney.* If a party is represented by an attorney, whose appearance is not deemed to be terminated under Rule 101(f), service under Rule 5 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 party or attorney;

(B) leaving it at the party's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) leaving it at the attorney's office with a clerk or other person in charge;

(D) mailing it by first-class mail to the party's or attorney's last known address—in which event service is complete upon mailing;

(E) sending it by electronic means as permitted or required by administrative order or as consented to in writing by the party or attorney—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 party or attorney consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(c) PROVING SERVICE.

(1) *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) 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 may be made by:

(A) written acknowledgment or waiver of service signed by the person to be served;

(B) affidavit of the person making service or delivery;

(C) certificate of a member of the Bar of this court; or

(D) other proof satisfactory to the court.

(2) *Rule 4 Service*. When a party is required to serve the other party in the manner provided for service of summons in Rule 4, proof of service must be made in accordance with Rule 4.

(3) *Amending Proof*. The court may at any time allow the proof of service to be amended or supplied, unless to do so would result in material prejudice to a party.

(4) *Failure to Make Proof of Service*. Failure to make proof of service will not affect the validity of service.

(d) FILING.

(1) *Required Filings*. Any paper after the complaint or petition that is required to be served and for which the proof of service is a certificate of service must be filed with the court within 7 days after service. When proof of service is by acknowledgment or waiver of service or by affidavit of the person making service, the paper may be filed with the court prior to the filing of the proof of 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 Papers and Deposition Transcripts*.

(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 to the clerk's office.

(4) *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 District of Columbia 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)(4)(B)(i) and (ii) apply to him or her except that no District of Columbia 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. Except as provided in Rule 5(d)(5)(B), 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.

(5) *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) *Affidavits of Service of Process*. Affidavits of service of process must be filed in paper form, unless a different procedure is required by statute, rule, the court, or administrative order.

(C) *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.

(D) *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 any 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).

COMMENT TO 2018 AMENDMENTS

This rule was amended to make it more consistent with Civil Rule 5. A provision for electronic service was added, and the provision for service by facsimile was deleted. Consistent with current practice in the domestic relations branch, the provision for filing with a judge or magistrate judge, who would then transmit the papers to the clerk, was deleted, but it does not affect the court's discretion to regulate the delivery of papers, letters, or emails to chambers.

Filing and service of reports by guardians ad litem are generally left to orders in individual cases. These reports are also subject to the *Practice Standards for Guardians ad Litem In Custody and Related Consolidated Cases*, D.C. Super. Ct. Admin. Order No. 14-01 (January 24, 2014).

COMMENT

Pursuant to paragraph (a), if a new or additional claim is asserted against a party in default, that party must be served in the manner provided for service of summons in SCR-Dom. Rel. 4. Paragraph (b)(2) requires that service of post-judgment motions also be made by summons pursuant to SCR-Dom. Rel. 4 where the appearance of counsel of the party to be served has been terminated, or where the party was not represented by counsel and 60 days has elapsed since the judgment. 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, or any paper related to a motion, hand-deliver a copy of such motion or paper to the chambers of the judicial officer assigned to the case unless the original paper has been mailed, in which instance the courtesy copy can likewise be mailed. Note, however, that original papers shall not be filed with a judicial officer, unless expressly permitted by a Court order, oral or written.

Rule 5-I. [Deleted].

Rule 5-II. [Deleted].

COMMENT

Civil Rule 5-II has been deleted since there are no veterans estates in Family Court.

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 2018 AMENDMENTS

Rule 5-III is new. It is based on the corresponding Superior Court Rule of Civil Procedure. 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 2018 AMENDMENTS

This rule is new. Consistent with the approach taken by the civil rules, the rule moves requirements to Rule 5.1 from Rule 24(d), which addresses the criteria and procedures for intervention.

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 2018 AMENDMENTS

This rule is new. It is based on the corresponding Superior Court Rule of Civil Procedure.

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 and taxpayer-identification number and any 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#" placed where the individual's taxpayer-identification number would have been included; and

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

(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 2018 AMENDMENT

This rule is new and is based on the corresponding Superior Court Rule of Civil Procedure. However, this rule does not require redaction of birthdates or minor's names—information which is needed in domestic relations cases.

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, 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) and (d), 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)(D) (mail) or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

COMMENT TO 2018 AMENDMENTS

This rule was amended to conform with the corresponding civil rule, which provides a new method for calculating time.

COMMENT

Pursuant to paragraph (a), if a pleading is served on the 10th day of the month, the first day of the applicable time period is the 11th day of the month. If the pleading was served by mail, paragraph (c) permits three additional business days to be added to the specified time period after the initial period has been computed pursuant to paragraph (a). *See Wallace v. Warehouse Employees Union No. 730*, 482 A.2d 801 (D.C. App. 1984). For example, if the specified time period ended on Saturday, the 10th day of the month, the operative due date would become Monday, the 12th, which is the next business day. If paragraph (c) is applicable, the three additional days extends the prescribed time period to Thursday the 15th. The same computation applies when an order or judgment is rendered outside the presence of the parties and notice is mailed pursuant to SCR-Dom. Rel. 77(b). *Id*.

Rule 6-I. [Deleted].

TITLE III. PLEADINGS AND MOTIONS

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

(a)PLEADINGS. All pleadings must be signed under oath by the party on whose behalf it is filed. Only these pleadings are allowed:

(1) a complaint or petition;

(2) an answer to a complaint or petition;

(3) a counterclaim as provided in Rule 13;

(4) an answer to a counterclaim.

(5) if the court orders one, a reply to an answer.

(b) MOTIONS AND OTHER PAPERS.

(1) *Motions*.

(A) *In General*. With the exception of motions made in open court, or otherwise with leave of the court, every petition or motion to the court must be in writing and filed with the clerk. Every motion must state clearly its object and the facts on which it is based or the reasons for the relief sought.

(B) *Consent*. If all affected parties consent to a motion, that fact must be indicated in the title of the motion, e.g., "Consent Motion to Extend Time for Filing Opposition."

(C) *Points and Authorities*. Each motion must include or be accompanied by a statement of the specific points and authorities that support the motion.

(D) *Proposed Order Not Required*. Unless specifically ordered by the court or required by administrative order, the moving party is not required to submit a proposed order.

(E) *For Temporary Alimony, Maintenance, Child Support, and Custody*. Motions for temporary alimony, maintenance, child support, and custody of minor children under D.C. Code §§ 16-831.09 and -911 (2012 Repl. & 2018 Supp.) must be made under oath, and proof of service may be by certificate of service.

(F) *To Enlarge a Decree of Legal Separation*. A motion to enlarge a decree of legal separation under D.C. Code § 16-905 (b) (2012 Repl.) must be supported by an affidavit of essential facts and served in the manner of an original complaint and summons.

(G) *For Approval of Priority for Writs of Attachment*. In cases of attachment (under D.C. Code § 16-577 (2012 Repl.)) before or upon a judgment, order or decree of the Domestic Relations Branch for the payment of any sum for the support or maintenance of a spouse, or former spouse, or children, where priority over any other execution is desired, application for such priority must be by written motion.

(2) *Oppositions*. 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 an opposition including a statement of points and authorities. If an opposition is not filed within the prescribed time the court may treat the motion as conceded. If an opposition is filed, the motion must be treated as submitted unless an oral hearing is requested and granted by the court.

(c) STIPULATIONS. A stipulation must be in writing and signed by the parties or their attorneys, or made at a reported hearing, or made at a recorded deposition.

(d) HEARING. -- A party may request an oral hearing by stating at the bottom of the party’s motion or opposition, above the party's signature, “Oral Hearing Requested.” The court in its discretion may decide any motion without a hearing. If the judge or

magistrate judge assigned to the case decides to hold a hearing on a motion, that judge or magistrate judge must give all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing. If a pending motion is resolved by counsel, the movant must immediately notify the court.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the general restyling of the civil rules. The provision addressing the statement of points and authorities has been amended to allow the statement of points and authorities to be included as part of the motion; there is no requirement that it be a separate document. Citation requirements for cases decided by the United States Court of Appeals for the District of Columbia Circuit were eliminated as unnecessary and inconsistent with general practice.

As with prior versions of the rule, the amended rule does not include the requirement in Civil Rule 12-I(a) that the moving party attempt to get the consent of the other party before filing a motion. This requirement was omitted from these rules because it is unlikely to be productive in most domestic relations cases—where one or both parties do not have lawyers and the conflict that brings them to court makes it unlikely that they will reach agreement about the relief sought in motions. Omission of this requirement does not affect the court's discretion to require lawyers or self-represented parties in any case to make diligent efforts to seek and obtain consent before filing all or specified types of motions. It is preferable for the parties or their lawyers to attempt to resolve an issue before filing a motion.

The requirement of submission of a proposed order was eliminated as unnecessary, particularly in cases where a party is not represented by counsel. The provisions of any administrative order requiring a proposed order, including in electronic form, still apply. The former provision for post-argument submission of a proposed order was also eliminated as unnecessary.

Provisions relating to service were eliminated because Rule 5 addresses service of motions. Subsection (b)(3) addressing the form of motions and other papers was also deleted because Rule 10 already includes similar provisions.

The provision addressing issuance of a Notice of Hearing and Order Directing Appearance for a contempt motion was narrowed and moved to Rule 4(b)(2)(B). The assigned judge may decide on a case-by-case basis whether a party should be directed to appear for a hearing on the motion.

Section (d), which requires the movant to notify the court when a motion is resolved, was modified to permit the movant to notify the court in any manner that is not inconsistent with instructions from the judge or magistrate judge.

COMMENT

Paragraph (a) of this Rule lists the pleadings which are permissible in a domestic relations action; use of demurrers, pleas, and exceptions for insufficiency of a pleading are no longer allowed. Where a party has requested child support in the complaint, rather than a motion, a Notice of Hearing and Order Directing Appearance will be issued and a hearing will be held on that issue within 45 days; no motion is necessary. D.C.

Code § 46-206. Paragraph (b)(1)(A)'s requirement that motions be in writing except when made in open court or otherwise with leave of the Court is meant to leave open the possibility, at the Court's discretion, that motions be made by telecommunication. With regard to subparagraph (b)(1)(B), see *Richardson v. Richardson*, 276 A.2d 231 (D.C. App. 1971), which makes personal service of motions for contempt unnecessary. However, if a party wishes to invoke the Court's power to issue a bench warrant for failure of a party to appear at a contempt or temporary child support hearing, the motion must be personally served with a Notice of Hearing and Order Directing Appearance. [Note that although D.C. Code § 46-206(b) defines personal service of process in a paternity case to include a combination of first-class and certified mail, such service is not a sufficient basis for issuance of a bench warrant for failure of the defendant to appear.] In addition, no hearing is under subparagraph (b)(1)(C), although the subparagraph does require that the motion to enlarge a decree of legal separation be served in the same manner as an original summons and complaint.

Rule 7-I. [Deleted].

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 judgment for the relief or remedy sought, which may include alternative, inconsistent, or multiple reliefs or remedies, whether legal or equitable.

(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) *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.

(4) *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.

(5) *Effect of Failing to Deny*. An allegation 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. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- arbitration and award;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- laches;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(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 Statement 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 2018 AMENDMENTS

This rule has been amended to conform to the civil rule.

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 or 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.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the civil rule.

Rule 9-I. [Deleted].

COMMENT TO 2018 AMENDMENTS

Unsworn declarations are addressed in Rule 2(c).

COMMENT

SCR-Civil 9-I has been deleted, since verifications are not applicable to Family Division, nor is it felt that affidavits need be spelled out in manner specified.

Rule 10. Form of Pleadings, Motions, and Other Papers

(a) STATIONERY. Pleadings, motions, and other papers must be on opaque white paper, approximately 11 inches long and 8 1/2 inches wide, without a back or cover.

(b) CAPTION; NAMES OF PARTIES; LOCATIONAL INFORMATION.

(1) *In General*. Except as provided in Rule 10(b)(2), every pleading, motion, or other paper must contain a caption setting forth:

(A) the name of the Superior Court of the District of Columbia Family Court Domestic Relations Branch;

(B) the title of the action, which must include:

(i) in the complaint, petition, and answer, the names and residence addresses of all parties; or

(ii) in pleadings, motions, and papers, other than the complaint, petition, and answer, the name of the first party on each side with an appropriate indication of other parties;

(C) the case number;

(D) the name of the pleading, motion, or other paper and, if a request for child support is made in the pleading, the inscription "ACTION INVOLVING CHILD SUPPORT" immediately below the name of the pleading;

(E) where necessary to avoid confusion, the name or names of the party or parties on whose behalf the pleading or other paper is filed; and

(F) if the case has been assigned to a specific calendar or a specific judge or magistrate judge, the calendar number or the judge or magistrate judge's name must appear below the file number.

(2) *Substituted Address*. A party who has a reasonable basis to fear harassment or harm to the party or the party's family from disclosure of the party's residence address is not required to state the address if the party substitutes the name and residence or other address of the party's attorney or a third person willing to accept service copies for the party and in care of whom such service copies may be sent. A paper which has a substituted address must be clearly marked to indicate that such a substitution has been made. In using a substitute address, a party certifies that the party may be notified of court proceedings and receive service copies of papers at that address.

(3) *Parties' Information Deemed Correct and Current.* Except as modified by a notice filed with the court and served on the parties under Rule 5, the names, addresses, and telephone numbers represented in the pleading, motion, or other paper are deemed conclusively correct and current.

