SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
RULE PROMULGATION ORDER 16-01

(Amending Super. Ct. Crim. R. 1-60[1])

WHEREAS, pursuant to D.C. Code § 11-946 the Board of Judges of the Superior Court approved amendments to Superior Court Rules of Criminal Procedure 1-60; and

WHEREAS, pursuant to D.C. Code § 11-946 the amendments to these rules have been approved by the District of Columbia Court of Appeals; it is

ORDERED, that Superior Court Rules of Criminal Procedure 1-60 are hereby amended as set forth below; and it is further

ORDERED, that the amendments to Superior Court Rules of Criminal Procedure 1-60 shall take effect April 11, 2016, and shall govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

[1] Super. Ct. Crim. R. 44-I and 49.1 are not included in or affected by this order.

Rule 1. Scope; Authority of the Chief Judge; Definitions

(a) Scope. These rules govern the procedure in all criminal proceedings in the Superior Court of the District of Columbia.

(b) Authority of the Chief Judge. The Chief Judge by order may arrange and divide the business of the Criminal Division as may be necessary for the sound administration of justice, except that branches within the Division may be created or eliminated only by court rule.

(c) Tax Division. All proceedings brought by the District of Columbia for the imposition of criminal penalties pursuant to the provisions of the statutes relating to taxes levied by or in behalf of the District of Columbia shall be conducted in the Tax Division.

(d) Definitions. The following definitions apply to these rules.

(1) "Attorney for the government" means:

(A) the Attorney General of the United States or an authorized assistant;

(B) a United States Attorney or an authorized assistant;

(C) the Attorney General for the District of Columbia or an authorized assistant; and

(D) any other attorney authorized by law to conduct proceedings under these rules as a prosecutor.

(2) "Civil action" refers to a civil action in the Superior Court.

(3) "Court" means a judge or magistrate judge performing functions authorized by law, except where the term is used to mean the court as an institution.

(4) "District Court" means all United States District Courts.

(5) "Judge" means the Chief Judge, an Associate Judge, or a Senior Judge of the Superior Court of the District of Columbia.

(6) "Law enforcement officer" or "investigative officer" means an officer or member of the Metropolitan Police Department of the District of Columbia or of any other police force operating in the District of Columbia, or an investigative officer or agent of the United States or the District of Columbia.

(7) "Magistrate Judge" means a Magistrate Judge of the Superior Court of the District of Columbia as defined in D.C. Code §§ 11-1732 and -1732A (2012 Repl.).

(8) "Oath" includes an affirmation.

(9) "Organization" is defined in *18 U.S.C. § 18*.

(10) "Superior Court" means the Superior Court of the District of Columbia.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) makes clear that these rules apply to all criminal proceedings in the Superior Court.

D.C. Code § 11-902 (b) (2012 Repl.) permits the Superior Court by rule to establish branches within the Division. This rule eliminates the Felony, Misdemeanor and District of Columbia-Traffic Branches of the Criminal Division to permit greater flexibility in case management and utilization of resources.

Paragraph (b) reflects the Chief Judge's authority pursuant to D.C. Code § 11-906 (b) (2012 Repl.) to organize the business of the Superior Court. It replaces former paragraph (d).

Paragraph (d) (Definitions) differs from the federal rule in several ways to reflect local practice. In addition, consistent with the incorporation of *Federal Rule 54* into *Federal Rule 1*, the definitional paragraphs of former Superior Court Rule 54 have been moved, as modified, to this rule.

Subparagraph (d)(3), defining "court," substitutes "judge or magistrate judge" for "federal judge" and adds the phrase "except where the term is used to mean the court as an institution."

Rule 2. Interpretation

These rules are to be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule.

Rule 3. The Complaint

The complaint is a written statement of the essential facts constituting the offense charged. It must be made under oath before a judge or magistrate judge or any employee of the Superior Court authorized by the Chief Judge to administer oaths.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule by substituting the term "judge or magistrate judge" for the term "magistrate judge" and by retaining the local provision that permits any authorized employee of the Superior Court to administer oaths.

Rule 4. Arrest Warrant or Summons on a Complaint

(a) Issuance. If the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it. At the request of an attorney for the government, the judge must issue a summons, instead of a warrant, to a person authorized to serve it. A judge may issue more than one warrant or summons on the same complaint. If a defendant fails to appear in response to a summons, a judge or magistrate judge must issue a bench warrant. A judge may issue an arrest warrant in lieu of a bench warrant. Except for good cause shown by specific statements appearing in the complaint or in an affidavit filed with the complaint, no warrant shall be issued unless the complaint has been approved by an appropriate prosecutor.

(b) Probable cause. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) Form.

(1) Warrant. An arrest warrant must:

(A) contain the defendant's name or, if it is unknown, a name or description by which the defendant can be identified with reasonable certainty;

(B) describe the offense charged in the complaint;

(C) command that the defendant be arrested and brought without unnecessary delay before the court or other person enumerated in *18 U.S.C. § 3041*;

(D) be signed by a judge;

(E) state or contain the name of the court; and

(F) state or contain the date of the issuance of the warrant.

(2) Summons. A summons must be in the same form as a warrant except that it must require the defendant to appear before the court at a stated time and place.

(d) Execution or Service, and Return.

(1) By Whom. Only a law enforcement officer or other authorized officer may execute a warrant. The summons may be served by any person authorized to serve a summons in a civil action in the Superior Court or by any officer authorized to execute an arrest warrant.

(2) Territorial Limits. A warrant or summons for a felony under D.C. Code §§ 16-1022 and -1024 (2012 Repl.) or for an offense punishable by imprisonment for more than 1 year may be executed or served at any place within the jurisdiction of the United States. A warrant

or summons for an offense punishable by imprisonment for not more than 1 year, or by a fine only, or by such imprisonment and a fine, may be executed or served in any place in the District of Columbia.

(3) Time Limit. An arrest warrant or summons for an offense punishable by imprisonment for not more than 1 year, or by a fine only, or by such imprisonment and a fine, may not be executed more than 1 year after the date of issuance.

(4) Manner.

(A) A warrant is executed by arresting the defendant. Upon arrest, an officer possessing the warrant must show it to the defendant. If the officer does not possess the warrant, the officer must inform the defendant of the warrant's existence and of the offense charged and, at the defendant's request, must show the warrant to the defendant as soon as possible.

(B) A summons is served on an individual defendant:

(i) by delivering a copy to the defendant personally; or

(ii) by leaving a copy at the defendant's residence or usual place of abode with a person of suitable age and discretion residing at that location; or

(iii) by mailing a copy to the defendant's last known address.

(C) A summons is served on an organization by delivering a copy to an officer, to a managing or general agent, or to another agent appointed or legally authorized to receive service of process. A copy must also be mailed to the organization's last known address within the District of Columbia or to its principal place of business elsewhere in the United States.

(5) Return.

(A) After executing a warrant, the officer must return it to the judge, magistrate judge or other judicial officer before whom the defendant is brought in accordance with Rule 5. At the request of an attorney for the government, an unexecuted warrant must be brought back to and cancelled by a judge.

(B) The person to whom a summons was delivered for service must return it on or before the return day.

(C) At the request of an attorney for the government, a judge may deliver an unexecuted warrant, an unserved summons, or a copy of the warrant or summons to a law enforcement officer or other authorized person for execution or service.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) takes into account the dictates of D.C. Code § 23-561 (a)(2) (2012 Repl.) which states: "If a person fails to appear in response to a summons, a warrant shall issue for his arrest." It also retains the language of the former rule requiring approval by an appropriate prosecutor of any complaint before an arrest warrant issues, except where good cause is shown.

Paragraph (b) retains the language of the former rule regarding the use of hearsay to support probable cause. The language was removed from the federal rule as unnecessary, in part because this principle is addressed in *Federal Rule of Evidence 1101*. Because this jurisdiction has not adopted the Federal Rules of Evidence, the Superior Court rule did not follow this change.

Subparagraphs (c)(1)(E) and (F) retain the additional requirement of the former rule that the warrant contain the name of the court and the date of the issuance of the warrant to conform with the requirements of D.C. Code § 23-561 (b)(1) (2012 Repl.).

Subparagraph (c)(2) differs from subparagraph (b)(2) of the federal rule by substituting "the court" for "magistrate judge."

Subparagraphs (d)(2) and (3) include territorial and time limits not found in the federal rule. See D.C. Code § 23-563 (a)–(b) (2012 Repl.) (dealing with warrants or summons issued by the Superior Court); D.C. Code §§ 16-1022, -1024 (2012 Repl.) (defining the crime and punishment for parental kidnapping, which, although a felony, is punishable by a fine of not more than $1000 and/or imprisonment for not more than six months). The time limit in subparagraph (d)(3) is not intended to apply to bench warrants issued as to any offense.

Subparagraphs (d)(2) and (5) recognize the possibility of arrests on Superior Court warrants within or outside the District of Columbia. Accordingly, subparagraph (d)(5) provides for a return to the appropriate judge, magistrate judge, or other appropriate federal, state or local judicial officer.

Subparagraph (d)(4) is substantially identical to subparagraph (c)(3) of the federal rule, with changes in the manner of serving a summons to reflect D.C. Code § 23-562 (a)(2) (2012 Repl.).

Subparagraph (d)(5) is substantially identical to subparagraph (c)(4) of the federal rule, with minor changes to reflect local practice.

Rule 4-I. Use of Summons When Reprosecuting Offense

If a prosecution is terminated by nolle prosequi or by court dismissal without prejudice and if the attorney for the government elects to reinstitute the prosecution or to bring a subsequent prosecution against the same party arising out of the same fact situation as the charge which was terminated by nolle prosequi or dismissal, the prosecuting authority must, except for good cause shown, serve the party by summons and must notify in writing the party's former counsel of the date and place formal charges will be reinstituted.

COMMENT TO 2016 AMENDMENTS

This rule, retained from the former rule, has no federal counterpart. Minor stylistic changes have been made to maintain consistency throughout the rules.

Rule 5. Initial Appearance

(a) Appearance Upon an Arrest.

(1) A law enforcement officer within the District of Columbia making an arrest under a warrant issued by the Superior Court upon a complaint, making an arrest without a warrant, or receiving a person arrested by a special police officer or other authorized person must take the arrested person without unnecessary delay before the court.

(2) If a person arrested without a warrant is brought before the court, a complaint or information must be filed forthwith.

(3) Before taking an arrested person before the court, a law enforcement officer may perform any recording, fingerprinting, photographing, or other preliminary police duties required in the particular case, and if such duties are performed with reasonable promptness, the period of time required therefor will not constitute delay within the meaning of this rule.

(4) This rule shall not be construed to conflict with or otherwise supersede *18 U.S.C. § 3501*.

(b) Advice. The court must inform the defendant of the following:

(1) the complaint against the defendant, and of any affidavit filed with it;

(2) the defendant's right to retain counsel or to request that counsel be appointed if the defendant cannot obtain counsel;

(3) the defendant's right to a preliminary hearing if a felony is charged; and

(4) the defendant's right not to make a statement, and that any statement made may be used against the defendant.

(c) Consulting With Counsel. The court must allow the defendant reasonable time and opportunity to consult counsel.

(d) Detention or Release. The court must detain or release the defendant as provided by statute or these rules.

(e) Probable Cause Determination Following Arrest Without a Warrant.

(1) If a defendant is arrested without a warrant, and the court imposes upon the defendant any conditions of release which constitute a significant restraint on pretrial liberty, the court must, unless the defendant waives an initial probable cause determination, require the prosecutor to file with the clerk by the end of the next working day a copy of a sworn statement of fact offered to establish probable cause.

(2) Upon the filing of the sworn statement of fact, the court must then proceed promptly to determine if there is probable cause to believe that an offense has been committed and that the defendant committed it.

(3) The determination of probable cause may be made by the court without conducting a hearing.

(4) The court's finding of probable cause may be based upon hearsay evidence in whole or in part.

(5) The court must enter its determination as to probable cause on the docket along with the date of the determination.

(6) In nonmoving traffic violation cases, the traffic citation may be considered by the court as sufficient to establish probable cause.

(7) If the court determines, based on the information offered by the prosecutor, that there is no probable cause, the court must release the defendant, without significant restraints on the defendant's liberty, and must order the defendant to appear for the next court proceeding.

(f) Arrests Outside the District of Columbia. A person arrested outside the District of Columbia on a warrant issued by the Superior Court of the District of Columbia must be taken before the court or other person enumerated in *18 U.S.C. § 3041* and must be held to answer in the court having jurisdiction to try the defendant pursuant to the Federal Rules of Criminal Procedure as if the warrant had been issued by the United States District Court for the District of Columbia.

(g) Video Teleconferencing. Video teleconferencing may be used to conduct an appearance under this rule if the defendant, having been afforded the opportunity to consult with counsel, consents.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Subparagraph (a)(1) of this rule limits its application to instances of arrest or receipt of an arrested person within the District of Columbia. *Cf.* D.C. Code § 23-563 (c) (2012 Repl.). Subparagraph (a)(4) includes a rule of construction to avoid conflicting with or superseding of *18 U.S.C. § 3501,* dealing with the admissibility of confessions. *See* D.C. Code §§ 23-562 (c)(1), 5-115.01 (2012 Repl.). *Cf. Dickerson v. United States,* 530 U.S. 428 (2000).

The provisions of former Rule 5(d) have been moved to Rule 5.1 to be consistent with *Federal Rules 5 and 5.1*.

Paragraph (e), which contains the provisions of former paragraph (c), has no federal counterpart. It sets forth the procedures for a probable cause determination that must be made whenever the court imposes significant restraints on the pretrial liberty of a person arrested without a warrant. See *Gerstein v. Pugh*, 420 U.S. 103 (1975). Subparagraph (e)(5) substitutes the term "docket" for "case jacket."

Paragraph (f) contains the provisions of former Superior Court Rule 5-I.

Paragraph (g) is identical to paragraph (f) of the federal rule except that it makes explicit that the defendant must have been afforded the opportunity to consult with counsel before consenting to the procedure.

Rule 5.1. Preliminary Hearing

(a) In General. If a defendant is charged with a felony, the court must conduct a preliminary hearing unless:

(1) the defendant waives the hearing;

(2) the defendant is indicted;

(3) the government files an information under Rule 7(b) charging the defendant with a felony; or

(4) the government files an information charging the defendant with a misdemeanor.

(b) Scheduling. Unless otherwise provided by statute, the court must hold the preliminary hearing within a reasonable time, but no later than 10 days after the initial appearance if the defendant is detained and no later than 20 days if the defendant is not detained.

(c) Extending the Time. With the defendant's consent and upon a showing of good cause—taking into account the public interest in the prompt disposition of criminal cases—the court may extend the time limits in Rule 5.1(b) one or more times. If the defendant does not consent, the court may extend the time limits only on a showing that extraordinary circumstances exist and justice requires the delay.

(d) Hearing and Finding. At the preliminary hearing, the defendant must not be called upon to plead. The finding of probable cause may be based on hearsay evidence in whole or in part. The defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired. Motions to suppress must be made to the court as provided in Rules 12 and 47. The purpose of the preliminary hearing is not for discovery. If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the court must promptly require the defendant to appear for further proceedings.

(e) Discharging the Defendant. If the court finds no probable cause to believe an offense has been committed or the defendant committed it, the court must dismiss the complaint and discharge the defendant. A discharge does not preclude the government from later prosecuting the defendant for the same offense.

COMMENT TO 2016 AMENDMENTS

This rule consists of provisions previously found in paragraph (d) of former Superior Court Rule 5. This change conforms Rules 5 and 5.1 to their federal counterparts.

Paragraph (b) has been modified by the addition of the phrase "unless otherwise provided by statute" in recognition of D.C. Code §§ 23-1322, -1323, and -1329 (2012 Repl.), which address the scheduling of preventive detention hearings.

Paragraph (d) retains the language of the former rule regarding the use of hearsay to support probable cause. The language was removed from the federal rule as unnecessary, in part because this principle is addressed in *Federal Rule of Evidence 1101*. Because this jurisdiction has not adopted the Federal Rules of Evidence, the Superior Court rule did not follow this change.

Paragraph (g) of the federal rule ("Recording the Proceeding") has been omitted from this rule as unnecessary in light of Superior Court Rule 36-I, which requires the recording of all court proceedings.

Paragraph (h) of the federal rule, which provides that Rule 26.2(a)-(d) and (f) applies at preliminary hearings, is not included because that paragraph was not adopted during prior reviews and amendments to the Superior Court rules.

Rule 5-I. [Deleted].

COMMENT TO 2016 AMENDMENTS

All of Rule 5-I (Arrests outside the District of Columbia) has been moved to Rule 5(f).

Rule 6. The Grand Jury

(a) Summoning a Grand Jury.

(1) In General. When the public interest so requires, the Chief Judge or an associate judge designated by the Chief Judge must order one or more grand juries to be summoned. A grand jury must have 16 to 23 members, and the Chief Judge or an associate judge designated by the Chief Judge must order that enough legally qualified persons be summoned to meet this requirement.

(2) Alternate Jurors. When a grand jury is selected, the court may also select alternate jurors. Alternate jurors must have the same qualifications and be selected in the same manner as any other juror. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror is subject to the same challenges, takes the same oath, and has the same authority as the other jurors.

(b) Objection to the Grand Jury or to a Grand Juror.

(1) Challenges. Either the government or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.

(2) Motion to Dismiss an Indictment. A party may move to dismiss the indictment based on an objection to the grand jury or on an individual juror's lack of legal qualification, unless the court has previously ruled on the same objection under Rule 6(b)(1). The motion to dismiss is governed by D.C. Code § 11-1910 (2012 Repl.). The court must not dismiss the indictment on the ground that a grand juror was not legally qualified if the record shows that at least 12 qualified jurors concurred in the indictment.

(c) Foreperson and Deputy Foreperson. The summoning judge or, in the summoning judge's absence or disability, the Chief Judge or a judge designated by the Chief Judge will appoint one juror as the foreperson and another as the deputy foreperson. In the foreperson's absence, the deputy foreperson will act as the foreperson. The foreperson may administer oaths and affirmations and will sign all indictments. The foreperson—or another juror designated by the foreperson—will record the number of jurors concurring in every indictment and will file the record with the clerk, but the record may not be made public unless the court so orders.

(d) Who May Be Present.

(1) While the Grand Jury Is in Session. The following persons may be present while the grand jury is in session: attorneys for the government, the witness being questioned, interpreters when needed, and a court reporter or an operator of a recording device.

(2) During Deliberations and Voting. No person other than the jurors, and any interpreter needed to assist a hearing-impaired or speech-impaired juror, may be present while the grand jury is deliberating or voting.

(e) Recording and Disclosing the Proceedings.

(1) Recording the Proceedings. Except while the grand jury is deliberating or voting, all proceedings must be recorded by a court reporter or by a suitable recording device. But the validity of a prosecution is not affected by the unintentional failure to make a recording. Unless the court orders otherwise, an attorney for the government will retain control of the recording, the reporter's notes, and any transcript prepared from those notes.

(2) Secrecy.

(A) No obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B).

(B) Unless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury:

(i) a grand juror;

(ii) an interpreter;

(iii) a court reporter;

(iv) an operator of a recording device;

(v) a person who transcribes recorded testimony;

(vi) an attorney for the government; or

(vii) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii).

(3) Exceptions.

(A) Disclosure of a grand-jury matter—other than the grand jury's deliberations or any grand juror's vote—may be made to:

(i) an attorney for the government for use in performing that attorney's duty;

(ii) any government personnel—including those of a state, state subdivision, Indian tribe, or foreign government—that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal and District of Columbia criminal law; or

(iii) a person authorized by *18 U.S.C. § 3322*.

(B) A person to whom information is disclosed under Rule 6(e)(3)(A)(ii) may use that information only to assist an attorney for the government in performing that attorney's duty to enforce federal and District of Columbia criminal law. An attorney for the government must promptly provide the Superior Court with the names of all persons to whom a disclosure has been made, and must certify that the attorney has advised those persons of their obligation of secrecy under this rule.

(C) An attorney for the government may disclose any grand-jury matter to another grand jury in the District of Columbia.

(D) An attorney for the government may disclose any grand-jury matter involving foreign intelligence, counterintelligence (as defined in *50 U.S.C. § 3003*), or foreign intelligence information (as defined in Rule 6(e)(3)(D)(iii)) to any federal law enforcement, intelligence, protective, immigration, national defense, or national security official to assist the official receiving the information in the performance of that official's duties. An attorney for the government may also disclose any grand jury matter involving, within the United States or elsewhere, a threat of attack or other grave hostile acts of a foreign power or its agent, a threat of domestic or international sabotage or terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by its agent, to any appropriate federal, state, state subdivision, Indian tribal, or foreign government official, for the purpose of preventing or responding to such threat or activities.

(i) Any official who receives information under Rule 6(e)(3)(D) may use the information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. Any state, state subdivision, Indian tribal, or foreign government official who receives information under Rule 6(e)(3)(D) may use the information only in a manner consistent with any guidelines issued by the Attorney General and the Director of National Intelligence.

(ii) Within a reasonable time after disclosure is made under Rule 6(e)(3)(D), an attorney for the government must file, under seal, a notice with the court stating that such information was disclosed and the departments, agencies, or entities to which the disclosure was made.

(iii) As used in Rule 6(e)(3)(D), the term "foreign intelligence information" means:

(a) information, whether or not it concerns a United States person, that relates to the ability of the United States to protect against—

• actual or potential attack or other grave hostile acts of a foreign power or its agent;

• sabotage or international terrorism by a foreign power or its agent; or

• clandestine intelligence activities by an intelligence service or network of a foreign power or by its agent; or

(b) information, whether or not it concerns a United States person, with respect to a foreign power or foreign territory that relates to—

• the national defense or the security of the United States; or

• the conduct of the foreign affairs of the United States.

(E) The court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand-jury matter:

(i) preliminarily to or in connection with a judicial proceeding;

(ii) at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury;

(iii) at the request of the government, when sought by a foreign court or prosecutor for use in an official criminal investigation;

(iv) at the request of the government if it shows that the matter may disclose a violation of state, Indian tribal, or foreign criminal law, as long as the disclosure is to an appropriate state, state-subdivision, or Indian tribal, or foreign government official for the purpose of enforcing that law; or

(v) at the request of the government if it shows that the matter may disclose a violation of military criminal law under the Uniform Code of Military Justice, as long as the disclosure is to an appropriate military official for the purpose of enforcing that law.

(F) A petition to disclose a grand-jury matter under Rule 6(e)(3)(E)(i) must be filed with the clerk of the court. Unless the hearing is ex parte—as it may be when the government is the petitioner—the petitioner must serve the petition on, and the court must afford a reasonable opportunity to appear and be heard to:

(i) an attorney for the government;

(ii) the parties to the judicial proceeding; and

(iii) any other person whom the court may designate.

(4) Sealed Indictment. The judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial.

The clerk must then seal the indictment, and no person may disclose the indictment's existence except as necessary to issue or execute a warrant or summons.

(5) Closed Hearing. Subject to any right to an open hearing in a contempt proceeding, the court must close any hearing to the extent necessary to prevent disclosure of a matter occurring before a grand jury.

(6) Sealed Records. Records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.

(7) Contempt. A knowing violation of Rule 6, or of guidelines jointly issued by the Attorney General and the Director of National Intelligence pursuant to Rule 6, may be punished as a contempt of court.

(f) Indictment and Return. A grand jury may indict only if at least 12 jurors concur. The grand jury—or its foreperson or deputy foreperson—must return the indictment to a judge in open court. If a complaint or information is pending against the defendant and 12 jurors do not concur in the indictment, the foreperson must promptly and in writing report the lack of concurrence to the judge.

(g) Discharging the Grand Jury. A grand jury must serve until discharged by the Chief Judge or other judge designated by the Chief Judge; but no grand jury may serve more than 18 months unless the Chief Judge or designee extends the service of the grand jury for a period of 6 months or less upon determination that such extension is in the public interest.

(h) Excusing a Juror. At any time, for good cause, the Chief Judge or other judge designated by the Chief Judge may excuse a juror either temporarily or permanently, and if permanently, the Chief Judge or designee may impanel an alternate juror in place of the excused juror.

(i) "Indian Tribe" Defined. "Indian tribe" means an Indian tribe recognized by the Secretary of the Interior on a list published in the Federal Register under *25 U.S.C. § 479a-1*.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002, and to the minor stylistic changes made in 2006. It differs from the federal rule in several respects.

Paragraphs (a), (c) (g),and (h) provide that the Chief Judge (or his or her designee), rather than the court in general, controls the summoning, discharging, and excusing of jurors and the appointing of the foreperson and deputy foreperson.

Subparagraph (b)(2), concerning motions to dismiss the indictment, refers to D.C. Code § 11-1910 (2012 Repl.), rather than to the federal statute, *28 U.S.C. § 1867(e)*.

The contempt provision, formerly the last sentence of subparagraph (e)(2), is now subparagraph (e)(7).

Subparagraph (e)(3) contains several new provisions. First, subparagraph (e)(3)(A)(ii) recognizes the sovereignty of Indian tribes and the possibility that it would be necessary to disclose grand-jury information to appropriate tribal officials in order to enforce the law. Similar language has been added to Rule 6(e)(3)(E)(iv).

Second, subparagraph (e)(3)(A)(iii) recognizes that disclosure may be made to a person under 18 U.S.C. § 3322 (authorizing disclosures to an attorney for the government and banking regulators for enforcing civil forfeiture and civil banking laws).