(c) SIGNING OF PLEADING, MOTION, OR OTHER PAPER. Every pleading, motion, or other paper must be signed in accordance with Rule 11. Below the signature, the paper must contain:

(1) if the party is represented by counsel, the attorney's name, office address, telephone number, e-mail address, if any, and District of Columbia Bar number; or

(2) if the party is not represented by counsel, the name, full residence address, telephone number, and e-mail address of the party by whom the paper was filed, or a substitute name, address and telephone number if a substitution has been made under Rule 10(b)(2).

(d) PARAGRAPHS.

(1) *In General*. Each claim or defense must be made in a separate paragraph. The contents of each paragraph must be limited as far as practicable to a statement of a single set of circumstances.

(2) *Prior or Pending Action*. The last paragraph of a party's initial pleading must

(A) identify the court and docket number of any prior or pending action based on or including the same claim or subject matter; or

(B) state that there are no such cases.

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

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

COMMENT TO 2018 AMENDMENTS

This rule contains provisions from both Civil Rules 10 and 10-I, and it has been amended to conform to those civil rules. Many parties, including self-represented parties, prefer to receive communications electronically, and the rule requires parties with email addresses to provide them.

COMMENT

Subparagraph (b)(7) of this Rule allows a party to use a substitute address on pleadings where the party fears that disclosing a residence address will pose a risk of harassment or harm to the party or his or her family. A party who uses a substitute address will be deemed to have certified that the party may receive notice of court proceedings and papers at that address.

Rule 10-I. [Deleted].

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to the 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)(4)(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 or be 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 2018 AMENDMENTS

This rule has been amended to conform to the civil rule.

COMMENT

In recognition of the potential for unnecessary embarrassment of persons involved in the Domestic Relations proceedings, this Rule has been amended to permit the Court to impose sanctions where a party's pleading, motion or other paper is interposed with the intention of embarrassing another party.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings

(a) TIME TO SERVE A RESPONSIVE PLEADING.

(1) *In General*. The time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer within 21 days after being served with:

(i) the summons and complaint, except when service is made under Rule 4(f) and another time is specified by the applicable statute or rule; or

(ii) a petition and notice of hearing and order directing appearance under Rule 4(d), but unless the court orders otherwise, filing of such an answer does not relieve the defendant or respondent of the obligation to appear in court on the day set out in the notice or order.

(B) A plaintiff must serve a reply within 21 days after being served with an answer containing a counterclaim, unless the court orders otherwise.

(2) *Effect of a Motion*. Unless the court sets a different time, if a defendant files and serves a motion to dismiss under this rule, the time for the defendant to file and serve a responsive pleading is extended until 14 days after notice that the court denied the motion or postponed its disposition until trial.

(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; and

(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) RESULT 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 point out the defects complained of and the details desired. If the motion is granted and the court's 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) *Limitation 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, 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.

(j) NON-APPEARANCE OF PARTIES. If at the time set for hearing of any motion, there is no appearance by a party or counsel for a party, the court may treat the motion as submitted, withdrawn, or conceded by the non-appearing party, and rule on it.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the civil rule.

Rule 12-I. [Deleted].

Rule 13. Counterclaim

(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 to 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 may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) COUNTERCLAIM MATURING OR ACQUIRED AFTER PLEADING.

(1) *Compulsory Counterclaim Maturing or Acquired*. If a compulsory counterclaim matured or was acquired by a party after serving an earlier pleading but prior to trial, the party must file a supplemental pleading asserting the compulsory counterclaim. If, upon motion of any party, the court determines that litigation of the counterclaim in the current proceeding will result in substantial prejudice to any party, it may continue the proceeding for trial on all the claims or order a separate trial of the counterclaim.

(2) *Permissive Counterclaim Maturing or Acquired*. The court may permit a party to file a supplemental pleading asserting a permissive counterclaim that matured or was acquired by the party after serving an earlier pleading.

(e) REQUEST FOR CHANGE OF NAME ON DIVORCE. In an action for divorce, a party may in a responsive pleading request restoration of the party’s birth-given or other previously-used name.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to closely conform to the civil rule. In conformance with the civil rule, the provision regarding omitted counterclaims has been deleted. Section (e), formerly section (f), was retained from the previous domestic relations rule. The provision for requesting a name change in a pleading does not affect the court’s authority to grant an oral request for a name change.

COMMENT

Paragraph (d) provides that when a claim which would otherwise be a compulsory counterclaim either matures or is acquired by a party after serving a responsive

pleading but before trial, it must be pleaded. An example of such a claim is one for absolute divorce where the ground of one year separation had not been reached until after the party filed an answer in a suit for legal separation. If, upon motion, the Court determines that litigation of the counterclaim in the instant proceeding would result in substantial prejudice to any party, it may either continue the trial date to allow the parties to prepare to litigate all claims, or it may order the separate trial of the counterclaim. This deviation from SCR-Civil 13 accommodates the unique nature of actions in the Domestic Relations Branch, and furthers the purpose of the rule by promoting complete litigation of all claims between the parties in one action. Paragraph (f) makes it clear that a party need not file a counterclaim for a change of name upon divorce. The request may be included in the party's responsive pleading.

Rule 14. [Deleted].

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 and that such consent was denied.

(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. An amendment to a pleading relates back to the date of the original pleading when:

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

(2) 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.

(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. In accordance with Rule 13(d)(1), the court must permit a party to serve a supplemental pleading that states a claim required to be made under that rule. The court may order that the opposing party plead to a supplemental pleading within a specified time.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the civil rule. The prior reference to former Rule 13(e) was corrected.

Rule 16. Pretrial Procedure in Domestic II Cases

(a) APPLICABILITY. Unless otherwise ordered by the judge or magistrate judge to whom the case is assigned, the provisions of this rule apply to all cases assigned to the Domestic II Calendar.

(b) INITIAL STATUS CONFERENCE.

(1) *In General*. In every case assigned or assignable to a domestic relations calendar, the court must hold an initial status conference as soon as practicable after the case is filed. At the conference, the judge or magistrate judge will ascertain the status of the case; explore the possibilities for early resolution through settlement or alternative dispute resolution or for expediting the case by use of stipulations; explore issues of service, notice, and identity of necessary parties; and determine a reasonable time frame for bringing the case to conclusion.

(2) *Disclosure of Information*. The judge or magistrate judge may require that the parties exchange information pursuant to Rule 26(a)(1)(A).

(3) *Motions*. The judge or magistrate judge must determine any outstanding motions or set a date for hearing the motions.

(4) *Certification*. The judge or magistrate judge must also consider whether the complexity of the case, the need for court supervision of discovery, or other relevant factors warrant certification to the Domestic I Calendar.

(5) *Scheduling*. After consulting with the attorneys for the parties and with any self-represented parties, the judge or magistrate judge may set dates for the following events:

(A) *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.

(B) *Filing Motions*. By this date, all motions must be filed, except motions in limine, motions to bifurcate, or motions for which leave to file has been obtained.

(6) *Modification*. The schedule set at the initial status conference may be modified by the parties' agreement, but dates for court proceedings may not be modified without the court's leave.

(c) APPEARANCE**.** Unless excused by the court, each party and an attorney of record for each party must appear at each hearing.

(d) TELEPHONIC CONFERENCES. In the court's discretion, any pretrial communications may be conducted by telephone or other reliable electronic means.

(e) 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 hearing or pretrial conference;

(B) is substantially unprepared to participate or does not participate in good faith in the hearing or 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, the party's 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 2018 AMENDMENTS

This rule has been amended to more closely conform to Civil Rule 16 while maintaining practices and procedures distinct to domestic relations actions. Section (c) is new. It makes explicit that a party and at least one attorney of record for a represented party must appear at all hearings, unless excused by the court. Section (d) was amended to clarify that the court may permit a party or attorney to participate by telephone in a pretrial proceeding even if other parties do not consent.

COMMENT

This Rule provides a flexible pretrial procedure for cases set on the Domestic II Calendar. In cases whose complexity warrants a more structured pretrial procedure; SCR-Dom. Rel. 16-I should be applied.

Rule 16-I. Pretrial Procedure in Domestic I Cases

(a) APPLICABILITY. Unless otherwise ordered by the judge to whom the case is assigned, the provisions of this rule apply to all cases assigned to the Domestic I Calendar.

(b) INITIAL STATUS CONFERENCE.

(1) *In General*. In every case assigned or assignable to a domestic relations calendar, the court must hold an initial status conference as soon as practicable after the case is filed. At the conference the judge will ascertain the status of the case; explore the possibilities for early resolution through settlement or alternative dispute resolution, or for expediting the case by use of stipulations; explore issues of service, notice and identity of necessary parties; and determine a reasonable time frame for bringing the case to conclusion.

(2) *Disclosure of Information*. The judge may require that the parties exchange information pursuant to Rule 26(a)(1)(A).

(3) *Scheduling*. After consulting with the attorneys for the parties and with any self-represented parties, the judge may set 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 after the deadline for discovery requests.

(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) *Exchanging Lists of Fact Witnesses*. By this date, each party must file and serve a listing, by name and address, of all fact witnesses to be called by that party.

(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 (a party asserting a claim or an affirmative defense) 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*. By this date, all motions must be filed, except motions in limine, motions to bifurcate, or motions for which leave to file has been obtained.

(G) *Other Dates*. The judge may also set dates for filing legal memoranda, trial briefs, and pretrial statements; dates for appraisals; and, if custody is or may be an issue, dates for requests for Social Services investigations, appointment of guardians ad litem, and forensic evaluations.

(4) *Modification*. The schedule set at the initial status conference may be modified by the parties' agreement, but dates for court proceedings may not be modified without the court's leave.

(c) PRETRIAL DISCUSSION. Unless the court orders otherwise, trial counsel for each represented party and any unrepresented parties must confer not less than 14 days

prior to the trial date, or 14 days prior to the pretrial conference, if one is scheduled. They must make a good faith effort to reach agreement on the following matters:

(1) formulating and simplifying the issues, and eliminating insupportable claims or defenses;

(2) amending the pleadings if necessary or desirable;

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

(4) identifying witnesses and documents;

(5) referring matters to a magistrate or a master;

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

(7) disposing of pending motions;

(8) 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

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

(d) SERVING EXHIBITS ONE WEEK PRIOR TO TRIAL. One week prior to the trial date, each party must serve on all other parties copies of all documentary exhibits which that party may offer at trial, unless the court orders otherwise. If a party proposes to offer more than 15 exhibits at trial, that party must place a numbered exhibit sticker on each exhibit and identify the exhibits by exhibit number on an exhibit summary form (copies of which are available in the clerk's office) served with the exhibits. The exhibit summary form, and the original exhibits, separated by tabbed divider pages, must be fastened or placed in a notebook. By this date, each party also must make all non-documentary exhibits available for inspection by other parties. Except for rebuttal or impeachment purposes, no party may offer at trial any exhibit not served as required by this rule, without leave of court or agreement of the parties.

(e) PRETRIAL AND SETTLEMENT CONFERENCE. If the judge sets pretrial and/or settlement conferences, all parties and trial counsel for each represented party must attend the pretrial and/or settlement conference, unless excused by the judge for good cause. The parties must bring their trial exhibits to the conference. If a pretrial conference is scheduled after the date for exchange of exhibits, the parties also must be prepared to make objections to the other parties' exhibits.

(f) PRETRIAL ORDER. If there is a 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. The pretrial order may set limits with respect to the time for 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, or the total amount of time each party may have for presenting the party's case.

(g) AUTHORITY OF COUNSEL. Counsel for each party participating in any conference before trial, or in the discussion described in Rule 16-I(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.
(h) TELEPHONIC CONFERENCES. In the court's discretion and with the parties' consent, any pretrial communications may be conducted by telephone or other form of electronic communication.
(i) 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 its 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 pretrial order.
(2) *Imposing Fees and Costs*. Instead of or in addition to any other sanction, the Court may require 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 2018 AMENDMENTS

This rule has been amended to conform more closely to Civil Rule 16 while maintaining practices and procedures distinct to domestic relations actions.

COMMENT

This rule provides a more structured pretrial procedure than SCR-Dom. Rel. 16 for those domestic relations cases whose complexity or need for Court supervision warrants such treatment. The rule provides more flexible scheduling periods than the corresponding civil rule to accommodate the more fluid nature of Domestic Relations cases. It is in the Court's discretion, of course, to allow even more flexibility when appropriate in a particular case.
While subparagraph (b)(2) requires a party to file a listing of all fact witnesses the party intends to call, the party should not be precluded from calling at trial other witnesses for purposes of rebuttal or impeachment.

TITLE IV. PARTIES

Rule 17. Plaintiff and Defendant; Capacity

(a) REAL PARTY IN INTEREST.

(1) *Designation in General*. An action must be brought 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) a personal representative;

(B) a guardian;

(C) a trustee;

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

(E) 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) *Curing Defect*. The court may not dismiss an action for failure to bring in the name of the real party in interest until, after an objection, a reasonable time has been allowed for curing the defect. After revision, 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*. Unless otherwise permitted by law, 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. If a substantial question of incompetency is raised, the court must give the parties an opportunity to be heard, and the court may appoint a guardian ad litem—or issue another appropriate order—to protect the person who is unrepresented.