Third, subparagraph (e)(3)(E)(v) addresses disclosure of grand-jury information to armed forces personnel where the disclosure is for the purpose of enforcing military criminal law under the Uniform Code of Military Justice, *10 U.S.C. §§ 801-946*.

Fourth, subparagraph (e)(3)(D) reflects changes made to Rule 6 by Section 203 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Pub. L. No. 107-56; 115 Stat. 272) and by Section 6501 of the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 (Pub. L. No. 108-458; 118 Stat. 3638). The USA PATRIOT Act provision permits an attorney for the government to disclose grand-jury matters involving foreign intelligence or counterintelligence to other federal officials, in order to assist those officials in performing their duties. The term "foreign intelligence information" is defined in Rule 6(e)(3)(D)(iii). The IRTPA provision permits an attorney for the government to disclose grand jury matters involving, within the United States or elsewhere, threats of attack, sabotage, terrorism and clandestine intelligence gathering activities to appropriate federal, state, Indian tribal, or foreign government officials, in order to assist those officials in preventing or responding to such threats or activities. Under Rule 6(e)(3)(D)(i), the federal official receiving the information may only use the information as necessary and may be otherwise limited in making further disclosures. Any disclosures made under this provision must be reported under seal, within a reasonable time, to the court.

Finally, subparagraph (e)(3)(E)(iii) is a new provision added by the IRTPA. It permits the court, on motion of the government, to authorize disclosures sought by a foreign court or prosecutor for use in an official criminal investigation.

Subparagraph (e)(3)(B) differs from the federal rule in two ways. First, it retains a reference to the government attorney's duty to enforce both local and federal criminal law. Second, it retains a requirement that the attorney for the government provide disclosure notice to "the Superior Court" rather than to "the court that impaneled the grand jury."

Subparagraph (e)(3)(C) consists of language formerly found in subparagraph (e)(3)(C)(iii). It retains language permitting the attorney for the government to disclose a "grand-jury matter to another grand jury in the District of Columbia", rather than to a federal grand jury. Similarly, subparagraph (e)(3)(F) retains language, formerly in subparagraph (e)(3)(D), requiring that a disclosure petition be filed "with the clerk of the court" rather than "in the district where the grand jury convened."

Subparagraph (e)(3)(G) of the federal rule, concerning a disclosure petition "aris[ing] out of a judicial proceeding in another district," has been omitted as not applicable to Superior Court practice.

Subparagraph (e)(4) is the same as the federal rule except that this rule refers to the "judge" rather than to the "magistrate judge to whom an indictment is returned." Similarly, paragraph (f) refers twice to "judge" rather than to "magistrate judge."

Paragraphs (g) and (h) ("Discharging the Grand Jury" and "Excusing a Juror," respectively) consist of language that was previously found in paragraph (g) ("Discharge and Excuse").

Paragraph (g) differs from the federal rule by omitting the phrase "except as otherwise provided by statute," which refers to the locally inapplicable *18 U.S.C. § 3331*.

Rule 7. The Indictment and the Information

(a) When Used. An offense which may be punished by imprisonment for a term exceeding one year must be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment or information. An information may be filed without leave of court, but in the case of a person arrested without a warrant, the person must be brought before the court and charged forthwith by information or complaint or the person must be discharged.

(b) Waiving Indictment. An offense punishable by imprisonment for more than one year may be prosecuted by information if the defendant—in open court and after being advised of the nature of the charge and of the defendant's rights—waives prosecution by indictment.

(c) Nature and Contents

(1) In General. The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government. It need not contain a formal introduction or conclusion. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or the defendant committed it by one or more specified means. For each count, the indictment or information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. For purposes of an indictment referred to in D.C. Code § 23-331 (2012 Repl.), for which the defendant's true name is unknown and the defendant's identity has been established with reasonable certainty by forensic testing of DNA evidence as described in that statute, it shall be sufficient for the indictment to be by fictitious name.

(2) Citation Error. Unless the defendant was misled and thereby prejudiced, neither an error in a citation or a citation's omission is a ground to dismiss the indictment or information or to reverse a conviction.

(d) Surplusage. Upon the defendant's motion, the court may strike surplusage from the indictment or information.

(e) Amending an Information. Unless an additional or different offense is charged or a substantial right of the defendant is prejudiced, the court may permit an information to be amended at any time before the verdict or finding.

(f) Bill of Particulars. The court may direct the government to file a bill of particulars. The defendant may move for a bill of particulars before or within 10 days after arraignment or at a later time if the court permits. The government may amend a bill of particulars subject to such conditions as justice requires.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) retains the structure and content of the former Superior Court rule, and rejects the structure and content of the federal rule as not locally applicable for the following reasons.

First, paragraph (a) defines when an indictment is used in relation to the length of the penalty, not whether the offense is termed a felony or misdemeanor. See D.C. Code § 23-301 (2012 Repl.) (prosecution by indictment for offenses punishable by imprisonment for a term exceeding one year). An offense denominated a felony under District of Columbia law may be punished by a term of imprisonment of less than one year. See D.C. Code § 16-1024 (2012 Repl.) (parental kidnapping). No indictment would be required by virtue of the penalty.

Second, paragraph (a) does not adopt the provision of the federal rule that excludes criminal contempt from prosecution by indictment. Where a District of Columbia statute authorizes punishment for criminal contempt, an indictment or information may be required, depending on the maximum penalty. See D.C. Code § 23-1329 (c) (2012 Repl.) (criminal contempt for violating release conditions, penalty not to exceed six months); D.C. Code § 11-944 (2012 Repl.) (criminal contempt, penalty not specified); D.C. Code § 23-301 (2012 Repl.) (prosecution by indictment for offenses punishable by imprisonment for a term exceeding one year). This modification is not intended to have any impact on contempt proceedings under Rule 42.

Third, paragraph (a) omits references to offenses punishable by death. The District of Columbia has no death penalty.

Finally, paragraph (a) does not refer to *Federal Rule 58(b)(1)* respecting misdemeanors since that rule has no local counterpart.

Subparagraph (c)(1) reflects local law regarding DNA indictments.

Subparagraph (c)(2) of the federal rule dealing with criminal forfeitures is omitted. Proceedings for the forfeiture of property in the Superior Court are brought pursuant to Superior Court Civil Rule 71A-I.

Rule 8. Joinder of Offenses and of Defendants

(a) Joinder of Offenses. The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged—whether felonies or misdemeanors or both—are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of Defendants. The indictment or information may charge 2 or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.

COMMENT TO 2016 AMENDMENTS

With one proviso, this rule has been redrafted to conform to the general restyling of the federal rules in 2002. Paragraph (a) conforms to the federal rule's stylistic changes only up to the word "are." Adopting the other changes to paragraph (a) of the federal rule would make this rule differ from Title 23 of the D.C. Code, which provides for joinder of offenses that "are of the same or similar character or are based on the same act or transaction *or on two or more acts or transactions connected together* or constituting parts of a common scheme or plan." D.C. Code § 23-311 (a) (2012 Repl.) (emphasis added). The 2002 amendments of the federal rule eliminated the italicized language from paragraph (a), and rephrased the remainder of the paragraph. This rule retains all of the quoted language and thus conforms to D.C. Code § 23-311 (2012 Repl.).

Paragraph (b) is identical to its federal counterpart.

Rule 9. Arrest Warrant or Summons on an Indictment or Information

(a) Issuance. A judge must issue a warrant—or at the government's request, a summons—for each defendant named in an indictment or named in an information if one or more affidavits accompanying the information establish probable cause to believe that an offense has been committed and that the defendant committed it. The judge may issue more than one warrant or summons for the same defendant. The judge must issue the arrest warrant to an officer authorized to execute it or the summons to a person authorized to serve it. If a defendant fails to appear in response to a summons, the court must issue a warrant.

(b) Form.

(1) Warrant. The warrant must conform to Rule 4(c)(1) except that it must be signed by the clerk and must describe the offense charged in the indictment or information. The terms of release or detention may be fixed by the judge and endorsed on the warrant.

(2) Summons. The summons must be in the same form as a warrant except that it must require the defendant to appear before the court at a stated time and place.

(c) Execution or Service; Return; Initial Appearance.

(1) Execution or Service.

(A) The warrant must be executed or the summons served as provided in Rule 4(d).

(B) The officer executing the warrant must proceed in accordance with Rule 5(a)(1).

(2) Return. A warrant or summons must be returned in accordance with Rule 4(d)(5).

(3) Initial Appearance. When an arrested or summoned defendant first appears before the court, the judge or magistrate judge must proceed under Rule 5.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

In paragraph (a), the phrase "a judge" has been substituted for "the court." The latter phrase is now defined to include both judges and magistrate judges. A magistrate judge is not authorized to issue an arrest warrant. The last sentence of paragraph (a) takes into account D.C. Code § 23-561 (a)(2) (2012 Repl.), which requires that a warrant issue when a person fails to appear in response to a summons. Because a judge or a magistrate judge may issue such a warrant, that sentence uses the phrase "the court."

In addition, paragraph (a) differs from the former Superior Court rule by eliminating as unnecessary language specifying that some warrants be issued to the Chief of Police and that others be issued to the Chief or to the United States Marshal, and by substituting the requirement that process be issued to and served by authorized persons. The authorized persons are specified in D.C. Code § 16-703 (c) and (d) (2012 Repl.). A similar change has been made to paragraph (c).

In order to conform to local practice, subparagraph (b)(1) retains a provision permitting the court to specify release conditions on a warrant. See D.C. Code §§ 16-704, 23-1110 (2012 Repl.).

Subparagraph (c)(3) differs from the federal rule because a person arrested on a warrant may first appear before an associate judge or a magistrate judge in Superior Court.

Rule 10. Arraignment

(a) In General. An arraignment must be conducted in open court and must consist of:

(1) ensuring that the defendant has a copy of the indictment or information;

(2) reading the indictment or information to the defendant or stating to the defendant the substance of the charge; and then

(3) asking the defendant to plead to the indictment or information.

(b) Waiving Appearance. A defendant need not be present for the arraignment if:

(1) the defendant has been charged by indictment or misdemeanor information;

(2) the defendant, in a written waiver signed by both the defendant and defense counsel, has waived appearance and has affirmed that the defendant received a copy of the indictment or information and that the plea is not guilty; and

(3) the court accepts the waiver.

(c) Video Teleconferencing. Video teleconferencing may be used to arraign a defendant if the defendant, having been afforded the opportunity to consult with counsel, consents.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. Paragraphs (b) and (c) are new to this and the federal rule. This rule is identical to the federal rule except that it makes explicit that the defendant must have been afforded the opportunity to consult with counsel before consenting to arraignment by video teleconferencing.

Rule 11. Pleas

(a) Entering a Plea.

(1) In General. A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) Conditional Plea. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) Nolo Contendere Plea. Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) Failure to Enter a Plea. If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) the court's authority to order restitution; and

(K) that if the defendant is not a citizen of the United States, conviction of the offense for which the defendant has been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(2) Ensuring That a Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) Determining the Factual Basis for a Plea. Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(4) Innocence Protection Act. If the defendant is entering a plea to a crime of violence, the court must ensure that the defendant has been advised as required by D.C. Code § 22-4132 (2012 Repl.).

(c) Plea Agreement Procedure.

(1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) Disclosing a Plea Agreement. The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) Judicial Consideration of a Plea Agreement.

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report. If, however, the defendant enters a plea of guilty or nolo contendere to an offense involving a victim as defined in D.C. Code § 23-1905 (2)(A) (2012 Repl.), and the agreement is of the type specified in Rule 11(c)(1)(C), the court must defer that decision until the conditions of Rule 32(a) are met.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) Accepting a Plea Agreement. If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) Rejecting a Plea Agreement. If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) Withdrawing a Guilty or Nolo Contendere Plea. A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason;

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under Rule 11(c)(5); or

(B) the defendant can show a fair and just reason for requesting the withdrawal; or

(3) after the court imposes sentence, in order to correct manifest injustice.

(e) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements. Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or

criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;

(2) a plea of nolo contendere;

(3) any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas; or

(4) any statement made in the course of plea discussions with an attorney for the government that do not result in a plea of guilty or that result in a plea of guilty later withdrawn.

However, such a statement is admissible:

(1) in any proceeding wherein another statement made in the course of the same plea or plea discussion has been introduced and the statement ought in fairness be considered contemporaneously with it; or

(2) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(f) Recording the Proceedings. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).

(g) Harmless Error. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

In subparagraph (b)(1), the advice required to be given to the defendant differs from the federal rule. Four subparagraphs found in the federal rule are not included, as they are locally inapplicable: (J) on forfeiture, (L) on special assessments, (M) on application of the United States Sentencing Guidelines, and (N) on waiver of appeal and collateral attacks.