COMMENT TO 2018 AMENDMENTS

This rule has been modified to more closely conform to the civil rule while maintaining practices and procedures distinct to domestic relations actions. For instance, Rule 17(c)(2) allows a minor to sue without a next friend or guardian ad litem where permitted by law. D.C. Code § 16-914 (a-3) (2018 Supp.) permits a parent who is under 18 years of age to initiate a custody proceeding; it also permits initiation of a custody proceeding by the parent, guardian, or other legal representative of a minor parent. The amendment makes appointment of a guardian ad litem discretionary if a substantial question of incompetency is raised about a party who does not have a representative. Rule 17(c)(2) requires appointment of a guardian for a minor or incompetent person only when the minor or incompetent person is a party.

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.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 18.

COMMENT

SCR-Dom. Rel. 18 permits joinder of all claims a party has against an opposing party, regardless of whether they arise out of the marriage or would otherwise be cognizable in the Family Division. *See* SCR-Dom. Rel. 1. Where the Court deems it appropriate, it may sever the claims pursuant to SCR-Dom. Rel. 42(b).

Rule 19. Joinder of Persons

(a) IN GENERAL. On a party's motion or on its own, the court must order the joinder of all indispensable persons and may order, on just terms, the joinder of other persons at any stage of the action.

(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.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 19. The factors for the court to consider when deciding whether dismissal is appropriate have been moved from the comment to the text of the rule. The provision in the former rule for dismissal as well as joinder of other persons at any stage of the action was deleted. Dismissal of claims against persons is addressed in Rule 12.

COMMENT

SCR-Dom. Rel. 19 as amended consolidates the joinder provisions of former SCR-Dom. Rel. 19, 20 and 21. The amendments reflect the statutory framework for Domestic Relations actions, which provides for joinder in stated circumstances (e.g. D.C. Code § 16-4510 (additional parties in custody proceedings)). As to the joinder of indispensable persons, the factors to be considered by the Court may include: (1) the extent to which a judgment rendered in the person's absence might be prejudicial to the person or those already parties; (2) the extent to which the prejudice can be lessened or avoided by protective provisions in the judgment, by the shaping of relief, or other measures; (3) whether a judgment rendered in the person's absence will be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Should a joinder issue arise which is not otherwise addressed, reference should be made to the applicable civil rule.

Rule 20 [Deleted].

Rule 21 [Deleted].

Rule 22 [Deleted].

Rule 23 [Deleted].

COMMENT

SCR-Civil 23 has been deleted as not appropriate to the Family Division.

Rule 23-I [Deleted].

COMMENT

SCR-Civil 23-I has been deleted as not appropriate to the Family Division.

Rule 23-II [Deleted].

COMMENT

SCR-Civil 23-II has been deleted as not appropriate to the Family Division.

Rule 23.1 [Deleted].

COMMENT

SCR-Civil 23.1 has been deleted as not appropriate to the Family Division.

Rule 23.2 [Deleted].

COMMENT

SCR-Civil 23.2 has been deleted as not appropriate to the Family Division.

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 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 any person 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 pending action a common question of law or fact.

(2) *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 2018 AMENDMENTS

This rule has been modified to conform to Civil Rule 24. In accordance with amendments to the civil rules, 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 (d), have been moved to Rule 5.1.

In section (b), the reference to "governmental entity" was deleted as unnecessary and potentially confusing because the term "person" as used in other rules includes entities—both governmental and private. Section (b) differs from the corresponding civil provision, which specifies under what circumstances the court may permit governmental intervention.

Rule 24-I. [Deleted].

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 action 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).

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 25. The phrase "suggestion of death" has been eliminated as archaic and confusing.

TITLE V. DISCLOSURES AND DISCOVERY

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) DISCLOSURES.

(1) *Pretrial Disclosures*.

(A) *In General*. At the initial hearing, the judge or magistrate judge may order the parties to exchange information and documents, and, if so, set the dates and sequence. If so ordered, a party must provide to the other parties the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name, the address, and telephone number of each witness--separately identifying those the party expects to present and those it may call if the need arises;

(ii) a copy of each exhibit, with a list of all exhibits which separately identifies those the party expects to offer and those it may offer if the need arises;

(iii) financial information in accordance with a form(s) provided by the court.

(B) *Protective Order*. An order for pretrial disclosures does not preclude a subsequent motion for a protective order, where appropriate.

(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 ordered by the court.

(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, 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 Statements*. 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 the 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 Rule 26(b)(4)(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) 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 on 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) *Stay*. When a motion for a protective order is filed, further action with respect to the matter in dispute is stayed until the court decides the motion.

(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. For good cause, the court may order an enlargement of time limitations for the completion of discovery.

(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.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to more closely conform to Civil Rule 26 while maintaining practices and procedures distinct to domestic relations actions.

COMMENT

Subparagraph (a)(1) of this Rule allows the Court, in appropriate cases, to require the parties to disclose certain information and documents whether or not requested in discovery. It is intended to provide automatically for basic information likely to be needed to fairly determine the issues. The parties may employ traditional discovery methods to obtain the same or additional information to prepare for trial or make an informed decision about settlement.

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 that 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 in 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) *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 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 27.

COMMENT

SCR-Domestic Relations 27 provides auxiliary proceedings for the perpetuation of testimony either before an action is initiated or after judgment and before the expiration of the time for taking an appeal or pending appeal, for use in the event of further proceedings in the Superior Court. Paragraphs (a) and (b). Paragraph (c) makes it clear that the rule does not preclude an action for perpetuating testimony. However, an action to perpetuate testimony requires service of process in the same manner as in the expected action. Consequently, an action cannot proceed unless service of process is effected and personal jurisdiction obtained over the defendant.

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 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 28. Consistent with the civil rules, the provisions that were in the former section (b) concerning depositions outside the forum jurisdiction have been moved to Rules 28-I and 28-II.

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 which 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 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 PURSUANT TO D.C. CODE § 13-434.

(1) *Pursuant to 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 this section must be taken in the manner prescribed in 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 2018 AMENDMENTS

Rule 28-I is new. It conforms to Civil Rule 28-I and to the Uniform Interstate Depositions and Discovery Act, which was adopted in 2010.

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 domestic relations 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 in 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 14 days file an opposition to the motion as prescribed in Rule 7.

COMMENT TO 2018 AMENDMENTS

The substance of this rule is substantially identical to the former Rule 28(b)(1) 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 Rules 16(b) and 16-I(b).

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 29, except for the reference to Rule 16-I(b). The authority granted in Rule 29 does not affect the parties' authority under Rules 16(b) and 16-I(b) to modify the schedule set at the initial status conference.

COMMENT

Under the individual calendar system, each judicial officer will regulate the scope and limitations on discovery of cases on that judicial officer's calendar. Consequently, SCR-Dom. Rel. 29 does not attempt to delineate the permissible range of modifications to discovery procedure to which the parties may stipulate.

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 or petition 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 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 a 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 any 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 authorized in 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 1 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 district 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 RECORD; 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.

(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 2018 AMENDMENTS

This rule conforms to Civil Rule 30.

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 the deposition before the expiration of 30 days after service of the summons and complaint or petition 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 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.

(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 2018 AMENDMENTS

This rule conforms to Civil Rule 31.

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)-(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 the 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 depositions 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 shown, 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 a 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.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 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 form provided by the clerk's office, 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 or petition upon that defendant or within 75 days after service of the summons and complaint or petition 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 2018 AMENDMENTS

This rule conforms to Civil Rule 33.

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 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 or petition upon that defendant or within 75 days after service of the summons and complaint or petition 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 form provided by the clerk's office, 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 2018 AMENDMENTS

This rule conforms to Civil Rule 34.

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 is in controversy to submit to a physical or mental examination by a suitable 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 2018 AMENDMENTS

This rule conforms to Civil Rule 35. Although Rule 26(b)(3) provides that the requesting party is entitled to the results of an examination, mental examinations in domestic relations cases may raise sensitive issues, and Rule 26(c)(1) provides authority for judges to issue protective orders in appropriate cases.

COMMENT

While this Rule by its terms provides a general framework for examinations where a person's physical or mental condition is in controversy, it is not intended to preclude the

use of court-ordered medical, genetic blood and tissue grouping tests where such tests are relevant to matters at issue. These tests, when used to establish parentage, are specifically authorized by D.C. Code §16-2343.

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 or petition 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 or petition upon that defendant or before the expiration of 75 days after service of the summons and complaint or petition 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 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. 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 form provided by the clerk's office, 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 TO 2018 AMENDMENTS

This rule conforms to Civil Rule 36.

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) MOTION FOR ORDER COMPELLING DISCLOSURE OR DISCOVERY.

(1) *In General*.

(A) *Certification of Good Faith Effort*. 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 disclosure or discovery with a certification that despite a good faith effort to secure it, the disclosure or discovery material sought has not been provided.

(B) *Content 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*. 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;

(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 disclosure or discovery matter; or

(iii) a meeting is prohibited by any court order.

(D) *Format of Motion to Compel*. Any motion to compel disclosure or discovery must set out verbatim the question propounded and the answer given, or a description of the other disclosure required or 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*. A motion 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 the discovery is or will be taken.

(3) *Specific Motions*.

(A) *To Compel Disclosure*. If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(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 Disclosure, Answer or Response*. For purposes of Rule 37(a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, 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 disclosure or 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 effort to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, 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 matter 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, 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 DISCLOSE, TO SUPPLEMENT AN EARLIER RESPONSE, OR TO ADMIT.

(1) *Failure to Disclose or Supplement*. If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure; and

(B) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i) – (vi).

(2) *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 ANSWER 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 a 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 answers, objections, or a 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; or

(B) 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 2018 AMENDMENTS

The rule has been amended to conform to Civil Rule 37. Subsection (a)(1)(C)(iii) has been added because one self-represented party may be subject to a stay-away order that precludes an in-person meeting about discovery issues.

COMMENT

In subparagraph (a)(4), the phrase "after affording an opportunity to be heard" is intended to make it clear that the Court may award expenses or impose other sanctions for a party's failure to disclose, answer, or respond to a discovery request after consideration of written submissions, or after a hearing.

TITLE VI. TRIALS

Rule 38 [Deleted].

COMMENT

SCR-Civil 38 has been deleted as not appropriate to the Family Division.

Rule 38.I. [Deleted]

COMMENT

SCR-Civil 38-I has been deleted as generally inapplicable to Family Division cases. However, see General Family Rule L.

Rule 39 [Deleted].

COMMENT

SCR-Civil 39 has been deleted as not appropriate to the Family Division.

Rule 40. [Deleted].

COMMENT TO 2018 AMENDMENT

Rule 40 was deleted because assignment procedures are better left to the court's case management plan, internal operating procedures, and administrative orders. The elimination of this rule does not affect the ability of a party to file a motion asking the Presiding Judge to certify a case to the Domestic I Calendar based on the estimated length of trial, the number of witnesses who may appear or exhibits that may be introduced, the nature of the factual and legal issues involved, the extent to which discovery may require supervision by the court, the number of motions that may be filed, and any other relevant factor appropriate for the orderly administration of justice.

Rule 40-I [Deleted].

Rule 40-II [Deleted].

Rule 41. Dismissal of Actions

(a) VOLUNTARY DISMISSAL.

(1) *By the Plaintiff*.

(A) *Without a Court Order*. Subject to Rule 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.

(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 one for lack of jurisdiction or failure to join a party under Rule 19--operates as an adjudication on the merits.

(2) *By the Clerk*.

(A) *Failure to File Proof of Service*. In accordance with Rule 4(i), 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; and

(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.

(B) *Delinquency and Notice to Delinquent Party*. A party seeking affirmative relief is delinquent if he or she fails for 150 days from the time action may be taken, to comply with any law, rule, or order requisite to the prosecution of the claim, or to avail of any

right arising through the default or failure of an adverse party. The clerk must mail to the delinquent party a notice indicating that the claim will be dismissed if the party fails to comply with this rule. The clerk must enter the date of mailing on the docket. A party who does not receive this notice is not relieved from the operation of this rule.

(C) *Dismissal for Delinquency*. If the party remains delinquent for 30 days after the notice is mailed by the clerk, the clerk must dismiss the delinquent party's complaint or counterclaim. The time in which the delinquent party may take appropriate action to reinstate under Rule 60(b) will start to run from the entry of dismissal by the clerk or, upon appropriate motions by the court, and the clerk in either case must serve notice by mail upon every party not in default for failure to appear. The clerk must enter the date of mailing on the docket.

(D) *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 2018 AMENDMENTS

The rule has been amended to conform to Civil Rule 41.

COMMENT

Unlike SCR-Civil 41, this Rule does not operate to convert a voluntary dismissal into an adjudication on the merits where the claimant has dismissed a prior action based on or including the claim in the instant case. An automatic adjudication on the merits is not appropriate due to the unique nature of domestic relations actions. New SCR-Domestic Relations 10(b)(8) requires that related prior or pending actions be identified in the party's initial pleading. This information will assist the Court in evaluating the matter before it.

Rule 41-I. [Deleted].

Rule 42. Consolidation; Separate Trials

(a) CONSOLIDATION. The court may consolidate domestic relations actions and other cases before the court relating to the same subject matter or parties or members of the same family or household. On consolidation, copies of the consolidation order and all subsequent pleadings and orders must be filed in each consolidated case, except that all papers filed in an adoption case must be maintained only in the adoption case file.

(b) RELATED CASES. When an attorney or party becomes aware of the existence of a related case, he or she must immediately notify, in writing, the judges or magistrate judges on whose calendars the cases appear.

(c) SEPARATE TRIALS. The court may order a separate trial of one or more claims or counterclaims or of any separate issues when it will promote the efficient administration of justice.

COMMENT TO 2018 AMENDMENTS

This rule was amended consistent with the stylistic changes made to the civil rules.

COMMENT

Paragraph (a) provides for the consolidation of domestic relations cases and other related cases in the Superior Court. Because a number of factors affect the placement of consolidated Family Division cases on a particular calendar, no attempt is made to set forth the procedure in this Rule.

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 2018 AMENDMENTS

This rule was amended to make it more consistent with Civil Rule 43. Section (b) has been amended to provide for testimony by contemporaneous transmission from a different location in exceptional circumstances.

In accordance with D.C. Code § 16-4601.10 (b) (2012 Repl.), which is based on § 111 of the Uniform Child Custody Jurisdiction and Enforcement Act, the court may permit an individual residing in another state to testify by telephone or electronic means.

COMMENT

This Rule is intended to be consistent with D.C. Code § 14-102 (Impeachment of Witnesses). Pursuant to SCR-Dom. Rel. 2(b)(5), whenever a person is required to take an oath, the person may make a solemn affirmation instead. For provisions on the admissibility of business records, see SCR-General Family Q.

Rule 43-I. [Deleted].

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;

(ii) the record—or a copy—that is attested by an authorized person and accompanied by either 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 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 an entry in it—by any other method authorized by law.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 44. Former section (d) related to proof of statutes, ordinances, and regulations was moved to new DR Rule 44-I. Former section (e) related to determinations of foreign law was moved to new DR Rule 44.1.

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 2018 AMENDMENTS

This rule conforms to Civil Rule 44.1.

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, or 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 2018 AMENDMENTS

This rule conforms to Civil Rule 44-I.

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 case number, the calendar designation 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) [Deleted].

(3) *Issued by Whom.* An attorney authorized to practice in the District of Columbia may issue and sign a subpoena. A party not represented by an attorney may obtain from the clerk and complete a blank subpoena, and submit it to the clerk to be signed. The clerk may sign the subpoena if it relates to a case in which action is pending, otherwise the clerk shall refer the subpoena to a judge or magistrate judge for consideration.

(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 of age 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, except that:

(A) witnesses will be subpoenaed without prepayment of witness fees if the court grants a request to proceed without prepayment of costs, fees, or security under Rule 54-II; and

(B) 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) *Service 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 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, 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 material 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 2018 AMENDMENTS

This rule conforms to the corresponding civil rule. The rule now provides for discovery of electronically stored information.

COMMENT

Pursuant to subparagraph (b)(1) of this Rule, a person serving a subpoena commanding attendance in court must also give the person subpoenaed the fees for one day's attendance and the mileage allowed by law. Those fees and travel allowances can be found in Title *28 U.S.C. § 1821* et seq. See D.C. Code § 15-714. For waiver of prepayment of costs and witness fees, see SCR-Dom. Rel. 54(f). For purposes of this Rule, an attorney is not a party and may serve a subpoena. *See In re Kirk,* 413 A.2d 928 (D.C. App. 1980). However, in the event of a factual dispute over service, there is a risk that the attorney's ability to continue as counsel in the case will be affected.

Rule 46. Objection 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 the action it 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 2018 AMENDMENTS

This rule was amended consistent with the stylistic changes made to the civil rules.

COMMENT

Identical to SCR-Civil 46.

Rule 47. [Deleted].

COMMENT

SCR-Civil 47 deleted as not appropriate to Family Division practice.

Rule 48. [Deleted].

COMMENT

SCR-Civil 48 deleted as not appropriate to Family Division practice.

Rule 49. [Deleted].

COMMENT

SCR-Civil 49 deleted as not appropriate to Family Division practice.

Rule 50. Judgment as a Matter of Law; 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 trial and the court finds that there is no 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 end of the trial. 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 movant may file, no later than 28 days after the entry of judgment, 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 the judgment to stand;

(2) order a new trial; or

(3) direct 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 2018 AMENDMENTS

Rule 50 was amended to conform to Civil Rule 50, except that references to jury trials were eliminated.

Rule 51. [Deleted].

COMMENT

SCR-Civil 51 deleted as not appropriate to Family Division practice.

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, the court must make written findings of fact and separate conclusions of law. Judgment must be entered under Rule 58.

(2) *For an Interlocutory Injunction*. In granting or refusing an interlocutory injunction, the court must 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 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 2018 AMENDMENTS

The rule was modified to make it consistent with Civil Rule 52.

COMMENT TO 2015 AMENDMENTS

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

COMMENT

Paragraph (c) is not intended to trigger notices where the Court has announced a decision on the record but has yet to issue the written findings.

Rule 53. Masters

(a) APPOINTMENT. The term “master” also refers to the Auditor-Master as established by D.C. Code § 11-1724 (2012 Repl.) unless otherwise noted.

(b) REFERENCE.

(1) *In General*. On motion or on its own, the court may refer a matter to a master. The court may appoint a master only if appointment is warranted by:

(A) some exceptional condition; or

(B) the need to perform an accounting or resolve a difficult computation of damages.

(2) *Content*. An order referring a matter to the master may:

(A) specify or limit the master's powers;

(B) direct the master to report only on particular issues;

(C) direct the master to do or perform particular acts;

(D) direct the master to receive and report evidence only; and

(E) fix the time and place for beginning and closing the hearings and for the filing of the master's report.

(c) MASTER’S AUTHORITY.

(1) *In General*. Unless the order of reference 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 referring 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) PROCEEDINGS.

(1) *First Meeting*. When a reference is made, the clerk must immediately provide the master with a copy of the order of reference. Unless the order of reference provides otherwise, on receipt of the order, the master must immediately set a time and place for the first meeting of the parties or their attorneys and must notify the parties or their attorneys of this meeting. The meeting should be held within 28 days from the date of the order of reference.

(2) *Duty to Proceed*. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the report.

(3) *Absence of Party*. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(4) *Witnesses*. The parties may procure the attendance of witnesses before the master by the issuing and serving subpoenas in accordance with Rule 45.

(5) *Statement of Accounts*. When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts must be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. On objection of a party to any of the items submitted or on a showing that the form of statement is insufficient, the master may require that a different form of statement to be furnished or that the accounts or specific

items be proved by oral examination of the accounting parties, by written interrogatories, or in such other manner as the master directs.

(e) REPORT.

(1) *Contents and Filing*. The master must prepare a report on the matters referred to the master. The report must include findings of fact and conclusions of law where the master was required to make them. Unless otherwise directed by the order of reference, the report must be accompanied by a transcript of the evidence and proceedings as well as the original exhibits. The master must file the report with the clerk of the court and serve all parties with notice of the filing. Unless otherwise directed by the order of reference, the master must also serve a copy of the report on each party.

(2) *Actions on the Master's Order, Report, or Recommendations*.

(A) *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.

(B) *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 14 days after a copy is served, unless the court sets a different time.

(C) *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:

(i) the findings will be reviewed for clear error; or

(ii) the findings of a master will be final.

(D) *Reviewing Legal Conclusions*. The court must decide de novo all objections to conclusions of law made or recommended by a master.

(E) *Reviewing Procedural Matters*. Unless the order of reference 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.

(3) *Stipulation as to Findings*. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact will be final, only questions of law arising upon the report will be considered.

(4) *Draft Report*. Before filing the master's report a master may submit a draft to counsel for all parties for the purpose of receiving their suggestions.

(f) FEES AND COMPENSATION.

(1) *Fixing Fees*. The court must fix the fees, if any, for work performed by the Auditor-Master and the compensation allowed to a special master. Fees for work performed by the Auditor-Master must bear a reasonable relation to the value of the services rendered. However, the court, if appropriate, may order that a party or parties be charged no fee or only a reduced fee for work performed by the Auditor-Master.

(2) *Payment*. The fees and compensation must be paid, as directed by the court, either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(3) *Failure to Pay*. The special master must not retain the master's report as security for the master's compensation; but when the party ordered to pay the compensation

allowed by the court does not pay it after notice and within the time prescribed by the court, the special master is entitled to a writ of execution against the party.
(g) DEPOSIT FOR EXPENSES. A master may require the deposit of funds sufficient to defray the expenses of a reference, including a stenographic report of the testimony.
(h) CUSTODY OF EXHIBITS. Unless otherwise directed by the reference, the master must transmit original exhibits to the court with the report. At the conclusion of a trial or hearing, the court must return all exhibits to the party or attorney offering the exhibit. The party or attorney must provide a receipt for each exhibit returned by the court. The party or attorney must retain the exhibits until the time for filing a notice of appeal has expired or, if an appeal is perfected, until final disposition of the case by the appellate court. On request, the party or attorney must transmit the exhibits to the appellate court.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. Subsection (e)(2)(C) was modified to provide that the court must review, de novo, an objection to a finding of fact.

This rule also applies to parenting coordinators. In *Jordan v. Jordan*, 14 A.3d 1136, 1152 (D.C. 2011), the District of Columbia Court of Appeals held that "Rule 53 of the Superior Court Rules Governing Domestic Relations Proceedings authorize[s] the trial court both to appoint a parenting coordinator under [ ] exceptional circumstances … and to delegate decision-making authority to the parenting coordinator over day-to-day issues that do not implicate the court's exclusive responsibility to adjudicate the parties' rights to custody and visitation."

Rule 53-I. [Deleted].

Rule 53-II. [Deleted].

TITLE VII. JUDGMENT

Rule 54. Judgments; Costs

(a) DEFINITION; FORM. "Judgment" as used in these rules includes a decree and any order from which an appeal lies.

(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) *In General*. Claims for costs and attorneys' fees must be made in the complaint or answer and supported in a detailed motion in accordance with Rule 54(d)(2) .

(2) *Timing and Contents of the Motion*. Unless a statute or a court order provides otherwise, the motion must:

(A) be filed no later than 14 days after the entry of judgment;

(B) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(C) state the amount sought or provide a fair estimate of it; and

(D) disclose, if the court so orders, the terms of any agreement about fees for the services for which claim is made.

(3) *Proceedings*. On a party's request, the court must give an opportunity for adversary submissions on the motion. The court must find the facts and state its conclusions of law as provided in Rule 52(a) and must set forth a judgment as provided in Rule 58.

(4) *Witness Fees*. Witness fees may be awarded at the court's discretion. Proof of the attendance of witnesses shall be by certificate of the attorney of record in the form prescribed by the clerk's office. 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 it.

(5) *Costs*. Costs of depositions, reporters' transcripts on appeal, and premiums on bonds may be awarded at the court's discretion.

(6) *Special Procedures; Reference to a Master or a Magistrate Judge*. The court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a master under Rule 53 without regard to the limitations of Rule 53(b)(1), and may refer a motion for attorneys' fees to a magistrate judge as if it were a dispositive pretrial matter.

(7) *Exceptions*. Rule 54(d)(1)-(6) do not apply to claims for fees and expenses as sanctions for violating these rules.
(e) [Deleted].
(f) [Deleted].

COMMENT TO 2018 AMENDMENTS

This rule conforms more closely to the style of Civil Rule 54. Subsection (d)(4) conforms to Civil Rule 54-I.

COMMENT

Unlike SCR-Civil 54(d), paragraph (d) of this Rule requires that claims for attorneys' fees and costs be made in the complaint or answer, and substantiated in a motion filed and served no later than 14 days after entry of judgment.

Rule 54-I [Deleted].

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 upon the presentation of 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 must grant the application without requiring additional information from the applicant.

(c) HEALTH CARE BENEFITS. Consistent with Form 106A, if an applicant receives Interim Disability Assistance (IDA), 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 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 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 Form 106A. Notarization is not required.

(i) WITNESS FEES. Where an application to proceed without prepayment of costs, fees, or security is granted, 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 2018 AMENDMENTS

This rule was amended consistent with stylistic changes to the civil rules.

COMMENT TO 2010 AMENDMENT

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.

The Rule is stylistically consistent with Civil Rule 54-II, which is stylistically consistent with the Federal Rules of Civil Procedure.

Rule 55. Default; Default Judgment or Order

(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 court must enter the party's default.

(2) *Effective Date of Default; Motion by Defendant*. Any default entered on the court's or the clerk's own initiative, including a default for failure to respond to the complaint or petition 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 the defendant or respondent 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 a 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 document, 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 OR ORDER.

(1) *In General*. Except as provided in Rule 55(b)(2), a party must move for entry of a default judgment or order no more than 60 days after default is entered.

(A) *Notice of Motion*. Unless the court orders otherwise, a party against whom a default judgment or order is sought must be served with written notice of the motion at least 7 days before the hearing on the motion for entry of a default judgment or order.

(B) *Servicemembers Civil Relief Act*. If the party against whom a default judgment or order is sought has not appeared in the action, the requesting party must comply with the Servicemembers Civil Relief Act (*50 U.S.C. §§ 3901-4043*).

(2) *Default Parentage Order*.

(A) *Ex Parte Hearing Not Required*. When a defendant or respondent fails to appear at a hearing in which parentage is at issue, the court may conduct an ex parte hearing on that date to determine the issue of parentage, but an ex parte hearing is not required.

(B) *Requirements for Issuance of Default Order*. The court must issue a default order concerning parentage if:

(i) the defendant or respondent was served with notice of the action by any method permitted under D.C. Code § 46-206 (b) (2012 Repl.);

(ii) the defendant or respondent received actual notice of the first, or any other hearing, where parentage is at issue which the respondent failed to attend; and

(iii) the plaintiff or petitioner complied with the Servicemembers Civil Relief Act (*50 U.S.C. §§ 3901-4043*).