Subparagraph (b)(1)(H) includes a new requirement that the court advise the defendant of the applicable term of supervised release. This has long been required by the federal rule, but was not relevant in Superior Court until the enactment of D.C. Code § 24-403.01 (2012 Repl.) as part

of the Sentencing Reform Amendment Act of 2000, which requires the imposition of supervised release following a term of imprisonment.

A new subparagraph (b)(1)(K) has been added to reflect the requirements of D.C. Code § 16-713 (2012 Repl.) (Alien Sentencing).

A new subparagraph (b)(4) has been added to reflect the requirements of the Innocence Protection Act of 2001, D.C. Code § 22-4132 (2012 Repl.).

Subparagraph (c)(1)(C) omits the federal rule's reference to the United States Sentencing Guidelines.

Subparagraph (c)(3)(A) provides that whenever the plea agreement is of the type specified in subparagraph (c)(1)(C) and the plea is to an offense involving a victim as defined in D.C. Code § 23-1905 (2012 Repl.), the court must defer deciding whether to accept the agreement until it has reviewed the presentence report.

Consistent with the reorganization of the federal rules, paragraph (d) of this rule now contains the substance of former Superior Court Rule 32(e) (Withdrawal of Plea of Guilty). It retains the difference between the federal and Superior Court provisions: post-sentence plea withdrawal is not permitted by the federal rule, but is permitted by this rule to correct manifest injustice. No change in practice is intended.

Paragraph (e) retains the language of the former Superior Court rule regarding the admissibility of pleas and related statements. The corresponding language in the federal rule was changed to refer to *Federal Rule of Evidence 410*. Because this jurisdiction has not adopted the Federal Rules of Evidence, the Superior Court rule did not follow this change.

Paragraph (i) of the former Superior Court rule, defining the term "court," has been deleted as unnecessary in light of the definition of the term in Rule 1.

Rule 12. Pleadings and Pretrial Motions

(a) Pleadings. The pleadings in a criminal proceeding are the indictment, the information, and the pleas of not guilty, guilty, and nolo contendere.

(b) Pretrial Motions.

(1) In General. Rule 47 applies to a pretrial motion.

(2) Motions That May Be Made Before Trial. A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial of the general issue.

(3) Motions That Must Be Made Before Trial. The following must be raised before trial:

(A) a motion alleging a defect in instituting the prosecution;

(B) a motion alleging a defect in the indictment or information—but at any time while the case is pending, the court may hear a claim that the indictment or information fails to invoke the court's jurisdiction or to state an offense;

(C) a motion to suppress evidence;

(D) a Rule 14 motion to sever charges or defendants; and

(E) a Rule 16 motion for discovery.

(4) Notice of the Government's Intent to Use Evidence:

(A) At the Government's Discretion. At the arraignment or as soon afterward as practicable, the government may notify the defendant of its intent to use specified evidence at trial in order to afford the defendant an opportunity to object before trial under Rule 12(b)(3)(C).

(B) At the Defendant's Request. At the arraignment or as soon afterward as practicable, the defendant may, in order to have an opportunity to move to suppress evidence under Rule 12(b)(3)(C), request notice of the government's intent to use (in its evidence-in-chief at trial) any evidence that the defendant may be entitled to discover under Rule 16.

(c) Ruling on a Motion. The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

(d) Waiver of a Defense, Objection, or Request. A party waives any Rule 12(b)(3) defense, objection, or request not raised at the time required by Rule 47 or by any extension the court provides. For good cause, the court may grant relief from the waiver.

(e) Defendant's Continued Custody or Release Status. If the court grants a motion to dismiss based on a defect in instituting the prosecution, in the indictment, or in the information, it may order the defendant to be released or detained under D.C. Code § 23-1321 et seq. (2012 Repl.) for a specified time until a new indictment or information is filed. This rule does not affect any statutory period of limitations.

(f) Producing Statements at a Suppression Hearing. Rule 26.2 applies at a suppression hearing under Rule 12(b)(3)(C). If the defendant has called a law enforcement officer as a witness, both the government and the defendant are required to produce statements of the officer in their possession under the terms of Rule 26.2.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Consistent with the former rule, paragraphs (c) and (f) of the federal rule have been omitted. Paragraph (c) of the federal rule (Motion Deadline) is unnecessary because the time for filing motions is governed by Rule 47. Paragraph (f) (Recording the Proceedings) is unnecessary in light of Superior Court Rule 36-I, which requires the recording of all proceedings.

Consistent with the organization of the federal rules, paragraphs (c) and (e) of this rule have been incorporated from former Superior Court Rule 47-I (g) and (h).

Paragraph (c) now includes the federal rule's requirement that the court state its essential factual findings on the record when deciding a motion.

Paragraph (e) has been modified to refer to local rather than federal law.

Paragraph (f) retains a difference between the federal and local rule with respect to producing statements of law enforcement officers called by the defendant.

Rule 12.1. Notice of an Alibi Defense

(a) Government's Request for Notice and Defendant's Response.

(1) Government's Request. An attorney for the government may request in writing that the defendant notify an attorney for the government of any intended alibi defense. The request must state the time, date, and place of the alleged offense.

(2) Defendant's Response. Within 10 days after the request, or at some other time the court sets, the defendant must serve written notice on an attorney for the government of any intended alibi defense. The defendant's notice must state:

(A) each specific place where the defendant claims to have been at the time of the alleged offense; and

(B) the name, address, and telephone number of each alibi witness on whom the defendant intends to rely.

(b) Disclosing Government Witnesses.

(1) Disclosure. If the defendant serves a Rule 12.1(a)(2) notice, an attorney for the government must disclose in writing to the defendant or the defendant's attorney:

(A) the name, address, and telephone number of each witness the government intends to rely on to establish the defendant's presence at the scene of the alleged offense; and

(B) each government rebuttal witness to the defendant's alibi defense.

(2) Time to Disclose. Unless the court directs otherwise, an attorney for the government must give its Rule 12.1(b)(1) disclosure within 10 days after the defendant serves notice of an intended alibi defense under Rule 12.1(a)(2), but no later than 10 days before trial.

(c) Continuing Duty to Disclose. Both an attorney for the government and the defendant must promptly disclose in writing to the other party the name, address, and telephone number of each additional witness if:

(1) the disclosing party learns of the witness before or during trial; and

(2) the witness should have been disclosed under Rule 12.1(a) or (b) if the disclosing party had known of the witness earlier.

(d) Exceptions. For good cause, the court may grant an exception to any requirement of Rule 12.1(a)–(c).

(e) Failure to Comply. If a party fails to comply with this rule, the court may exclude the testimony of any undisclosed witness regarding the defendant's alibi. This rule does not limit the defendant's right to testify.

(f) Inadmissibility of Withdrawn Intention. Evidence of an intention to rely on an alibi defense, later withdrawn, or of a statement made in connection with that intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule.

Rule 12.2. Notice of an Insanity Defense; Mental Examination

(a) Notice of an Insanity Defense. Insanity shall not be raised as a defense unless the defendant has complied with the notice provisions of D.C. Code § 24-501 (j) (2012 Repl.).

(b) Notice of Expert Evidence of a Mental Condition. If a defendant intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing on the issue of guilt, the defendant must—within the time provided for filing a pretrial motion or at any later time the court sets—notify an attorney for the government in writing of this intention and file a copy of the notice with the clerk. The court may, for good cause, allow the defendant to file the notice late, grant the parties additional trial-preparation time, or make other appropriate orders.

(c) Mental Examination.

(1) Authority to Order an Examination; Procedures. In an appropriate case the court may, upon motion of the prosecutor or upon its own initiative, order the defendant to submit to one or more mental examinations by a psychiatrist or other expert designated for this purpose in the order of the court.

(2) Inadmissibility of a Defendant's Statements. No statement made by a defendant in the course of any examination conducted under this rule (whether conducted with or without the defendant's consent), no testimony by the expert based on the statement, and no other fruits of the statement may be admitted into evidence against the defendant in any criminal proceeding except on an issue regarding mental condition on which the defendant has introduced evidence requiring notice under paragraphs (a) or (b) of this rule.

(d) Failure to Comply. The court may exclude any expert evidence from the defendant on the issue of the defendant's mental disease, mental defect, or any other mental condition bearing on the defendant's guilt if the defendant fails to:

(1) give notice under Rule 12.2(b); or

(2) submit to an examination when ordered under Rule 12.2(c).

(e) Inadmissibility of Withdrawn Intention. Evidence of an intention as to which notice was given under Rule 12.2(a) or (b), later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) retains the language of the former rule and its reference to the local statute, D.C. Code § 24-501 (j) (2012 Repl.).

Paragraphs (b), (c), and (d) omit the provisions of the federal rule pertaining to capital punishment. The District of Columbia has no death penalty.

Paragraph (c) also omits all references to competency examinations, which are now governed in the District of Columbia by D.C. Code § 24-531.01 et seq. (2012 Repl.).

Rule 12.3. Notice of a Public-Authority Defense

(a) Notice of the Defense and Disclosure of Witnesses.

(1) Notice in General. If a defendant intends to assert a defense of actual or believed exercise of public authority on behalf of a law enforcement agency or federal intelligence agency at the time of the alleged offense, the defendant must so notify an attorney for the government in writing and must file a copy of the notice with the clerk within the time provided for filing a pretrial motion, or at any later time the court sets. The notice filed with the clerk must be under seal if the notice identifies a federal intelligence agency as the source of public authority.

(2) Contents of Notice. The notice must contain the following information:

(A) the law enforcement agency or federal intelligence agency involved;

(B) the agency member on whose behalf the defendant claims to have acted; and

(C) the time during which the defendant claims to have acted with public authority.

(3) Response to the Notice. An attorney for the government must serve a written response on the defendant or the defendant's attorney within 10 days after receiving the defendant's notice, but no later than 20 days before trial. The response must admit or deny that the defendant exercised the public authority identified in the defendant's notice.

(4) Disclosing Witnesses.

(A) Government's Request. An attorney for the government may request in writing that the defendant disclose the name, address, and telephone number of each witness the defendant intends to rely on to establish a public-authority defense. An attorney for the government may serve the request when the government serves its response to the defendant's notice under Rule 12.3(a)(3), or later, but must serve the request no later than 20 days before trial.

(B) Defendant's Response. Within 7 days after receiving the government's request, the defendant must serve on an attorney for the government a written statement of the name, address, and telephone number of each witness.

(C) Government's Reply. Within 7 days after receiving the defendant's statement, an attorney for the government must serve on the defendant or the defendant's attorney a written statement of the name, address, and telephone number of each witness the government intends to rely on to oppose the defendant's public-authority defense.

(5) Additional Time. The court may, for good cause, allow a party additional time to comply with this rule.

(b) Continuing Duty to Disclose. Both an attorney for the government and the defendant must promptly disclose in writing to the other party the name, address, and telephone number of any additional witness if:

(1) the disclosing party learns of the witness before or during trial; and

(2) the witness should have been disclosed under Rule 12.3(a)(4) if the disclosing party had known of the witness earlier.

(c) Failure to Comply. If a party fails to comply with this rule, the court may exclude the testimony of any undisclosed witness regarding the public-authority defense. This rule does not limit the defendant's right to testify.

(d) Protective Procedures Unaffected. This rule does not limit the court's authority to issue appropriate protective orders or to order that any filings be under seal.

(e) Inadmissibility of Withdrawn Intention. Evidence of an intention as to which notice was given under Rule 12.3(a), later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

COMMENT TO 2016 AMENDMENTS

This rule, new to the Superior Court, is identical to the federal rule.

Rule 12.4. Disclosure Statement

(a) Who Must File.

(1) Nongovernmental Corporation. Any nongovernmental corporate party must file a statement identifying the party's parent corporation and subsidiaries and any publicly held corporation that holds 10% or more of its stock.

(2) Partnership. Any partnership that is a party must file a statement identifying all partners, including silent partners.

(b) Time for Filing; Supplemental Filing. A party must:

(1) file the Rule 12.4(a) statement upon the defendant's initial appearance; and

(2) promptly file a supplemental statement upon any change in the information that the statement requires.

COMMENT TO 2016 AMENDMENTS

This is a new rule.

Paragraph (a) differs from the federal rule by adopting language from District of Columbia Court of Appeals Rule 28. Specifically, it expands the requirement of filing a disclosure statement to include corporate subsidiaries and partnerships. In addition, the disclosure requirement covers institutional parties but not institutional victims.

Paragraph (b) is identical to the federal rule.

Rule 13. Joint Trial of Separate Cases

The court may order that separate cases be tried together as though brought in a single indictment or information if all offenses and all defendants could have been joined in a single indictment or information. If two or more defendants charged in separate informations are alleged to have participated in the same act or transaction or in the same series of acts and transactions constituting an offense or offenses, the informations, if filed the same day, must, unless otherwise ordered by the court, be treated as joined for purpose of trial. In that event, each such information must indicate the other information or informations with which it is joined for purpose of trial.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. The first sentence is identical to the federal rule. The remaining sentences, not found in the federal rule, are retained from the former Superior Court rule.

Rule 14. Relief from Prejudicial Joinder

(a) Relief. If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

(b) Defendant's Statements. Before ruling on a defendant's motion to sever, the court may order an attorney for the government to deliver to the court for in camera inspection any defendant's statement that the government intends to use as evidence.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule.

Rule 15. Depositions

(a) When Taken.

(1) In General. A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion because of exceptional circumstances and in the interest of justice. If the court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data.

(2) Detained Material Witness. A witness who is detained under D.C. Code § 23-1326 (2012 Repl.) may request to be deposed by filing a written motion and giving notice to the parties. The court may then order that the deposition be taken within a reasonable period of time and may discharge the witness after the witness has signed under oath the deposition transcript.

(b) Notice.

(1) In General. A party seeking to take a deposition must give every other party reasonable written notice of the deposition's date and location. The notice must state the name and address of each deponent. If requested by a party receiving the notice or by the deponent, the court may, for good cause, change the deposition's date or location.

(2) To the Custodial Officer. A party seeking to take the deposition must also notify the officer who has custody of the defendant of the scheduled date and location.

(c) Defendant's Presence.

(1) Defendant in Custody. The officer who has custody of the defendant must produce the defendant at the deposition and keep the defendant in the witness's presence during the examination, unless the defendant:

(A) waives in writing the right to be present; or

(B) persists in disruptive conduct justifying exclusion after being warned by the court that disruptive conduct will result in the defendant's exclusion.

(2) Defendant Not in Custody. A defendant who is not in custody has the right upon request to be present at the deposition, subject to any conditions imposed by the court. If the government tenders the defendant's expenses as provided in Rule 15(d) but the defendant still fails to appear, the defendant—absent good cause—waives both the right to appear and any objection to the taking and use of the deposition based on that right.

(d) Expenses. If the deposition was requested by the government, the court may—or if the defendant is unable to bear the deposition expenses, the court must—order the government to pay:

(1) any reasonable travel and subsistence expenses of the defendant and the defendant's attorney to attend the deposition; and

(2) the costs of the deposition transcript.

(e) Manner of Taking.

(1) In General. Unless these rules or a court order provides otherwise, a deposition must be taken and filed in the same manner as a deposition in a civil action, except that:

(A) a defendant may not be deposed without that defendant's consent.

(B) the scope and manner of the deposition examination and cross-examination must be the same as would be allowed during trial.

(2) On Written Interrogatories. When the examination is on written interrogatories, at or before the time fixed in the notice, any other party may file cross interrogatories. Any subsequent interrogatories may be filed with leave of court. If a party fails to file written interrogatories or fails to attend an oral examination, the person before whom the deposition is taken must propound the interrogatories listed in D.C. Code § 23-108 (2012 Repl.).

(3) Statements of the Deponent. The party taking the deposition must provide to the opposing party, for use at the deposition, any statement of the deponent in that party's possession to which the opposing party would be entitled at trial under Rule 26.2. If the deposing party disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record.

(f) Use as Evidence. A party may use all or part of a deposition as provided by the law of evidence.

(g) Objections. A party objecting to deposition testimony or evidence must state the grounds for the objection during the deposition.

(h) Depositions by Agreement Permitted. The parties may by agreement take and use a deposition with the court's consent.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Subparagraph (a)(2) cites the D.C. Code provision concerning the detention of material witnesses, D.C. Code § 23-1326 (2012 Repl.). In addition, this rule retains the requirement that a detained material witness be deposed "within a reasonable period of time," which is language not found in the federal rule.

Subparagraph (b)(1) allows a deponent as well as a party to move for a change in the date or place of a deposition.

Paragraph (e) is substantially different from the federal rule. First, subparagraph (e)(2) specifies a procedure that must be followed when a deposition is to be conducted on interrogatories. Second, subparagraph (e)(3) provides for "reverse Jencks" disclosures that parallel the government's obligations. Both of these differences are retained from the former rule, although the Jencks and "reverse Jencks" provisions of (e)(3) have been combined into a single paragraph, simplified by referring to Rule 26.2, and made consistent with that rule.

Paragraph (f) omits reference to the Federal Rules of Evidence.

Rule 16. Discovery and Inspection

(a) Government's Disclosure.

(1) Information Subject to Disclosure.

(A) Defendant's Oral Statement. Upon a defendant's request, the government must disclose to the defendant the substance of any relevant oral statement made by the defendant, before or after arrest, in response to interrogation by a person the defendant knew was a government agent if the government intends to use the statement at trial.

(B) Defendant's Written or Recorded Statement. Upon a defendant's request, the government must disclose to the defendant, and make available for inspection, copying, or photographing, all of the following:

(i) any relevant written or recorded statement by the defendant if:

- the statement is within the government's possession, custody, or control; and
- the attorney for the government knows—or through due diligence could know—that the statement exists;

(ii) the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew was a government agent; and

(iii) the defendant's recorded testimony before a grand jury relating to the charged offense.

(C) Organizational Defendant. Upon a defendant's request, if the defendant is an organization, the government must disclose to the defendant any statement described in Rule 16(a)(1)(A) and (B) if the government contends that the person making the statement:

(i) was legally able to bind the defendant regarding the subject of the statement because of that person's position as the defendant's director, officer, employee, or agent; or

(ii) was personally involved in the alleged conduct constituting the offense and was legally able to bind the defendant regarding that conduct because of that person's position as the defendant's director, officer, employee, or agent.

(D) Defendant's Prior Record. Upon a defendant's request, the government must furnish the defendant with a copy of the defendant's prior criminal record that is within

the government's possession, custody, or control if the attorney for the government knows—or through due diligence could know—that the record exists.

(E) Documents and Objects. Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control and:

(i) the item is material to preparing the defense;

(ii) the government intends to use the item in its case-in-chief at trial; or

(iii) the item was obtained from or belongs to the defendant.

(F) Reports of Examinations and Tests. Upon a defendant's request, the government must permit a defendant to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if:

(i) the item is within the government's possession, custody, or control;

(ii) the attorney for the government knows—or through due diligence could know—that the item exists; and

(iii) the item is material to preparing the defense or the government intends to use the item in its case-in-chief at trial.

(G) Expert Witnesses. At the defendant's request, the government must give to the defendant a written summary of any expert testimony that the government intends to use during its case-in-chief at trial. If the government requests discovery under Rule 16(b)(1)(C)(ii) and the defendant complies, the government must, at the defendant's request, give to the defendant a written summary of expert testimony that the government intends to use as evidence at trial on the issue of the defendant's mental condition. The summary provided under this subparagraph must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

(2) Information Not Subject to Disclosure. Except as Rule 16(a)(1) provides otherwise, this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case. Nor does this rule authorize the discovery or inspection of statements made by prospective government witnesses except as provided in *18 U.S.C. § 3500*.

(3) Grand Jury Transcripts. This rule does not apply to the discovery or inspection of a grand jury's recorded proceedings, except as provided in Rules 6, 12(f), 16(a)(1), and 26.2.

(b) Defendant's Disclosure.

(1) Information Subject to Disclosure.

(A) Documents and Objects. If a defendant requests disclosure under Rule 16(a)(1)(E) and the government complies, then the defendant must permit the government, upon request, to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items if:

(i) the item is within the defendant's possession, custody, or control; and

(ii) the defendant intends to use the item in the defendant's case-in-chief at trial.

(B) Reports of Examinations and Tests. If a defendant requests disclosure under Rule 16(a)(1)(F) and the government complies, the defendant must permit the government, upon request, to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if:

(i) the item is within the defendant's possession, custody, or control; and

(ii) the defendant intends to use the item in the defendant's case-in-chief at trial, or intends to call the witness who prepared the report and the report relates to the witness's testimony.

(C) Expert Witnesses. The defendant must, at the government's request, give to the government a written summary of any expert testimony that the defendant intends to use as evidence at trial, if—

(i) the defendant requests disclosure under Rule 16(a)(1)(G) and the government complies; or

(ii) the defendant has given notice under Rule 12.2(b) of an intent to present expert testimony on the defendant's mental condition.

This summary must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

(2) Information Not Subject to Disclosure. Except for scientific or medical reports, Rule 16(b)(1) does not authorize discovery or inspection of:

(A) reports, memoranda, or other documents made by the defendant, or the defendant's attorney or agent, during the case's investigation or defense; or

(B) a statement made to the defendant, or the defendant's attorney or agent, by:

(i) the defendant;

(ii) a government or defense witness; or

(iii) a prospective government or defense witness.

(c) Continuing Duty to Disclose. A party who discovers additional evidence or material before or during trial must promptly disclose its existence to the other party or the court if:

(1) the evidence or material is subject to discovery or inspection under this rule; and

(2) the other party previously requested, or the court ordered its production.

(d) Regulating Discovery.

(1) Protective and Modifying Orders. At any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. The court may permit a party to show good cause by a written statement that the court will inspect ex parte. If relief is granted, the court must preserve the entire text of the party's statement under seal.

(2) Failure to Comply. If a party fails to comply with this rule, the court may:

(A) order that party to permit the discovery or inspection; specify its time, place, and manner; and prescribe other just terms and conditions;

(B) grant a continuance;

(C) prohibit that party from introducing the undisclosed evidence; or

(D) enter any other order that is just under the circumstances.

(e) Detained Defendants. In the case of a defendant who is detained pursuant to D.C. Code §§ 23-1322 (b) or -1329 (b) (2012 Repl.), a request for discovery under this rule may be made after 30 days following the initial order of detention or at any time after the detention hearing pursuant to D.C. Code § 23-1322 (d) (2012 Repl.), whichever is later.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule in all but three respects.

First, it omits references to the Federal Rules of Evidence found in subparagraphs (a)(1)(G) and (b)(1)(C) of the federal rule, concerning expert witnesses. Second, those two subparagraphs refer to the parties' duties to disclose summaries of "expert testimony" to make clear those provisions reach only expert testimony. Finally, this rule retains a final paragraph (e) (formerly

(f)), not found in the federal rule, concerning pre-indictment discovery in cases where the defendant is detained.

Consistent with the federal rule, former paragraph (e), which addressed the topic of notice of alibi witnesses, has been deleted as duplicative of Rule 12.1.

Rule 16-I. Informal Discovery

The defense attorney has a duty to consult with the attorney for the government assigned to the case in order to seek informal discovery. This consultation must take place before the time for filing pretrial motions under Rule 47(c). No motion for a bill of particulars under Rule 7(f) or for discovery under Rule 16 will be accepted for filing unless defense counsel certifies, in writing, that counsel has made a good faith attempt to secure the requested relief voluntarily from the attorney for the government, and that the attorney for the government has not complied.

COMMENT TO 2016 AMENDMENTS

This rule, retained from the former version of these rules, has no federal counterpart. It has been renumbered from 16-II to 16-I, since former Rule 16-I was deleted as part of an earlier revision. In addition, in keeping with general stylistic changes made to the federal rules, the rule has been redrafted to make it more easily understood and to maintain consistency throughout the rules.

Rule 17. Subpoena

(a) Content. A subpoena must state the court's name and the title of the proceedings, include the seal of the court, and command the witness to attend and testify at the time and place the subpoena specifies. The clerk must issue a blank subpoena—signed and sealed—to the party requesting it, and that party must fill in the blanks before the subpoena is served.

(b) Defendant Unable to Pay.

(1) Defendant Appointed Counsel Under D.C. Code § 11-2601 (2012 Repl.).

(A) Application. For a defendant represented either by counsel appointed under the District of Columbia Criminal Justice Act, by attorneys of the Public Defender Service, or by law students admitted under Rule 44-I, an application may be made to the clerk for a witness subpoena where the witness involved will be served within 25 miles of the place of the hearing or trial specified in the subpoena. In the case of a defendant represented by a law student, the application must be signed by the law student's supervising lawyer.

(B) Issuance. The clerk must issue the subpoena to defense counsel in blank, signed, sealed and designated in forma pauperis, but not otherwise filled in. Filling in a subpoena issued in blank shall constitute a certificate by defense counsel that, in the defense counsel's opinion, the presence of the witness is necessary to an adequate defense.

(C) Service. No subpoena issued in blank may be served outside a radius of 25 miles from the place of the hearing or trial. Where the witness to be subpoenaed will be served outside a radius of 25 miles from the place of the hearing or trial, an application for the issuance of the subpoena must be made to the judge to whom the case is assigned and must follow the procedure required by Rule 17(b)(2).

(2) Other Defendants. For a defendant represented by counsel other than counsel listed in Rule 17(b)(1), upon an ex parte application, the court must order that a subpoena be issued for a named witness if the defendant shows an inability to pay the witness's fees and the necessity of the witness's presence for an adequate defense.

(3) Payment of Costs and Fees. For any subpoena issued under this paragraph, the process costs and witness fees will be paid in the same manner as those paid for witnesses the government subpoenas.