(3) *Minors and Incompetents*. Unless otherwise permitted by statute or rule, a default judgment or order 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 plaintiff or petitioner indicates that the defendant or respondent 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 or petitioner's failure to comply with Rule 55(b)(1) or (2) will result in the dismissal without prejudice of the complaint or petition.

(c) SETTING ASIDE A DEFAULT OR A DEFAULT JUDGMENT.

(1) *By the Clerk*. 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 document so requesting and bearing evidence of its service on all parties that have appeared. When required by Rule 55(c)(2), the document must be accompanied by a verified answer.

(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 or order under Rule 60(b).

COMMENT TO 2018 AMENDMENTS

The rule has been substantially amended, consistent with Civil Rule 55 and with current practice in the Domestic Relations Branch. The rule now provides for entry of default by the court as well as the clerk.

The former rule did not address entry of default judgments, but new section (b) addresses default judgments and orders. Consistent with current practice, final orders concerning parentage and child support are called orders rather than judgments.

Subsection (b)(1)(A) provides that the court generally may not enter a default judgment or order unless it holds a hearing after notice to the defaulting party. However, consistent with current practice, subsection (b)(1)(A) gives the court discretion to enter a default judgment at the same hearing in which it enters a default. Rule 4(a)(1)(E) requires the summons to notify the defendant that a failure to file an answer to the complaint and to appear at any scheduled hearing will result in a default judgment against the defendant for the relief demanded in the complaint. Written notice of a hearing on a motion for a default judgment or order may warn that if the defaulting party does not appear at the hearing or otherwise respond, the court may proceed with the hearing and enter a default judgment or order. Civil Rule 55 also provides for entry of a default judgment without a hearing, when it authorizes the clerk to enter a default judgment in cases where the claim is for a sum certain or a sum that can be made certain by computation. Unlike Civil Rule 55, this rule does not provide for entry of a default judgment or order by the clerk because the overwhelming majority of default judgments or orders for a sum certain involve child support and spousal support, and these default judgments or orders may be entered only by the court.

Subsection (b)(2) contains a separate provision for entry of a default order concerning parentage; this provision tracks D.C. Code § 16-2343.03 (2012 Repl.). Subsection (c)(1) incorporates the substance of Civil Rule 55-III.

Finally, consistent with Civil Rule 55(c)(2) and the 2015 amendments to the federal rule, the word "final" was added to subsection (c)(2) to indicate that the court "may set

aside a final default judgment under Rule 60(b)." The inclusion of this word helps 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

The procedures for default contained in this Rule do not apply to proceedings to determine paternity (see D.C. Code § 16-2341 et seq.; SCR-Dom. Rel. 405). The statement required under paragraph (a) of this Rule may be submitted by use of a court form, if available. Because, unlike Civil actions, Domestic Relations actions often involve issues over which the Court has continuing jurisdiction, paragraph (c) allows a party in default to appear and respond to new or additional claims raised by any party without having the default set aside.

Rule 55-I. [Deleted].

COMMENT

SCR-Civil 55-I was deleted as not necessary in Family Division.

Rule 55-II. [Deleted].

COMMENT

SCR-Civil 55-II was deleted as not necessary in Family Division.

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 7(b)(1)(C), 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 2018 AMENDMENTS

This rule was modified to make it consistent with Civil Rule 56.

Rule 57. Declaratory Judgments

These rules govern the procedure for obtaining a declaratory judgment under *28 U.S.C. § 2201* or otherwise. 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 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules.

Rule 58. Entering Judgment

(a) ENTERING JUDGMENT.

(1) *Without the Court's Direction.* Subject to Rule 54(b) and unless the court or administrative order orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter judgment when:

(A) the court awards only costs or a sum certain; or

(B) 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 the court grants other relief not described in Rule 58(a)(1).

(b) EFFECTIVENESS. A judgment is effective when it is entered in the docket under Rule 79(a).

(c) COST OR FEE AWARDS. Ordinarily, the entry of judgment may not be delayed for the award of costs and fees.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules.

COMMENT

The last sentence of this Rule makes it clear that the Court should not delay the finality of the judgment until a claim for costs and fees is decided.

Rule 59. Amending a Judgment; New Trial

(a) MOTION TO ALTER OR AMEND JUDGMENT OR FOR NEW TRIAL.

(1) *In General*. The court may grant a motion to alter or amend judgment or for a new trial where the interests of justice require.

(2) *Further Action*. On motion for a new trial, the court may:

(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. A motion to alter or amend judgment or for a new trial must be filed no later than 28 days after entry of the judgment.

(c) TIME TO SERVE AFFIDAVITS. When a motion for a new trial is based on affidavits, they must be served with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) ON COURT'S INITIATIVE; NOTICE; SPECIFYING GROUNDS. No later than 28 days after the entry of judgment, the court, on its own, may alter or amend the judgment or 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.

COMMENT TO 2018 AMENDMENTS

The deadlines were changed to conform with those in Civil Rule 59.

COMMENT

This Rule has been revised and reorganized for clarity. With the exception of the amendment to paragraph (d) explicitly allowing the Court to alter or amend a judgment on its own initiative no later than 10 days after entry of the judgment, the Rule is not intended to modify the substance or effect of SCR-Civil 59 with respect to trials in Domestic Relations actions. Grounds for a new trial under this Rule include manifest error of law or fact, and newly discovered evidence which is material to a significant issue. Similar to the civil rule, a timely motion under this Rule will toll the time for appeal. D.C. App. Rule 4(a)(2).

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.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform with Civil Rule 60.

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 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 2018 AMENDMENTS

This rule conforms to the corresponding civil rule.

COMMENT

Clerical mistakes and errors arising from oversight or omission in judgments, orders or other parts of the record, which may be corrected pursuant to SCR-Dom. Rel. 60(a), constitute harmless error under this Rule.

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) AUTOMATIC STAY; EXCEPTIONS FOR INJUNCTIONS, RECEIVERSHIPS, AND CHILD CUSTODY, SUPPORT, AND VISITATION ORDERS. Except as stated in this rule or expressly provided in a child custody, support, or visitation order, 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 action 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 52(b), to amend the findings or for additional findings;

(2) under Rule 59, for a new trial or to alter or amend a judgment; or

(3) 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 or 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 2018 AMENDMENTS

This rule closely conforms to the corresponding civil rule, but maintains an exemption for child custody, support, and visitation orders. Part of section (d) related to supersedeas bonds was moved to new Rule 62-I, which outlines a more detailed procedure for supersedeas bonds. Section (i) was moved to new Rule 62-II.

COMMENT

Paragraph (a) exempts from the automatic 10 day stay provision orders relating to custody, support or visitation which by express terms are to take effect within 10 days after entry. To avoid uncertainty as to the effectiveness and enforceability of such orders, the Court should specify the date upon which its provisions take effect. Where an appellant obtains a stay pursuant to paragraphs (d), the interest of justice may require that the operation or enforcement of any portion of the judgment against the appellee also be stayed.

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*. 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, fixes a different amount or orders security other than the bond.

(4) *Supplementing a Bond or Undertaking*. When the appellant has already filed in the trial court security, which 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, unless the court orders otherwise.

(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 2018 AMENDMENTS

This rule includes some provisions previously found in Rule 62. Consistent with the civil rules, the provisions were moved to Rule 62-I and expanded.

Rule 62-II. Application for Termination of Stay or for Entry of Judgment

(a) APPLICATION.

(1) *In General*. If either entry or execution of the judgment has been stayed on condition that a party make certain periodic payments to another party or perform other acts, and the party at any time fails to make the payments or perform the acts, the other party may apply for termination of the stay or entry of judgment.

(2) *Contents of Application*. The application must state:

(A) the conditions of the stay;

(B) the date(s) when the party made any required payments or performed any required acts;

(C) the date(s) when the party failed to make any required payments or to perform any required acts;

(D) the amount of the judgment and other relief requested;

(E) notice that the clerk may enter judgment against the party if the party fails to oppose the application within 14 days.

(b) ACTION BY THE CLERK.

(1) *When the Party Fails to Respond*. If the party fails to oppose the termination, the clerk may terminate the stay and issue execution or enter judgment in accordance with the notice given by the application, in the manner provided in Rule 55(b) with respect to defaults.

(2) *When the Party Files an Opposition*. If the party files an opposition, the notice must be treated as an opposed motion.

COMMENT TO 2018 AMENDMENTS

This rule is new. It closely conforms to Civil Rule 62-II.

Rule 62-III. Enforcing Foreign Judgments

(a) 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 party who obtained it or by that party's attorney only if:

(1) the judgment is authenticated in accordance with District of Columbia law;

(2) the judgment is accompanied by any form prescribed by the clerk; and

(3) the filing fee established by the court has been paid.

(b) JUDGMENTS ENTITLED TO FULL FAITH AND CREDIT IN THE DISTRICT OF COLUMBIA; 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.).

COMMENT TO 2018 AMENDMENTS

To conform to a restructuring in the civil rules, the substance of former Rule 72 has been moved to this rule. Civil Rule 62-III also includes procedures related to the Uniform Foreign-Country Money Judgments Recognition Act of 2011 (D.C. Code § 15-361 to -371 (2012 Repl.)). However, this uniform act does not apply to judgments for divorce, support or maintenance, or other judgments rendered in connection with domestic relations. D.C. Code § 15-363 (2012 Repl.).

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 2018 AMENDMENTS

This rule is new. It is identical to Civil Rule 62.1.

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. 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 2018 AMENDMENTS

This rule conforms to Civil Rule 63. Consistent with the civil rules, former section (b) has been moved to Rule 63-I.

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, such judge or magistrate judge must proceed no further, and the Chief Judge or the Chief Judge's designee must assign another judge or magistrate judge to hear such 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 2018 AMENDMENTS

This rule conforms to Civil Rule 63-I. It contains the provisions previously found in Rule 63(b).

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 the law of the District of Columbia, 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.

(c) [Deleted.]

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 64. Consistent with the civil rules, the substance of former section (b) was moved to Rule 64-I, and former section (c) was moved to Rule 64-II.

Rule 64-I. Attachment Before Judgment

(a) APPLICATION AND NOTICE TO DEFENDANT.

(1) *Requirements*. An application for a writ of attachment and garnishment 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 form provided by the clerk; 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 the notice is mailed.

(b) ISSUANCE. An application for a writ of attachment before judgment and a bond required under D.C. Code § 16-501 (e) (2012 Repl.) must be submitted as provided in General Family Rule R(a)(2) 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 in accordance with D.C. Code § 16-522 (2012 Repl.), the garnishee's obligations under the attachment will be limited by his or her answer.

(d) HEARING. If a hearing is held as a result of the defendant or the garnishee filing a traversing affidavit 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) EXPEDITION OF 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 2018 AMENDMENTS

This rule conforms to Civil Rule 64-I. It incorporates the substance of former Rule 64(b).

Rule 64-II. Replevin Actions

(a) INITIATING ACTION; NOTIFYING THE JUDGE. A complaint in replevin must be accompanied by an affidavit meeting the requirements of D.C. Code § 16-3703 (2012 Repl.). 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 or her attorney, will bring the action to the attention of the judge to whom the case is assigned under General Family Rule R(a)(2).

(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 the 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, the judge 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 AFTER HEARING; 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 pursuant to D.C. Code § 16-3708 (2012 Repl.).

(d) ISSUING THE WRIT PRIOR TO HEARING.

(1) *In General*. In the initial application, the plaintiff 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) *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.

(3) *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 fifth day after execution of the writ. It is the duty of plaintiff's counsel to notify the court promptly of the execution of the writ.

(e) EXPEDITED TRIAL. Trial of all actions in replevin must be expedited.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 64-II. It incorporates the substance of former Rule 64(c).

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 of 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.

(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:

(i) the movant has made reasonable efforts under the circumstances to furnish to the adverse party's attorney, if known, otherwise to the adverse party, 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 to date in the action or to be presented to the court at the hearing; or

(ii) that bodily harm is likely to occur prior to the hearing on the temporary restraining order if such notice be given.

(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 granted 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 over all 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 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. Where a temporary restraining order or preliminary injunction is granted for the physical protection of any party or for custody of children, no security is required of the movant.

(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).

COMMENT TO 2018 AMENDMENTS

This rule has been modified to conform to the stylistic changes to Civil Rule 65.

Rule 65-I. [Deleted].

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 2018 AMENDMENTS

The substance of this rule has been moved from Rule 71 to conform with the numbering in the civil rules.

Rule 66. Receivers

An action in which a receiver has been appointed may be dismissed only by court order.

COMMENT TO 2018 AMENDMENTS

This rule has been modified to conform to the stylistic changes to Civil Rule 66.

Rule 67. Deposit into Court; Recording Money Paid to or by Clerk

(a) DEPOSIT INTO COURT.

(1) *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.

(2) *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.

(b) RECORDING MONEY PAID TO OR BY CLERK. The clerk must receive and keep proper accounts of all moneys deposited or paid into or out of the clerk's office and make such reports concerning same as may be required by law or court order.

COMMENT TO 2018 AMENDMENTS

This rule has been modified to conform to the stylistic changes to Civil Rules 67 and 67-I. Section (a) corresponds to Civil Rule 67, and section (b) corresponds to Civil Rule 67-I.

Rule 67-I. [Deleted].

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 court must then enter judgment, unless it finds that the custody, visitation, or support provisions are not in the best interests of the child.

(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.