(c) Producing Documents and Objects.

(1) In General. A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are offered in evidence.

When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

(2) Quashing or Modifying the Subpoena. On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(d) Service. A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the prosecuting authority or a defendant unable to pay has requested the subpoena.

(e) Place of Service.

(1) In General. A subpoena requiring a witness to attend a hearing or trial may be served at any place within the District of Columbia or at any place outside of the District of Columbia that is within 25 miles of the place of the hearing or trial.

(2) Exception. A subpoena directed to a witness in a case in which a felony is charged may be served at any place within the United States upon order of a judge or magistrate judge.

(f) Issuing a Deposition Subpoena.

(1) Issuance. A court order to take a deposition authorizes the clerk of the Superior Court to issue a subpoena for the person named or described in the order.

(2) Place. After considering the convenience of the witness and the parties, the court may order—and the subpoena may require—the witness to appear anywhere the court designates.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court.

(h) Information Not Subject to a Subpoena. No party may subpoena a statement of a witness or of a prospective witness under this rule. Rule 26.2 governs the production of the statement.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (b) provides the local procedures, retained from the former rule, by which defendants who have previously qualified for Criminal Justice Act representation may obtain subpoenas issued in blank without having to file an ex parte application for waiver of the witness fee. This procedure is available only when the witness to be subpoenaed is within a 25-mile radius of the place of the hearing or trial. This paragraph has been restyled to make it more easily understood. No substantive changes are intended.

Subparagraph (c)(1) adds "data" to the list of matters that may be subpoenaed, consistent with the federal rule.

Paragraph (d) retains the phrase "the prosecuting authority" from the former Superior Court rule. It also retains the phrase "a defendant unable to pay" to reflect the requirements of D.C. Code § 23-106 (2012 Repl.).

Subparagraph (e)(2) substitutes "judge or magistrate judge" for "judge of the court."

Paragraph (g) retains the language of the former Superior Court rule. The federal rule draws distinctions based on federal law and practice that are not locally applicable.

Rule 17.1. Pretrial Conference

On its own, or on a party's motion, the court may hold one or more pretrial conferences to promote a fair and expeditious trial. When a conference ends, the court must prepare and file a memorandum of any matters agreed to during the conference. The government may not use any statement made during the conference by the defendant or the defendant's attorney unless it is in writing and is signed by the defendant and the defendant's attorney.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule, and, consistent with the 2002 amendments to that rule, it no longer prohibits a pretrial conference when the defendant is not represented by counsel.

Rule 18. [Omitted].

COMMENT TO 2016 AMENDMENTS

Federal Rule of Criminal Procedure 18, dealing with the place of prosecution and trial, is inapplicable in the Superior Court.

Rule 19. [Vacant].

COMMENT TO 2016 AMENDMENTS

There is currently no *Federal Rule of Criminal Procedure 19*.

Rule 20. Transfer From the District of Columbia for Plea and Sentence

(a) Consent to Transfer. When an indictment, information, or complaint is pending in the Superior Court against a defendant who is arrested, held, or present in another district, the prosecution may be transferred to that district if:

(1) the defendant states in writing a wish to plead guilty or nolo contendere and to waive trial in the District of Columbia, consents in writing to the court's disposing of the case in the transferee district; and

(2) the United States attorneys in both districts approve the transfer in writing.

(b) Clerk's Duties. After receiving the defendant's statement and the required approvals, the clerk of the Superior Court must send the file, or a certified copy, to the clerk in the transferee district.

(c) Effect of a Not Guilty Plea. If the defendant pleads not guilty after the case has been transferred under Rule 20(a), the clerk must return the papers to the Superior Court, and this court must restore the proceeding to its docket. The defendant's statement that the defendant wished to plead guilty or nolo contendere is not, in any civil or criminal proceedings, admissible against the defendant.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in two respects.

First, paragraph (a) identifies the District of Columbia as the district of transfer.

Second, paragraph (d) of the federal rule, dealing with the transfer of juveniles, is omitted as inapplicable in the Superior Court.

Rule 21. [Omitted].

COMMENT TO 2016 AMENDMENTS

Federal Rule of Criminal Procedure 21, dealing with transfers from one district to another for trial, is inapplicable in the Superior Court.

Rule 22. [Vacant].

COMMENT TO 2016 AMENDMENTS

There is currently no *Federal Rule of Criminal Procedure 22*.

Rule 23. Jury or Nonjury Trial

(a) Jury Trial. If the defendant is entitled to a jury trial, the trial must be by jury unless:

(1) the defendant waives a jury trial in writing and orally in open court;

(2) the government consents; and

(3) the court approves.

(b) Jury Size.

(1) In General. A jury consists of 12 persons unless this rule provides otherwise.

(2) Stipulation for a Smaller Jury. At any time before the verdict, the parties may, with the court's approval, stipulate in writing that:

(A) the jury may consist of fewer than 12 persons; or

(B) a jury of fewer than 12 persons may return a verdict if the court finds it necessary to excuse a juror for just cause after the trial begins.

(3) Court Order for a Jury of 11. After the jury has retired to deliberate, the court may permit a jury of 11 persons to return a verdict, even without a stipulation by the parties, if, due to extraordinary circumstances, the court finds it necessary to excuse a juror for just cause.

(c) Nonjury Trial. In a case tried without a jury, the court must find the defendant guilty or not guilty. If a party requests before the finding of guilty or not guilty, the court must state its specific findings of fact in open court or in a written decision or opinion**.**

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Subparagraph (a)(1) retains the requirement that the jury trial waiver be made "orally in open court," as well as in writing, to reflect the requirements of D.C. Code § 16-705 (a) (2012 Repl.) as interpreted by District of Columbia case law. See *Jackson v. United States*, 262 A.2d 106 (D.C. 1970); see also *Lopez v. United States*, 615 A.2d 1140 (D.C. 1992).

Subparagraph (b)(2)(B) retains the phrase "just cause" to be consistent with subparagraph (b)(3).

Subparagraph (b)(3) retains the phrases "due to extraordinary circumstances," "finds it necessary" and "just cause" (in place of the phrase "good cause" used in the federal rule) to reflect the requirements of D.C. Code § 16-705 (c) (2012 Repl.).

Rule 24. Trial Jurors

(a) Examination.

(1) In General. The court may examine prospective jurors or may permit the attorneys for the parties to do so.

(2) Court Examination. If the court examines the jurors, it must permit the attorneys for the parties to:

(A) ask further questions that the court considers proper; or

(B) submit further questions that the court may ask if it considers them proper.

(b) Peremptory Challenges.

(1) Number of Peremptory Challenges. Each side is entitled to an equal number of peremptory challenges to prospective jurors as specified below.

(A) Offenses Punishable by Imprisonment of More Than One Year. Each side has ten peremptory challenges when the defendant is charged with a crime punishable by imprisonment of more than one year.

(B) Offenses Punishable by Fine, Imprisonment of One Year or Less, or Both. Each side has three peremptory challenges when the defendant is charged with a crime punishable by fine, imprisonment of one year or less, or both.

(C) Multiple Defendants or Prosecuting Authorities. If there is more than one defendant, or if a case is prosecuted both by the United States and the District of Columbia, the court may allow additional peremptory challenges and permit them to be exercised separately or jointly, but in no event shall one side be entitled to more peremptory challenges than the other.

(2) Procedure. All peremptory challenges must be made at the bench. The prosecution must make the first peremptory challenge with each side proceeding in turn thereafter.

(c) Alternate Jurors.

(1) In General. The court may impanel up to six alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties.

(2) Procedure.

(A) Alternate jurors must have the same qualifications and be selected and sworn in the same manner as any other juror.

(B) Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors.

(3) Retaining Alternate Jurors. The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

(4) Peremptory Challenges. Each side is entitled to the number of additional peremptory challenges to prospective alternate jurors specified below. These additional challenges may be used only to remove alternate jurors.

(A) One or Two Alternates. One additional peremptory challenge is permitted when one or two alternates are impaneled.

(B) Three or Four Alternates. Two additional peremptory challenges are permitted when three or four alternates are impaneled.

(C) Five or Six Alternates. Three additional peremptory challenges are permitted when five or six alternates are impaneled.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. In addition to basic changes in style, the 2002 federal amendments to paragraph (a) were intended to clarify that a defendant may personally conduct voir dire only if the defendant is acting pro se.

Paragraph (b) of this rule differs from the federal rule in several respects. First, it omits the reference to the number of peremptory challenges in capital cases. The District of Columbia has no death penalty.

Second, subparagraph (b)(1) allows each side an equal number of peremptory challenges, as required by D.C. Code § 23-105 (a) (2012 Repl.).

Third, subparagraph (b)(1)(A) allows ten peremptory challenges for each side in cases where the offense charged is punishable by more than one year of imprisonment, to conform to the requirements of D.C. Code § 23-105 (a) (2012 Repl.).

Fourth, subparagraph (b)(1)(B) substitutes the title, "Offenses Punishable by Fine, Imprisonment of One Year or Less, or Both" for the title "Misdemeanor Case" used in the federal rule. See, e.g., D.C. Code §§ 16-1022, -1024 (2012 Repl.) (defining the crime of parental kidnapping as a felony although punishable by a term of imprisonment not to exceed six months).

Fifth, subparagraph (b)(1)(C) retains language from the former rule recognizing that two prosecuting authorities may bring a case in Superior Court.

Finally, subparagraph (b)(2) retains language from the former rule providing that peremptory challenges must be made at the bench and that the prosecution must make the first peremptory challenge with each side proceeding in turn thereafter.

Rule 25. Judge's or Magistrate Judge's Disability

(a) During Trial. Any judge regularly sitting in or assigned to the court may complete a jury trial if:

(1) the judge before whom the trial began cannot proceed because of death, sickness, or other disability; and

(2) the judge completing the trial certifies familiarity with the trial record.

(b) After a Verdict or Finding of Guilty.

(1) In General. After a verdict or finding of guilty, any judge or magistrate judge (if authorized by law) regularly sitting in or assigned to the court may complete the court's duties if the judge or magistrate judge who presided at trial cannot perform those duties because of absence, death, sickness, or other disability.

(2) Granting a New Trial. The successor judge or magistrate judge may grant a new trial if satisfied that:

(A) a judge or magistrate judge other than the one who presided at the trial cannot perform the post-trial duties; or

(B) a new trial is necessary for some other reason.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule, except for references to "judge" and "magistrate judge" instead of the term "judge" in the title and in paragraph (b) to make the rule applicable to magistrate judges. The parenthetical "if authorized by law" reflects that a magistrate judge's authority to act is limited by statute and rule.

Rule 26. Evidence

In every trial the testimony of witnesses must be taken in open court, unless otherwise provided by a statute or by these rules. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when a statute or these rules otherwise provide, by the principles of the common law as they may be interpreted by the courts in the light of reason and experience.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. In addition, the 2002 amendments deleted the word "orally" to accommodate witnesses who are not able to present oral testimony.

The rule differs from the federal rule in two respects. The first sentence omits reference to the federal rule-making statutes. The second sentence is retained from the former Superior Court rule.

Rule 26.1. Foreign Law Determination

A party intending to raise an issue of foreign law must provide the court and all parties with reasonable written notice. Issues of foreign law are questions of law, but in deciding such issues a court may consider any relevant material or source—including testimony—without regard to the law of evidence.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule except that it refers to the law of evidence rather than to the Federal Rules of Evidence.

Rule 26.2. Producing a Witness's Statement

(a) Motion to Produce. After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, must order an attorney for the government or the defendant and the defendant's attorney to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter of the witness's testimony.

(b) Producing the Entire Statement. If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party.

(c) Producing a Redacted Statement. If the party who called the witness claims that the statement contains information that is privileged or does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any privileged or unrelated portions, the court must order delivery of the redacted statement to the moving party. If the defendant objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.

(d) Recess to Examine a Statement. The court may recess the proceedings to allow time for a party to examine the statement and prepare for its use.

(e) Sanction for Failure to Produce or Deliver a Statement. If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record. If an attorney for the government disobeys the order, the court must declare a mistrial if justice so requires.

(f) Statement Defined. As used in this rule, a witness's "statement" means:

(1) a written statement that the witness makes and signs, or otherwise adopts or approves;

(2) a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or

(3) the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.

(g) Scope. This rule applies at trial, at a suppression hearing under Rule 12, and to the extent specified in the following rules:

(1) Rule 32(c) (sentencing);

(2) Rule 32.1(c) (hearing to revoke or modify probation);

(3) Rule 46(f) (detention hearing); and

(4) Rule 8(c) of the Rules Governing Proceedings Under D.C. Code § 23-110.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in two respects. First, consistent with the former rule and unlike its federal counterpart, paragraph (g) omits preliminary hearings from the scope of the rule. Second, subparagraph (g)(4), which is new to this rule, refers to the local Rules Governing Proceedings Under D.C. Code § 23-110.