(e) COSTS. For purposes of this rule, costs may include attorney's fees that may be awarded by statute or otherwise in connection with the pending action.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 68, except that the substance of section (e) (formerly section (b)) was retained from the former domestic relations rule.

COMMENT

Because attorney's fees are routinely statutorily at issue in domestic relations cases, paragraph (b) provides that the fees incurred after the making of an offer of judgment are properly awardable as costs under this Rule. See *Kelly v. Clyburn,* 490 A.2d 188 (D.C. App. 1985). See D.C. Code § 16-911, 16-918.

Rule 68-I. [Deleted].

COMMENT

SCR-Civil 68-I has been deleted as not appropriate to Family Division practice.

Rule 69. Execution

(a) IN GENERAL.

(1) *Money Judgment; Applicant Procedure.* A money judgment is enforceable by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the District of Columbia, but a federal statute governs to the extent 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 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 69. Provisions related to attachment after judgment have been moved to Rule 69-I, and particular provisions related to attachment of wages have been moved to Rule 69-II.

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 these 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 upon 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. 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.

(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. 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 the garnishee's 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 stand 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 2 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, 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 2018 AMENDMENTS

This rule is new. It contains provisions previously found in Rule 69. The rule has been modified to conform with Civil Rule 69-I.

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.

(e) GARNISHMENT DOCKET CARD. Each writ of attachment for wages must be accompanied by a garnishment docket card prepared by the judgment creditor or the judgment creditor's attorney. The judgment creditor or the judgment creditor's attorney must provide the social security number of the judgment-debtor, if known. The garnishment docket card must be recorded on a form provided by the clerk’s office or on a form that is substantially similar.

COMMENT TO 2018 AMENDMENTS

This rule is new; the substance of the rule previously appeared in Rule 69. This rule now conforms to Civil Rule 69-II, except that section (e) was retained from the former domestic relations rule.

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 and approval by the court, 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 and approval by the court, 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 2018 AMENDMENTS

This rule was amended to conform to Civil Rule 70, except that court approval is required before the clerk can issue a writ.

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 2018 AMENDMENTS

This rule was amended to conform to Civil Rule 71. The substance of section (b) was moved to new Rule 65.1 to conform to the numbering in the civil rules.

Rule 71A. [Deleted].

COMMENT

SCR-Civil 71A has been deleted as not appropriate to Family Division practice.

Rule 71A-I. [Deleted].

COMMENT

SCR-Civil 71A-I has been deleted as not appropriate to Family Division practice.

IX. APPEALS

Rule 72. [Deleted].

COMMENT TO 2018 AMENDMENTS

To conform to a restructuring in the civil rules, the substance of Rule 72 has been moved to Rule 62-III.

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 the 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 party to resort to the cumbersome prior practice of bringing suit to enforce a foreign judgment.

The Rule is not intended to preempt the provisions of other locally-adopted uniform acts dealing with Family Division matters. See the Uniform Child Custody Jurisdiction Act (D.C. Code §§ 16-4501 - 4524); the Uniform Reciprocal Enforcement of Support Act (D.C. Code §§ 46-701 - 726).

Rules 73 to 76. [Deleted].

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) 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) enter a default; and

(C) act on any other matter that does not require the court's action.

(c) 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, 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.

(2) *Time to Appeal Not Affected by Lack of Notice*. Lack of notice of the entry does not affect the time to appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed, except as allowed by the Rules for the District of Columbia Court of Appeals.

(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(c).

COMMENT TO 2018 AMENDMENTS

This rule has amended to conform to Civil Rule 77, except for the provision requiring all proceedings to take place in "open court."

Rule 77-I. [Deleted].

Rule 77-II. [Deleted].

Rule 78. [Deleted].

COMMENT

SCR-Civil 78 has been deleted as not appropriate to Family Division practice.

Rule 78-I. [Deleted].

Rule 79. Records Kept by the Clerk

(a) DOCKET.

(1) *In General*. The clerk must keep a record known as the "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 domestic relations 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, and judgments.

(3) *Contents of Entries*. 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

(b) 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 Officers 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.

(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 2018 AMENDMENTS

This rule was amended to conform to Civil Rule 79. Accordingly, provisions related to copies and custody of filed papers were moved to new Rule 79-I.

Rule 79-I. Copies and Custody of Filed Papers

(a) ACCESS TO FILED PAPERS. Unless prohibited by statute, rule, or order of the court, inspection and copying of the files and records of the Family Court will be permitted.

(b) 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 in any manner that is legible and must also stamp the date of filing separately on any exhibit. If any person filing any paper requests a certification of such filing, a copy of the paper provided by such 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 administrative order.

(c) 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 2018 AMENDMENTS

This rule is new. It closely conforms to the Civil Rule 79-I, except that section (a) limits access to filed papers and records where prohibited by statute.

Rule 80. [Deleted].

XI. GENERAL PROVISIONS

Rule 81. [Deleted].

COMMENT

SCR-Civil 81 has been deleted as not appropriate to Family Division practice.

Rule 82. [Deleted].

Rule 83. [Deleted].

COMMENT

[Deleted]. (Mar. 15, 1973.)

Rule 83.I. [Deleted].

Rule 84. Forms

Forms supplied by the clerk suffice under these rules and illustrate the simplicity and brevity that these rules contemplate.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to Civil Rule 84.

Rule 85. [Deleted].

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 order 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 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 86.

Rule 86-I. [Deleted].

XII. PRACTICE BEFORE THIS COURT

Rule 101. Attorneys: Appearance; Withdrawal; Appointment; Termination

(a) WHO MAY PRACTICE.

(1) *Bar Membership*. 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) *Representation by Counsel*. No person other than one authorized by this rule will be permitted to appear in this court in a representative capacity for any purpose other than securing a continuance. No corporation may appear in the Family Court except through an attorney authorized by this rule. Nothing in this rule prevents a natural person who is without counsel from prosecuting or defending an action in which that person is a party.

(3) *Attorneys Admitted Pro Hac Vice*.

(A) *Appearances Pro Hac Vice*. An attorney who is a member in good standing of the bar of any United States court or of any state's highest court but who is not a member in good standing of the District of Columbia Bar, if granted permission by the court, may enter an appearance, file pleadings, and participate in proceedings in this court, *pro hac vice*, if a member in good standing of the District of Columbia Bar also enters an appearance in the case. The District of Columbia attorney must be jointly responsible for the case, and must sign all papers filed, including the motion to appear *pro hac vice* and certificate of service, and must attend all subsequent proceedings in the action unless this latter requirement is waived by the judge or magistrate judge presiding at the proceeding in question.

(B) *Request to Appear Pro Hac Vice*. An attorney seeking permission to appear under Rule 101(a)(3)(A) must comply with District of Columbia Court of Appeals Rule 49(c)(7).

(4) *State Attorneys General*. 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 any United States court, may appear and represent the state or its agency.

(b) ENTRY OF APPEARANCE. An attorney eligible to appear may enter an appearance in a domestic relations case by signing any pleading or other paper described in Rule 5(a), filed by or on behalf of the party the attorney represents, or by filing a written praecipe noting the entry of the attorney's appearance and listing the attorney's office address, telephone number, fax number, if any, and Bar number.

(c) WITHDRAWAL OF APPEARANCE.

(1) *Withdrawal by Praecipe*. An attorney may withdraw an appearance by filing a praecipe signed by the attorney and the attorney's client, noting such withdrawal if

(A) a trial date has not been set in the case; and

(B) another attorney enters or has entered an appearance on behalf of the client, or the client states in writing that the client intends to represent himself or herself.

The withdrawal will not be grounds for a request for an extension of time or a continuance.

(2) *Withdrawal by Motion*.

(A) *In General*. Except where withdrawal by praecipe is permitted under Rule 101(c)(1), an attorney may withdraw only by order of the court on motion by the attorney served on all parties or their attorneys. The court may deny the attorney's motion for

leave to withdraw if the attorney's withdrawal would unduly delay trial of the case, be unduly prejudicial to any party, or otherwise not be in the interests of justice.

(B) *Notice to Client*. 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 must 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 14 days of service of the motion on the client.

(C) *Copy of Order to Client*. Except where leave to withdraw has been granted in open court in the presence of the affected client, the clerk must send to the affected client by first class mail, postage prepaid, a copy of any order granting leave to withdraw.

(d) APPEARANCES BY INACTIVE ATTORNEYS IN PRO BONO CASES. An inactive member of the District of Columbia Bar may enter an appearance, file pleadings, and practice in a particular case if:

(1) the attorney is affiliated with a legal services or referral program;

(2) the case is handled without a fee; and

(3) the attorney files 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) APPOINTMENT OF ATTORNEY; COMPENSATION.

(1) *Appointment of Attorney*. In any case where the court deems it necessary or proper, it may appoint an attorney for a defendant who has appeared or answered. In a case involving custody of a minor child, the court may appoint an attorney to appear on behalf of the child and represent the child's best interest as provided in D.C. Code § 16-831.06 (c), -914 (g), or -918 (b) (2012 Repl. & 2018 Supp.).

(2) *How Appointed*.

(A) *For Defendant*. A party seeking the appointment of an attorney to represent the defendant must make the request by filing a praecipe. If the court determines that the request for appointed counsel should be granted, it must issue an order appointing counsel for the defendant and apportioning payment of such fees as determined by the court. If fees are due, the order appointing counsel for the defendant will take effect on the payment of the fee. In cases where the court allows the party to proceed without prepayment of attorney’s fees, the order will take effect upon docketing.

(B) *For Minor Child*. On motion or on its own, the court may appoint an attorney to represent a minor child. A party seeking the appointment of an attorney or guardian ad litem to represent a minor child must make the request by motion served on all other parties. If the court determines that the request for appointed counsel should be granted, it must issue an order appointing counsel for the minor child and apportioning payment of such fees as determined by the court.

(3) *Time for Filing Answer*. Within 30 days of the date of appointment, unless the court extends the time for good cause, the appointed attorney must, if the defendant has already filed a written answer under oath, either adopt the defendant's answer by filing a praecipe so stating, or file a new answer signed by the defendant under oath, or, if the defendant refuses to sign the new answer under oath, take such other action as the

attorney deems appropriate.
(f) TERMINATION OF APPEARANCE. Notwithstanding any rule of court, the appearance of any appointed or other attorney in any action under D.C. Code §§ 16-831.01 to -.13 and 16-901 to -925 (2012 Repl. & 2018 Supp.) will be deemed to have terminated for all purposes upon completion of the case ending in a judgment, adjudication, decree, or final order from which no appeal has been taken when the time allowed for an appeal expires, and, if notice of appeal has been entered, upon the date of final disposition of the appeal. No action is required of any person or attorney under Rule 101(f), but the court may suspend the termination of the appearance on its own , or on the motion of any party to the case prior to the expiration of the time for appeal.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules.

COMMENT

Paragraph (e). Pursuant to D.C. Code § 16-918(a), paragraph (e) of this Rule provides that the Court may appoint an attorney for a defendant who has appeared or answered. While the statute is broad enough to encompass the appointment of an attorney for a defendant who has neither appeared nor answered, such an appointment would be necessary only in extraordinary circumstances. Where such circumstances exist, the Court should consider outlining the scope of representation expected.

Subparagraph (e)(2). Consistent with current practice, it is contemplated that in most cases, the amount ordered to be prepaid for appointment of counsel pursuant to subparagraph (e)(3) will be the minimum fee set by the Board of Judges of the Superior Court for such appointments.

Subparagraph (e)(3). Where an appointed attorney is unable to obtain the sworn signature of the defendant on an answer, subparagraph (e)(3) contemplates actions such as a request for appointment of a guardian ad litem or permission to withdraw the attorney's appearance in the case.

Rule 102. [Deleted].

Rule 103. [Deleted].

XIII. MISCELLANEOUS PROVISIONS

Rule 201. Release of Transcripts

(a) ORDERING TRANSCRIPTS. Any person who has made suitable arrangements to pay the appropriate fee is entitled to obtain a transcript of all or any part of any recorded proceedings other than those under seal.
(b) ENDORSEMENT ON TRANSCRIPT. Each transcript obtained in accordance with this rule must bear the following endorsement upon its cover page:
"This transcript represents the product of an official reporter, engaged by the court, who has personally certified that it represents the testimony and proceedings of the case as recorded. "
(c) TRANSCRIPT ON APPEAL. Upon the completion of any transcript in a matter to be brought before the appellate court, the reporter or transcriber must notify the trial court and counsel that the transcript has been completed and will be forwarded to the Court of Appeals within 7 days. The notice must inform counsel that any objections to the transcript must be presented to the trial court and served on opposing counsel within the 7-day period in the manner prescribed in Rule 5. The court will make known to the parties any objections which it raises sua sponte and will give the parties an opportunity to make representations to the court before the objections are resolved. All objections must be resolved by the trial court on the basis of the best available evidence as to what actually occurred in the proceedings.
(d) SECURITY OF ORIGINAL TRANSCRIPT. In any case in which a transcript is ordered by any person, the reporter or transcriber must deliver to the person a copy or copies of any transcript prepared. The original of the transcript, bearing the required certificate, must be filed by the reporter or transcriber with the clerk of the court and may not be changed in any respect except pursuant to rule of court.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to Civil Rule 201, except that the recording of court proceedings is addressed in General Family Rule N.

COMMENT

For provisions with respect to recording of court proceedings, see SCR-General Family N.

Rule 202. [Omitted].

COMMENT

SCR-Civil 202 is excluded since Family Division fees are covered in SCR-General Family Rule C.

Rule 203. [Deleted].

XIV. FIDUCIARY RULES

Rules 301 to 308. [Deleted].

COMMENT

SCR-Civil 301-308 deleted as not appropriate to Family Division practice.

Rule 309. [Deleted].

XV. DOMESTIC RELATIONS SPECIAL RULES

Rule 401. Reciprocal Enforcement of Support Proceedings

(a) COMMENCEMENT OF PROCEEDINGS IN WHICH THE DISTRICT OF COLUMBIA IS THE INITIATING JURISDICTION ("I" CASES). A reciprocal enforcement of support action is commenced by filing with the court an original and 3 copies of the testimony expected to be adduced by plaintiff, and the deposit of court costs, if any, required by the jurisdiction to which the case is to be forwarded. If the plaintiff does not file a statement of testimony, the court may order a transcript of testimony adduced at trial to be prepared in quadruplicate by the court reporter at the expense of the plaintiff.

(b) PROCEEDINGS IN WHICH THE DISTRICT OF COLUMBIA IS THE RESPONDING JURISDICTION ("R" CASES).

(1) *Jurisdiction of Defendant*. Jurisdiction of the defendant is obtained by service upon the defendant of a Notice of Hearing and Order Directing Appearance, together with a copy of a petition or complaint and supporting documents forwarded by the initiating jurisdiction and filed in the Family Court. Service must be made as provided in Rule 4(d).

(2) *Answer*. A defendant must file an answer in accordance with Rule 12(a). The defenses raised therein must be as specified by Rule 8(b).

(3) *Reply*. On application, the court may permit the plaintiff to file a reply to defendant's answer within such time as the court may determine reasonable, depending upon the circumstances of the case.

(4) *Subsequent Action*. If, in any other action within the Family Court, the question of support has been an issue or becomes an issue involving the same parties to a reciprocal support action the court may either specify that any award made must be paid through the reciprocal support order or dismiss the same in lieu of a new judgment. Any arrearages existing at the time of such dismissal will be incorporated in the new order.

(5) *Dismissal*. If the court is notified by an initiating state that a case is no longer active in that state, the clerk must enter a dismissal of the action, notify the initiating state and provide it with a certification of the financial record. Notice must also be given to counsel of record.

(6) *Referral of Cases*. Upon receipt by the clerk of a petition which names a respondent who is not within the territorial jurisdiction of this court, the clerk must, if able to ascertain the appropriate jurisdiction, refer the case to that jurisdiction without recourse to the initiating state. Notice of this referral must be made to the initiating jurisdiction.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules.

COMMENT

This Rule embodies the former Domestic Relations Rule on reciprocal support with some modifications to cover areas where experience has proven a need. Title 30A,

Chapter 3 of the D.C. Code embodies the Uniform Interstate Family Support Act of 1995 and is quite comprehensive in its coverage, so that there is no necessity for more rules.

Rule 402. [Deleted].

Rule 403. Payment of Support

(a) CHILD SUPPORT PAYMENTS.

(1) *In General*. A child support order is immediately enforceable by withholding unless, under D.C. Code § 46-207 (2012 Repl.), the court finds good cause not to require immediate withholding or the court approves the parties' agreement to an alternative method of payment.

(2) *Collection and Disbursement Unit*. Money due under a child support order enforced by the District of Columbia Government IV-D Agency or a child support order for which withholding is ordered must be paid through the Collection and Disbursement Unit. For all other orders, the court may order payment through the Collection and Disbursement Unit or the Family Court Finance Office.

(b) SPOUSAL SUPPORT PAYMENTS. The court may order that spousal support be paid through the Family Court Finance Office.

(c) DISBURSEMENT BY FINANCE OFFICE. All money received by the Family Court Finance Office must be promptly disbursed to the persons or agencies entitled to it.

COMMENT TO 2018 AMENDMENTS

The "IV-D Agency" is the Child Support Services Division of the Office of Attorney General for the District of Columbia or the successor organizational unit. The "Collection and Disbursement Unit," also known as the District of Columbia Child Support Clearinghouse, is operated by the IV-D Agency and is responsible for collection and disbursement of support payments.

Rule 403 allows parties in cases involving either or both child support and spousal support to agree, or the court to direct, that one spouse must make the payments through the Family Court Finance Office. Payments for only spousal support may not be made through the Collection and Disbursement Unit. Whether the payment involves child support, spousal support, or both, the Finance Office does not get involved in arranging for wage-withholding. However, a party that obtains wage-withholding of spousal support under Rule 69-II may arrange for the employer to make the payments to the Finance Office.

COMMENT

For the statutory provision on the payment of moneys through the Court, see D.C. Code § 16-911(c).

Rule 404. Social Service Referrals

In any proceeding involving custody or visitation the court may order a party or a child at issue to submit to an evaluation by the Court Social Services Division as detailed in an order of reference. Any written report made as a result of the evaluation may only be provided to the assigned judge, counsel of record, and unrepresented parties. On the court's order, the report may be filed on the docket under seal.

COMMENT TO 2018 AMENDMENTS

This rule has been amended consistent with the stylistic changes to the civil rules. This rule does not limit the court's ability to refer the party or child for evaluation by the Custody Assessment Unit.

COMMENT

Under D.C. Code § 11-1722(a) and (d) the Division will have the assistance of the Director of Social Services for purposes of home studies, psychological examinations, or other evaluations. See Superior Court Intrafamily Rule 11(e) for provisions permitting the Court to order treatment and counseling in intrafamily proceedings.

Rule 405. [Deleted].

COMMENT TO 2018 AMENDMENTS

Rule 405 was deleted because parentage proceedings are now addressed in the Rules Governing Parentage and Support Proceedings.

COMMENT

The purpose of this Rule is to implement the Parentage and Support Proceedings Reform Act of 1984. The intent of that act is to assist in making scientific blood test results available to the trier of fact in actions involving the issue of disputed paternity. To ensure that valid blood and tissue typing test results, including the results of the human leukocyte antigen test, are readily available as evidence to the trier of fact, the Rule provides that such test results shall be decided before trial. The intent of the act is also to prevent the situation where such tests, although performed, are not admitted at trial due to some correctable objection to the test results or procedures. It is also contemplated that expert witnesses should only be necessary in rare cases and that the test results and the reports should generally be admitted into evidence without the necessity of an expert witness testifying.

Section (c) replaces SCR-Dom. Rel. 12(a) for paternity proceedings. Section (d) represents one use of hearing commissioners as authorized in SCR-General Family D. Section (e) allows an adjudication of paternity without the presence of the respondent but does not allow a default judgment on the pleadings alone. *Cf.*
Note: SCR-Dom. Rel. 26 through 37 make pretrial discovery available in paternity proceedings.

Rule 406. Writ of *Ne Exeat*

(a) APPLICATION. Every application for writ of *ne exeat* must be by way of petition (which may be part of the original pleading), under oath, which must set forth with particularity the intention of either party to wrongly defeat the other party's right to the custody of a minor child or children, or the intention of the adverse party to leave the jurisdiction, or threats or declarations to that effect, in order to defeat the applicant's right to maintenance or alimony or the right of the child or children to maintenance, support and education. An application for writ of *ne exeat* must also set forth sufficient facts to support a finding that a less drastic remedy would be ineffective.

(b) NOTICE. Actual notice of the hearing and copies of all pleadings and other papers filed to date in the action or to be presented to the court at the hearing on the application for writ of *ne exeat* must be served on the adverse party or the adverse party's attorney of record, unless it can be satisfactorily shown by affidavit or otherwise under oath that such notice cannot be given in time or would defeat the purposes for which the writ is being sought.

(c) EXECUTION. Upon execution of a writ of *ne exeat* the law enforcement officer must forthwith bring the person before a judge sitting in the Family Court.

COMMENT TO 2018 AMENDMENTS

Section (d) was deleted because applications for writs of *ne exeat*, like other custody-related motions, should be presented to a judge in the Domestic Relations Branch and not to the judge in chambers.

SUPERIOR COURT RULES GOVERNING PARENTAGE AND SUPPORT PROCEEDINGS

Rule 1. Title and Scope of Rules

(a) TITLE. These rules may be known and cited as the Superior Court Rules Governing Parentage and Support Proceedings or as "Super. Ct. P&S R. __."

(b) SCOPE. These rules govern the procedure in all actions and proceedings in the Parentage and Support Branch of the Family Court of the Superior Court of the District of Columbia.

(c) PURPOSE. These rules should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

(d) APPLICABILITY OF DOMESTIC RELATIONS RULES. Except when inconsistent with these rules, the following Superior Court Rules Governing Domestic Relations Proceedings are deemed applicable to proceedings in the Parentage and Support Branch:

> 5, 5-III, 5.1, 5.2, 6, 7, 8, 9, 11, 12, 13,15, 17 18, 19, 24, 25, 26-37, 41, 42, 43, 44, 45, 46, 50, 52, 53, 54, 54-II, 55, 56, 57, 58, 59, 60, 61, 62, 62-I, 62-II, 62-III, 62.1, 63, 63-I, 64, 65, 66, 67, 68, 69, 69-I, 69-II, 70, 71, 77, 79, 84, 86, 101, 201, 401, 404, and 406.

COMMENT

The parentage and support rules closely align with the domestic relations rules. In fact, some provisions in the parentage and support rules are similar or identical to the corresponding domestic relations provisions. If an entire domestic relations rule was deemed applicable to parentage and support proceedings, the domestic relations rule was listed in section (d). The intent is that the parentage and support rules are consistent with the domestic relations rules that are deemed applicable to proceedings in the Parentage and Support Branch, but if any inconsistency emerges, the parentage and support rule controls.

Rule 2. Definitions; Unsworn Declarations

(a) DEFINITIONS. The following definitions apply to these rules:

(1) Affidavit. A written declaration or statement of facts confirmed by the oath of the party making it.

(2) Clerk. Clerk of the Parentage and Support Branch of the Family Court.

(3) Minor. Any person under the age of 18 except:

(A) in cases involving the right to child support, any person under the age of 21; or

(B) in cases where a child support order has been in issued in another jurisdiction, any person designated as a minor under the laws of that jurisdiction.

(4) "Reciprocal" or "Interstate" Support. Support based on an order issued or initiated in another state or jurisdiction other than the District of Columbia.

(5) IV-D Agency. The Child Support Services Division of the Office of Attorney General for the District of Columbia or successor organizational unit.

(b) 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
>
> ____ day of _____, _____, at
> (date) (month) (year)
>
> _____,
> (city or other locations, and state)
>
> _____.
> (country)

(2) *Exclusions*. Rule 2 (b)(1) does not apply to:

(A) a deposition;

(B) an oath of office; or

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

COMMENT

In accordance with D.C. Code §§ 46-353.03 and -356.04 (2018 Supp.), the definition of “minor” may be governed by the law in the state where a child support order was issued.

Rule 3. Commencing an Action and Enforcement of Child Support Orders

(a) IN GENERAL. The following parentage and support actions under D.C. Code § 11-1101 (2012 Repl.) are commenced by filing a petition or counterclaim with the court:

(1) proceedings to determine parentage of any child;

(2) actions for support of minor children;

(3) actions to enforce child support orders; and

(4) proceedings for reciprocal or interstate support under D.C. Code §§ 46-351.01 to -359.03 (2018 Supp.).

(b) CONTENTS OF PARENTAGE PETITION. A petition to commence a parentage proceeding under D.C. Code § 11-1101 (a)(11) (2012 Repl.) must set forth the jurisdiction of the court and all relevant information concerning the allegation of parentage, including, but not limited to, the following:

(1) the relationship of the petitioner to the child(ren);

(2) the date and place of birth of the children;

(3) the alleged natural father of the child(ren); and

(4) other requests for relief.

(c) CONTENTS OF SUPPORT PETITION. A petition to commence a support proceeding under D.C. Code § 11-1101 (a)(3) (2012 Repl.) must set forth the jurisdiction of the court and relevant information concerning the petition for support, including, but not limited to, the following:

(1) the relationship of the petitioner to the child(ren);

(2) the date and place of birth of the children;

(3) facts concerning parentage; and

(4) other requests for relief.

(d) ACTIONS TO REGISTER AN ORDER FOR ENFORCEMENT AND/OR MODIFICATION FROM ANOTHER JURISDICTION. Proceedings to register an order from another jurisdiction for enforcement and/or modification under D.C. Code §§ 46-356.01 to -.16 (2018 Supp.) are commenced by filing a certified copy of the order to be registered and any other supporting documentation required by statute.

COMMENT

Parentage and support cases may be initiated by petition in the Parentage and Support Branch or by complaint in the Domestic Relations Branch. If parentage or child support is the only issue to be resolved, the case must be filed by petition in the Parentage and Support Branch. *See* Comment (f) to General Family Rule A. This rule applies only to actions in the Parentage and Support Branch. If a separate case is filed in the Domestic Relations Branch, a related P&S matter may be consolidated in the Domestic Relations Branch with that case. *See* D.C. Code § 11-1104 (a), (b)(2)(B) (2012 Repl.); Domestic Relations Rule 42(a).

Rule 4. Process

(a) CONTENTS; AMENDMENTS.

(1) *Contents*. A Notice of Hearing and Order Directing Appearance or a Notice of Motion Hearing must:

(A) name the court and the parties;

(B) specify the date and time of the hearing;

(C) be directed to the respondent;

(D) state the name and address of the petitioner's attorney or, if unrepresented, of the petitioner;

(E) state the time period within which the respondent must file a response to the petition or motion;

(F) notify the respondent that failure to appear after being served, may result in a default judgment against the respondent for the relief demanded in the petition or motion;

(G) notify the respondent that failure to appear may result in issuance of a bench warrant and entry of a parentage and/or support order;

(H) be signed by the clerk; and

(I) bear the court's seal.