The last sentence of paragraph (c) is new to this and the federal Rule. It requires that the court retain, under seal, the entirety of a witness's statement whenever parts are excised over the objection of the defendant. The former rule required that the prosecutor retain such a statement.

Rule 26.3. Mistrial

Before ordering a mistrial, the court must give each defendant and the government an opportunity to comment on the propriety of the order, to state whether that party consents or objects, and to suggest alternatives.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule.

Rule 27. Proving an Official Record

A party may prove an official record, an entry in such a record, or the lack of a record or entry in the same manner as in a civil action.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule. The former rule incorporated the full text of Rule 44 of the Superior Court Rules of Civil Procedure. Consistent with the federal rule, this rule now simply refers to the manner of proof used in civil actions. No change in substance is intended.

Rule 28. Court-Appointed Expert Witnesses and Interpreters

(a) Expert Witnesses.

(1) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness's duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness's findings, if any; the witness's deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

(2) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law.

(3) Disclosure of Appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(4) Parties' Experts of Own Selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.

(b) Interpreters. The court may select, appoint, and set the reasonable compensation for an interpreter. The compensation must be paid from funds provided by law.

COMMENT TO 2016 AMENDMENTS

This rule differs from the federal rule in two respects.

Paragraph (a) has no counterpart in the federal rule. Like the former Superior Court rule, this paragraph is substantially identical to *Federal Rule of Evidence 706*.

Paragraph (b) has been redrafted to conform to the general restyling of the federal rules in 2002. In addition, it now omits the provision that interpreters' compensation may also be paid "by the government, as the court may direct." The phrase conflicts with D.C. Code §§ 2-1911 and -1912 (2012 Repl.), which provide that all interpreters shall be paid by the Office of Interpreter Services. See *Ko v. United States*, 694 A.2d 73 (D.C. 1997) (en banc).

The title of the rule has been changed to reflect more accurately the scope of the rule.

Rule 29. Motion for a Judgment of Acquittal

(a) Before Submission to the Jury. After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.

(b) Reserving Decision. The court may reserve decision on the motion, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.

(c) After Jury Verdict or Discharge.

(1) Time for a Motion. A defendant may move for a judgment of acquittal, or renew such a motion, within 7 days after a guilty verdict or after the court discharges the jury, whichever is later.

(2) Ruling on the Motion. If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal.

(3) No Prior Motion Required. A defendant is not required to move for a judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.

(d) Conditional Ruling on a Motion for a New Trial.

(1) Motion for a New Trial. If the court enters a judgment of acquittal after a guilty verdict, the court must also conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed. The court must specify the reasons for that determination.

(2) Finality. The court's order conditionally granting a motion for a new trial does not affect the finality of the judgment of acquittal.

(3) Appeal.

(A) Grant of a Motion for a New Trial. If the court conditionally grants a motion for a new trial and an appellate court later reverses the judgment of acquittal, the trial court must proceed with the new trial unless the appellate court orders otherwise.

(B) Denial of a Motion for a New Trial. If the court conditionally denies a motion for a new trial, an appellee may assert that the denial was erroneous. If the appellate court later reverses the judgment of acquittal, the trial court must proceed as the appellate court directs.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule. This rule includes paragraph (d) of the federal rule, which was not previously adopted by the Superior Court.

It also includes the 2005 amendment to the federal rule. In that year, *Federal Rules 29* (Motion for Judgment of Acquittal), *33* (New Trial) and *34* (Arresting Judgment) were amended to remove the requirement that the court act within seven days on motions for enlargement of time. A conforming amendment has been made to Rule 45 (Computing and Extending Time).

Rule 29.1. Closing Argument

Closing arguments proceed in the following order:

(a) the government argues;

(b) the defense argues; and

(c) the government rebuts.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule.

Rule 30. Jury Instructions

(a) In General. Any party may request in writing that the court instruct the jury on the law as specified in the request. The request must be made at the close of the evidence or at any earlier time that the court reasonably sets. When the request is made, the requesting party must furnish a copy to every other party.

(b) Ruling on a Request. The court must inform the parties before closing arguments how it intends to rule on the requested instructions.

(c) Time for Giving Instructions. The court may instruct the jury before or after the arguments are completed, or at both times.

(d) Objections to Instructions. A party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate. An opportunity must be given to object out of the jury's hearing and, on request, out of the jury's presence. Failure to object in accordance with this rule precludes appellate review, except as permitted under Rule 52(b).

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule.

Consistent with the federal rule, it includes two changes. First, paragraph (a) permits the court, in particular cases, to require that requests for jury instructions be made before trial. The rule does not preclude the practice of permitting the parties to supplement their requested instructions during the trial.

Second, the last sentence of paragraph (d) clarifies that the failure to object does not bar the limited appellate review available under the plain error standard set forth in Rule 52(b).

Rule 31. Jury Verdict

(a) Return. The jury must return its verdict to a judge in open court. The verdict must be unanimous.

(b) Partial Verdicts, Mistrial, and Retrial.

(1) Multiple Defendants. If there are multiple defendants, the jury may return a verdict at any time during its deliberations as to any defendant about whom it has agreed.

(2) Multiple Counts. If the jury cannot agree on all counts as to any defendant, the jury may return a verdict on those counts on which it has agreed.

(3) Mistrial and Retrial. If the jury cannot agree on a verdict on one or more counts, the court may declare a mistrial on those counts. The government may retry any defendant on any count on which the jury could not agree.

(c) Lesser Offense or Attempt. A defendant may be found guilty of any of the following:

(1) an offense necessarily included in the offense charged;

(2) an attempt to commit the offense charged; or

(3) an attempt to commit an offense necessarily included in the offense charged, if the attempt is an offense in its own right.

(d) Jury Poll. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity, the court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule.

Rule 32. Sentencing and Judgment

(a) Time of Sentencing.

(1) In General. Except as otherwise provided in this rule, upon a finding of guilty by plea or verdict, the court may sentence the defendant immediately or continue the sentencing to a further date.

(2) In Cases Involving Certain Victims. In any case in which a defendant has been found guilty of an offense involving a victim as defined in D.C. Code § 23-1905 (2) (2012 Repl.):

(A) The victim must be given a reasonable time prior to imposition of sentence to submit a victim impact statement as prescribed in D.C. Code § 23-1904 (2012 Repl.).

(B) The attorney for the government must make reasonable efforts to notify the victim of the right to submit a victim impact statement, and to be present and to make a statement at the defendant's sentencing. The notification may be made by first-class mail, postage prepaid, and must contain clear and concise instructions regarding the preparation of the impact statement, the name and address of a person in the office of the attorney for the government to whom it should be returned, and the time, date, and place where the sentencing will occur. The notification must allow the victim a reasonable time to respond prior to imposition of sentence.

(C) The attorney for the government must certify that the requirements of Rule 32(a)(2)(B) have been met. If such a certification has been made, or if the victim waives the right to submit a victim impact statement, the court may impose sentence without a victim impact statement. If for any reason the requirements of Rule 32(a)(2)(B) have not been met, the court must continue imposition of sentence for a time sufficient to permit compliance.

(D) The attorney for the government must promptly forward any victim impact statement either

(i) to the Court Services and Offender Supervision Agency if it is preparing a presentence report, or

(ii) to the court, and must serve it on the defendant's attorney. The victim impact statement must be included in any presentence report and must be disclosed to the defendant's attorney at a reasonable time prior to sentencing. The court must consider any victim impact statement in determining the appropriate sentence.

(b) Presentence Investigation.

(1) When Made.

(A) In a case in which the defendant is to be sentenced for an offense punishable by imprisonment for more than one year, the Court Services and Offender Supervision Agency must make a presentence investigation and report to the court before the pronouncement of the sentence or the granting of probation unless, with the permission of the court, the defendant waives a presentence investigation and report, or the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record.

(B) In any other case, the Court Services and Offender Supervision Agency must make a presentence investigation and report upon request by the court.

(C) If an investigation and report are not requested or made, and the defendant is not sentenced at the time of a guilty plea or guilty verdict, the court may order the Court Services and Offender Supervision Agency to provide the court with the defendant's prior criminal record.

(2) Report. The report of the presentence investigation must contain:

(A) any prior criminal record of the defendant;

(B) such information about the defendant's characteristics, financial condition and the circumstances affecting the defendant's behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant;

(C) any victim impact statement as prescribed in D.C. Code § 23-1904 (2012 Repl.); and

(D) such other information as may be required by the court.

(3) Disclosure.

(A) The court must make available to the defendant through the defendant's attorney and to the attorney for the government a copy of the report of the presentence investigation a reasonable time before imposing sentence. To the extent that the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons, the court may withhold any such portions of the presentence investigation report.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under Rule 32(b)(3)(A), the court in lieu of making the report or part thereof available must state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and must give the defendant or the defendant's attorney an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material disclosed to the one party must also be disclosed to the adverse party.

(D) The report must not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere, or has been found guilty, except that a judicial officer may, with the consent of the defendant given on the record or in writing, inspect a presentence report at any time.

(E) The reports of studies and recommendations contained therein made pursuant to D.C. Code § 24-903 (e) (2012 Repl.) shall be considered a presentence investigation within the meaning of Rule 32(b)(3).

(c) Sentencing.

(1) In General. At sentencing, the court:

(A) must verify that the defendant and the defendant's attorney have read and discussed the presentence report and any addendum to the report; and

(B) must allow the parties' attorneys to comment on the probation officer's determinations and other matters relating to an appropriate sentence.

(2) Introducing Evidence; Producing a Statement. The court may permit the parties to introduce evidence. If a witness testifies at sentencing, Rule 26.2(a)-(d) and (f) applies. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

(3) Court Determinations. At sentencing, the court:

(A) may accept any undisputed portion of the presentence report as a finding of fact;

(B) must—for any disputed portion of the presentence report or other controverted matter—rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing; and

(C) must append a copy of the court's determinations under this rule to any copy of the presentence report made available to the Bureau of Prisons.

(4) Opportunity to Speak.

(A) By a Party. Before imposing sentence, the court must:

(i) provide the defendant's attorney an opportunity to speak on the defendant's behalf;

(ii) address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence; and

(iii) provide an attorney for the government an opportunity to speak equivalent to that of the defendant's attorney.

(B) By a Victim. Before imposing sentence in a case in which a defendant has been found guilty of an offense involving a victim as defined in D.C. Code § 23-1905 (2) (2012 Repl.), the court must address any such victim who is present at sentencing and must permit the victim to speak or submit any information about the sentence.

(C) In Camera Proceedings. Upon a party's motion and for good cause, the court may hear in camera any statement made under Rule 32(c)(4).

(5) Pronouncement. Sentence must thereafter be pronounced. Unless the court pronouncing a sentence otherwise provides, a sentence imposed on a defendant for conviction of an offense must run consecutively to any other sentence imposed on such defendant for conviction of an offense. The defendant may be placed on probation unless otherwise provided by law. The court must precisely define any conditions of probation to the defendant.

(d) Defendant's Right to Appeal.

(1) Advice of a Right to Appeal.

(A) Appealing a Conviction. If the defendant pleaded not guilty and was convicted, after sentencing the court must advise the defendant of the right to appeal the conviction.

(B) No Duty to Advise. There shall be no duty on the court to advise the defendant of any right to appeal after sentence is imposed following a plea of guilty or nolo contendere.

(C) Appeal Costs. The court must advise a defendant who is unable to pay appeal costs of the right to ask for permission to appeal in forma pauperis.

(2) Clerk's Filing of Notice. If the defendant so requests, the clerk must immediately prepare and file a notice of appeal on the defendant's behalf.

(e) Defendant's Right to Seek Modification or Suspension of Child Support Payments. If the defendant is sentenced to a period of imprisonment of more than 30 days, the court must inquire whether the defendant is subject to a child support order. If so, the court must comply with D.C. Code § 23-112a (2012 Repl.). If the defendant elects to file a pro se petition to modify or suspend the support order, the clerk must serve it as provided in D.C. Code § 23-112a (c) (2012 Repl.).

(f) Judgment. In the judgment of conviction, the court must set forth the plea, the jury verdict or the court's findings, the adjudication, and the sentence. If the defendant is found not guilty or is otherwise entitled to be discharged, the court must so order. The court must sign the judgment, the clerk must enter it, and it must be transmitted to the authority taking custody of or having supervision over the defendant.

(g) Discharge From Probation, Dismissal of Proceedings, and Expungement of Official Records Pursuant to D.C. Code § 48-904.01 (e) (2014 Repl.).

(1) Discharge From Probation and Dismissal of Proceedings.

(A) Notice. If a person has been placed on probation pursuant to D.C. Code § 48-904.01 (e)(1) (2014 Repl.), the Court Services and Offender Supervision Agency must, 30 days before the expiration of probation, notify the court in writing if the person is not successfully completing probation. The Agency must mail a copy of the notice to the person, the person's attorney, the attorney for the government, the Metropolitan Police Department, and the clerk of the Criminal Division. The attorney for the government may file and serve a response in opposition within 10 days.