(2) *Amendments*. The court may permit a Notice of Hearing and Order Directing Appearance or a Notice of Motion Hearing to be amended.

(3) *Service Outside the District of Columbia*. A notice or order in lieu of notice 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 service of a notice or order in lieu of notice on a party not an inhabitant of or found within the District of Columbia.

(b) ISSUANCE OF NOTICE.

(1) *Support or Parentage Case*. In a case in which a party seeks permanent or temporary support of a child, to modify a child support order, or to establish parentage, the clerk must issue a Notice of Hearing and Order Directing Appearance or a Notice of Motion Hearing, specifying the date and time of the hearing, to each named respondent or individual whose attendance is required.

(2) *Motion for Contempt or Post-Judgment Motion*. When a judge or magistrate judge orders a hearing on a motion for contempt or a post-judgment motion, the clerk must issue a Notice of Motion Hearing for each party to be served.

(c) SERVING A NOTICE. A Notice of Hearing and Order Directing Appearance or a Notice of Motion Hearing must be served on the respondent or other named person, along with the petition or motion, in one of the following ways:

(1) by any person who is at least 18 years of age and not a party:

(A) delivering a copy of each to that individual personally; or

(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;

(C) leaving a copy of each at the individual's place of employment with someone of suitable age and discretion;

(2) by mailing a copy of each to the person to be served at the person's dwelling or usual place of abode or at the person's place of employment by certified mail, return receipt requested, and also by separate first-class mail—except that service by certified

mail that is unclaimed or refused and first-class mail alone is not a sufficient basis to permit the entry of a default order of parentage in a case where the respondent fails to file an answer or otherwise fails to respond appropriately;

(3) by the Metropolitan Police Department as authorized by D.C. Code § 13-302.01 (2012 Repl.);

(4) by a United States marshal or deputy marshal as authorized by D.C. Code § 13-302 (2012 Repl.); or

(5) in any manner authorized by applicable statute.

(d) TERRITORIAL LIMITS OF EFFECTIVE SERVICE. Serving a Notice of Hearing and Order Directing Appearance and the petition establishes personal jurisdiction over a respondent:

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

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

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

(e) 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 to the individual personally a copy of the Notice of Hearing and Order Directing Appearance and petition or the Notice of Motion Hearing and motion; 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.

(f) PROVING SERVICE.

(1) *Affidavit Required*. Unless service is waived, 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 personal delivery pursuant to Rule 4(c)(1), (3), or (4), the return of service must be made under oath (unless service was made by the United States marshal or deputy 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 eighteen (18) years of age or older;

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

(iv) the fact that a Notice of Hearing and Order Directing Appearance and petition or a Notice of Motion Hearing and motion were delivered to the person served; and

(v) if service was effected by delivery to a person other than the party named in the notice, then specific facts from which the court can determine that the person to whom was delivered meets the appropriate qualifications for receipt of process set out in Rule 4(c)(1)(B) or (C).

(B) *Service Under Rule 4(c)(2)*. If service is made by certified mail and first-class mail in accordance with Rule 4(c)(2), the return of service must be accompanied by the signed receipt, when available, and an affidavit, which must state:

(i) the caption and number of the case;

(ii) the name and address of the person who posted the certified and first-class mail;

(iii) the fact that the mailing contained a Notice of Hearing and Order Directing Appearance and petition or a Notice of Motion Hearing and motion;

(iv) if the return receipt does not purport to be signed by the party named in the notice, 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(c)(1)(B) or (C);

(v) if the return receipt is not available, whether the certified mail was unclaimed or refused; and

(vi) whether the first-class mail was returned.

(2) *Validity of Service.* Failure to prove service does not affect the validity of service.

(3) *Amending Proof*. The court may permit proof of service to be amended.

(g) TIME LIMIT FOR SERVICE.

(1) *In General*. Except where service is waived or made in open court, service must be accomplished before the time for commencement of the hearing specified on the Notice of Hearing and Order Directing Appearance or Notice of Motion Hearing. A separate proof must be filed as to each respondent who has not responded to the petition.

(2) *Extensions of Time*.

(A) *Application to Clerk*. Prior to the commencement of the hearing specified in the Notice of Hearing and Order Directing Appearance or Notice of Motion Hearing, the petitioner may file an application requesting the clerk to extend the time for service. The application must include a certificate of good faith efforts to complete service by the petitioner or by the petitioner's attorney.

(B) *Reissuance*. On receipt of an application that meets the requirements of Rule 4(g)(2)(A), the clerk must reissue a Notice of Hearing and Order Directing Appearance or Notice of Motion Hearing that specifies a new date and time for the initial hearing.

(3) *Dismissal*. The petitioner's failure to comply with the requirements of this rule will result in the dismissal without prejudice of the petition. The clerk will enter the dismissal and serve notice on all the parties.

(h) BENCH WARRANT.

(1) *When Personally Served.* Service of Notice of Hearing and Order Directing Appearance or Notice of Motion Hearing in accordance with D.C. Code § 46-206 (b)(1)(A)-(C) (2012 Repl.) provides a sufficient basis for issuance of a bench warrant for failure of the respondent to appear.

(2) *When Served by Mail*. Service executed in accordance with D.C. Code § 46-206 (b)(2) (2012 Repl.) does not provide a sufficient basis for issuance of a bench warrant for failure of the respondent to appear.

(i) NOTICE GIVEN IN OPEN COURT. Oral or written notice given by a judge, magistrate judge, or any authorized court representative, to any person during a hearing may constitute notice in lieu of service. If notice is provided in this matter, the clerk must promptly place proof of this notice in the appropriate court record.

COMMENT

The summons in Parentage & Support cases is called a Notice of Hearing and Order Directing Appearance ("NOHODA"). Specifically, the NOHODA serves the summons and notice function prescribed by D.C. Code § 46-206 (2012 Repl.). The content and service of a NOHODA must comply with the provisions of the statute which requires in Parentage & Support cases, that the petition be attached to the notice of an already scheduled hearing. While the statute refers only to "notice" and not specifically to a NOHODA, P&S Rule 4 tracks the statute in all other respects.

Rule 4(i) authorizes judges, magistrate judges, clerks, and other court employees to provide oral or written notice in lieu of service. *In re B.J.*, 917 A.2d 86, 90 (D.C. 2007), states that Superior Court rules of procedure are "broad enough to permit service of process by a courtroom clerk within a courtroom . . . ." *In re B.J.* also recognizes that, while non-resident litigants attending court are immune from service of process in other cases, there is an exception when the subject matter of the court proceeding is closely related by subject matter to the action in which service of process is being made. *Id*. However, under D.C. Code § 46-353.14 (2018 Supp.), a petitioner "is not amenable to service of civil process while physically present in the District to participate in a proceeding" under the Uniform Interstate Family Support Act.

Rule 5. Form of Pleadings, Motions, and Other Papers

(a) STATIONERY. Pleadings, motions, and other papers must be on opaque white paper, approximately 11 inches long and 8 1/2 inches wide, without a back or cover.

(b) CAPTION; NAMES OF PARTIES; LOCATIONAL INFORMATION.

(1) *In General*. Except as provided in Rule 5(b)(2), every pleading, motion, or other paper shall contain a caption setting forth:

(A) the name of the Superior Court, Family Court, Parentage and Support Branch;

(B) the title of the action, which must include:

(i) in the petition and answer, the names and residence addresses of all parties; or

(ii) in pleadings other than the petition and answer, it is sufficient to state the name of the first party on each side with an appropriate indication of other parties;

(C) the case number;

(D) the name of the pleading;

(E) where necessary to avoid confusion, the name or names of the party or parties on whose behalf the pleading or other paper is filed; and

(F) if the case has been assigned to a specific calendar or a specific magistrate judge, the calendar number or the magistrate judge's name must appear below the file number.

(2) *Substituted Address*. A party who has a reasonable basis to fear harassment or harm to the party or the party's family from disclosure of the party's residence address is not be required to state the address provided that the party substitutes the name and residence or other address of the party's attorney or a third person willing to accept service copies for the party and in care of whom such service copies may be sent. A paper which has a substituted address must be clearly marked to indicate that such a substitution has been made. In using a substitute address, a party certifies that the party may be notified of court proceedings and receive service copies of papers at that address.

(3) *Parties' Information Deemed Correct and Current*. Except as modified by a notice filed with the court and served on the parties under Domestic Relations Rule 5, the names, addresses, and telephone numbers represented in the pleading, motion, or other paper are deemed conclusively correct and current.

(c) SIGNING OF PLEADING, MOTION OR OTHER PAPER. Every pleading, motion, or other paper must be signed in accordance with Domestic Relations Rule 11. Below the signature, the paper must contain:

(1) if the party is represented by counsel, the attorney's name, office address, telephone number, e-mail address, if any, and District of Columbia Bar number; or

(2) if the party is not represented by counsel, the name, full residence address, telephone number, and e-mail address, if any, of the party by whom the paper was filed, or a substitute name, address, telephone number, and email address, if any, if a substitution has been made under Rule 5(b)(2).

(d) PARAGRAPHS.

(1) *In General*. Each claim or defense must be made in a separate paragraph. The contents of each paragraph must be limited as far as practicable to a statement of a single set of circumstances.

(2) *Prior or Pending Action*. The last paragraph of a party's initial pleading must:

(A) identify the court and docket number of any prior or pending action based on or including the same child; or

(B) state that there are no such cases.

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

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

COMMENT

This rule is substantially similar to Domestic Relations Rule 10.

Rule 6. Disclosures; Additional Discovery; Initial Hearings

(a**)** MANDATORY DISCLOSURES. Except as provided in Rule 6(d), at the initial hearing and any hearing thereafter, the parties must exchange the following documents:

(1) 2 most recent pay statements;

(2) most recent W-2, 1099, K-1, or other end-of-year income statement;

(3) proof of other income and means tested public benefits, such as unemployment compensation, workers' compensation, Social Security disability, veteran's benefits, Temporary Assistance for Needy Families, Supplemental Security Income, and any other source of income as defined in the Child Support Guideline;

(4) proof of Social Security derivative benefits received on behalf of the child(ren) subject to the case;

(5) most recent tax return, if self-employed;

(6) proof of alimony paid to the other party in the case or received from any person;

(7) proof of court-ordered child support for another child(ren) and proof of payment of the same;

(8) proof that other child(ren) reside in the home whom the party has a legal duty to support;

(9) proof of the increase in a parent or custodian's health insurance premium for including or adding child(ren) to the parent or custodian's health insurance plan;

(10) health insurance card, if the child(ren) is/are already covered by a health insurance plan;

(11) proof of any extraordinary medical expenses incurred on behalf of the child(ren) subject to the case that a party seeks to have included in the child support calculation;

(12) proof of child care expenses incurred for the child(ren) due to employment or education; and

(13) any other document required by the court.

(b) RESPONSIBILITY TO PRODUCE. Where the District of Columbia is the named party and the custodial parent has assigned his or her rights to support to the District of Columbia, the District of Columbia through the IV-D agency is responsible for producing the documents on behalf of the District of Columbia. In all other cases where the District of Columbia is the named party, the District of Columbia through the IV-D agency is responsible for producing the documents on behalf of the custodial parent.

(c) FAILURE TO PRODUCE NECESSARY DOCUMENTS. If the documents in Rule 6(a) are not produced but are necessary for the computation of the child support guidelines, a continuance may be granted.

(d) THIRD PARTY CUSTODIANS. A third party custodian is not required to provide the documents listed in Rule 6(a)(1)-(8).

(e) ADDITIONAL DISCOVERY**.** Any party may obtain additional discovery in accordance with Domestic Relations Rules 26 through 37.

(f) INITIAL HEARING.

(1) *In General*. At the initial hearing, the judge or magistrate judge may:

(A) explore the possibilities for early resolution through settlement or alternative dispute resolution or for expediting the case by use of stipulations;

(B) explore issues of service, notice, and identity of necessary parties and enter any appropriate orders regarding the same;

(C) determine whether parentage has been legally established and, if parentage has not been legally established, enter any appropriate orders, including adjudications of parentage based on in-court acknowledgment or genetic testing;

(D) determine any outstanding motions, if time allows and the parties are prepared, or set a date for hearing the motions;

(E) determine whether mandatory disclosures were made and whether there should be modifications to the mandatory disclosures specific to the case and enter any appropriate orders regarding the same;

(F) after consulting with the parties, set dates for future events in the case with the goal of establishing a permanent child support order at the earliest possible date—which may include a deadline by which mandatory disclosures or other discovery must be completed, a deadline by which motions must be filed, and a deadline for the filing of any legal memoranda—and require that the parties exchange additional information or documents, including that set forth in Domestic Relations Rule 26(a)(1);

(G) enter a temporary or permanent child support order; or

(H) order the parent(s) to search for a job and to provide proof of job search efforts.

(2) *Modifying Schedule*. The schedule set at the initial hearing may be modified by agreement of the parties, except that dates for court proceedings may not be modified without the court's leave.

COMMENT

Rule 6(d) exempts third party custodians from the requirement to provide the documents listed in Rule 6(a)(1)-(8) because, under D.C. Code § 16-916.01 (d)(8) (2018 Supp.), the income of a third party custodian is not considered when calculating child support.