(B) Hearing and Discharge. The court may hold a hearing to determine whether the person has successfully completed probation. If the court so determines, it must enter an order discharging the person from probation and dismissing the proceedings against the person. The court may, with notice as provided above, take such action prior to the expiration of the maximum period of probation imposed.

(C) Nonpublic Record. If an order of discharge and dismissal is entered, the clerk must thereafter retain a nonpublic record of the case solely for use by the courts in determining whether, in subsequent proceedings, such person qualifies for treatment under D.C. Code § 48-904.01 (e)(1) (2014 Repl.).

(2) Expungement of Official Records.

(A) Motion to Expunge. A person who has been discharged from probation and whose charges have been dismissed pursuant to D.C. Code § 48-904.01 (e)(1) (2014 Repl.) and Rule 32(g)(1) may file with the court and serve upon the attorney for the government a motion for expungement of all official records relating to the offense. The attorney for the government may file and serve an opposition within 10 days.

(B) Expungement. If the court, after hearing, determines that the person was discharged from probation and that the proceedings against the person were dismissed under D.C. Code § 48-904.01 (e)(1) (2014 Repl.), the court must enter an order expunging all official records of the offense to the extent required by D.C. Code § 48-904.01 (e)(2) (2014 Repl.).

(C) Exceptions. In a case involving codefendants, the court must first sanitize the records to be expunged. The order of expungement shall not affect the nonpublic record maintained under D.C. Code § 48-904.01 (e)(1) (2014 Repl.) and Rule 32(g)(1)(C).

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

This rule omits all references to the Federal Sentencing Guidelines. It also omits paragraph (a) of the federal rule (Definitions), because its definitions are locally inapplicable.

Paragraph (a) of this rule, regarding the time of sentencing, corresponds to paragraph (b) of the federal rule. It contains provisions implementing The Crime Victims' Rights Act of 2000 (D.C. Code § 23-1901 et seq. (2012 Repl.)).

Paragraph (b) of this rule, regarding presentence investigations, corresponds to paragraphs (c)-(g) of the federal rule. It differs from the federal rule to reflect local practice. It requires a presentence report in felony cases, unless the defendant waives it or the court makes certain findings. A report is required in misdemeanor cases only if the court requests one.

Paragraph (c) of this rule, regarding sentencing, corresponds to paragraph (i) of the federal rule. Subparagraph (c)(3), "Court Determinations," is identical to its federal counterpart, but is new to this rule. It requires the court to make findings with respect to any disputed portion of the presentence report or other sentencing matter, unless that portion will not affect the sentence or the court will not consider it. Any such finding must be reduced to writing and appended to the presentence report.

Subparagraph (c)(4)(B) contains provisions implementing The Crime Victims' Rights Act of 2000 (D.C. Code § 23-1901 et seq. (2012 Repl.))

Paragraph (d), concerning advice of appellate rights, corresponds to paragraph (j) of the federal rule. Consistent with the former Superior Court rule, it provides that the court has no duty to advise the defendant of any right to appeal after a guilty or nolo contendere plea.

Material formerly in paragraph (e), concerning plea withdrawal, has been moved to Rule 11.

Paragraph (e), regarding motions to suspend or modify child support payments, was added to reflect the requirements of D.C. Code § 23-112a (2012 Repl.). That section, and hence paragraph (e) of this rule, apply whether the proceeding is the initial sentencing or a probation revocation resulting in imprisonment for more than 30 days.

Paragraph (f), regarding judgment, corresponds to paragraph (k) of the federal rule. It omits provisions dealing with property subject to forfeiture. Proceedings for the forfeiture of property in the Superior Court are brought pursuant to Superior Court Civil Rule 71A-I.

Material formerly in paragraph (g), concerning production of witness statements, has been moved to subparagraph (c)(2) of this rule.

Paragraph (g), concerning "probation before judgment" under D.C. Code § 48-904.01 (e)(1) (2014 Repl.), has no federal counterpart. It has been revised to make it easier to read. No change in substance is intended.

References in the former rule to the "Social Services Division" have been replaced with the "Court Services and Offender Supervision Agency," as the latter agency is now responsible for preparation of presentence reports and supervision of probationers.

Rule 32.1. Revoking or Modifying Probation

(a) Revocation.

(1) Preliminary Hearing.

(A) In General. If a person is in custody for violating a condition of probation, the court must, within the time limits set forth in Rule 32.1(a)(3), conduct a hearing to determine whether there is probable cause to believe that a violation occurred. The person may waive the hearing.

(B) Requirements. The hearing must be recorded by a court reporter or by a suitable recording device. The court must give the person:

(i) notice of the hearing and its purpose, the alleged violation, and the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel;

(ii) an opportunity to appear at the hearing and present evidence; and

(iii) upon request, an opportunity to question any adverse witness.

Whenever the alleged violation of probation is based on an arrest for a criminal offense allegedly committed while on probation, a preliminary hearing held pursuant to Rule 5.1 may serve as the preliminary revocation hearing required by this subparagraph if the provisions of this subparagraph have been fully satisfied.

(C) Finding. The finding of probable cause may be based upon hearsay evidence in whole or in part. If the court finds probable cause, the court may release or detain the person under D.C. Code § 23-1325 (b) (2012 Repl.), and must conduct a revocation hearing. If the court does not find probable cause, the court must dismiss the proceeding.

(2) Revocation Hearing. Unless waived by the person, the court must hold the revocation hearing within the time limits set forth in Rule 32.1(a)(3). The person is entitled to:

(A) written notice of the alleged violation;

(B) disclosure of the evidence against the person;

(C) an opportunity to appear, present evidence, and question any adverse witness unless the court determines that the interest of justice does not require the witness to appear; and

(D) notice of the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; and

(E) an opportunity to make a statement and present any information in mitigation.

(3) Time Limits.

(A) Whenever the person is held in custody pending the final revocation hearing, the court must hold the final revocation hearing and decide whether to revoke probation no later than 60 days after the preliminary revocation hearing.

(B) Whenever the alleged violation of probation is based on an offense allegedly committed while on probation, which is also the subject of criminal charges against the person, the person shall have the right to have the final revocation hearing postponed beyond the 60-day time limit pending final disposition of the criminal charges. Any such postponement at the person's request shall have the effect of tolling the computation of time under this subparagraph. If the person exercises the right to postpone the final revocation hearing pending final disposition of the criminal charges, a final revocation hearing shall be held and the court shall decide whether to revoke probation no later than 20 days after judgment or other final disposition of the criminal charges.

(C) The time limits set forth in this subparagraph may be extended for good cause. If, within these time limits, or within any extension previously granted by the court, the court does not decide whether probation should be revoked, the person may not be further detained by reason of the alleged probation violation pending the court's decision.

(b) Modification.

(1) In General. Before modifying the conditions of probation, the court must hold a hearing, at which the person has the right to counsel and an opportunity to make a statement and present any information in mitigation.

(2) Exceptions. A hearing is not required if:

(A) the person waives the hearing; or

(B) the relief sought is favorable to the person and does not extend the term of probation; and

(C) an attorney for the government has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so.

(c) Producing a Statement. Rule 26.2(a)-(d) and (f) applies at a hearing under this rule. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraphs (a) and (d) of the federal rule, entitled "Initial Appearance" and "Disposition of the Case," are omitted as locally inapplicable.

Paragraph (a) of this rule, which corresponds to paragraph (b) of the federal rule, differs in the following respects.

First, subparagraph (a)(1)(B) provides that a preliminary hearing under Rule 5.1 may serve also as a preliminary revocation hearing under this rule if certain conditions are met.

Second, subparagraph (a)(1)(C) retains a provision expressly stating that a probable cause finding may be based on hearsay evidence.

Finally, subparagraph (a)(3), which has no federal counterpart, sets time limits within which the court must act. It differs from the former rule only as to organization; no difference in substance is intended.

The phrase "charged by complaint" in subparagraph (a)(1) of the former Superior Court rule is omitted in this rule to recognize that alleged violations of probation may be based on arrests for offenses charged by information as well as complaint.

Consistent with the 2002 amendments to the federal rule, this rule now provides in subparagraph (a)(2)(C) that a defendant's right to cross-examine adverse witnesses at a final revocation hearing is qualified. See *Young v. United States*, 863 A.2d 804 (D.C. 2004).

In 2005, the federal rule was amended to provide that a defendant has a right to allocute at a revocation hearing or a hearing on modification of probation. Subparagraphs (a)(2)(E) and (b)(1) of this rule reflect those changes.

Rule 32.2. [Omitted].

COMMENT TO 2016 AMENDMENTS

Federal Rule of Criminal Procedure 32.2 dealing with forfeitures is inapplicable to the Superior Court. Proceedings for the forfeiture of property in the Superior Court are brought pursuant to Superior Court Civil Rule 71A-I.

Rule 33. New Trial

(a) Defendant's Motion. Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) Time to File.

(1) Newly Discovered Evidence. Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case.

(2) Other Grounds. Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 7 days after the verdict or finding of guilty.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule. It does not govern motions under D.C. Code § 22-4135 (2012 Repl.), which permits a person convicted of a criminal offense to move the court, at any time, to vacate the conviction or grant a new trial on grounds of actual innocence based on new evidence.

The rule includes in subparagraph (b)(2) the 2005 amendment to the federal rule. In that year, *Federal Rules 29* (Motion for Judgment of Acquittal), *33* (New Trial) and *34* (Arresting Judgment) were amended to remove the requirement that the court act within seven days on motions for enlargement of time. A conforming amendment has been made to Rule 45 (Computing and Extending Time).

Rule 34. Arresting Judgment

(a) In General. Upon the defendant's motion or on its own, the court must arrest judgment if:

(1) the indictment or information does not charge an offense; or

(2) the court does not have jurisdiction of the charged offense.

(b) Time to File. The defendant must move to arrest judgment within 7 days after the court accepts a verdict or finding of guilty, or after a plea of guilty or nolo contendere.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule. Consistent with a change in the federal rule, the rule has been amended to permit the court, on its own motion, to arrest judgment.

It also includes the 2005 amendment to the federal rule. In that year, *Federal Rules 29* (Motion for Judgment of Acquittal), *33* (New Trial) and *34* (Arresting Judgment) were amended to remove the requirement that the court act within seven days on motions for enlargement of time. A conforming amendment has been made to Rule 45 (Computing and Extending Time).

Rule 35. Correcting or Reducing a Sentence or Collateral; Setting Aside Forfeiture

(a) Correcting the Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reducing a Sentence.

(1) Upon Motion. A motion to reduce a sentence may be made not later than 120 days after the sentence is imposed or probation is revoked, or not later than 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or not later than 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. The court must decide a motion within a reasonable time.

(2) Sua Sponte by the Court. After notice to the parties and an opportunity to be heard, the court may reduce a sentence without motion, not later than 120 days after the sentence is imposed or probation is revoked, or not later than 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or not later than 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation.

(3) Permissible Reduction. Changing a sentence from a sentence of incarceration to a grant of probation constitutes a permissible reduction of sentence under this paragraph.

(c) Imposition of Sentence Defined. For purposes of this rule, a sentence is imposed when it is orally announced.

(d) Setting Aside Forfeiture. No forfeiture of collateral security or of an unsecured personal appearance bond shall be vacated unless application is made within 90 days after forfeiture and upon good cause shown.

(e) Reducing Collateral in Traffic Cases. The amount of collateral security required in a traffic case may be reduced by a judge or magistrate judge only if (1) such reduction has been specifically recommended in writing by the attorney for the government on a form separate from the notice of violation, or (2) the judge or magistrate judge states the reasons for the reduction in writing on a form separate from the notice of violation. In all such cases the clerk's office shall submit a monthly report of such reductions to the Chief Judge.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (b) of this rule reflects longstanding differences between the federal and local rules governing the basis and timing of motions to reduce sentence.

Paragraph (c) is new to both the local and federal rules. Although the wording is different, the meaning is intended to be the same.

Paragraph (d) of this rule, dealing with setting aside a forfeiture of collateral security, and paragraph (e), dealing with reduction of collateral in traffic cases, have no federal counterparts.

In addition, paragraph (e) of this rule, formerly paragraph (d), substitutes the clerk's office for the Central Violations Bureau as the entity that will submit reports of traffic collateral reductions to the Chief Judge. The Central Violations Bureau no longer exists.

Rule 36. Clerical Error

After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record not including the transcript, or correct an error in the record arising from oversight or omission. No changes in any transcript may be made by the court except on notice to the attorney for the government and counsel for the defendant. Where changes are made in the transcription of proceedings, the corrections and deletions shall be shown.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It retains provisions from the former rule, not found in the federal rule, providing that no change in a transcript may be made by the court except on notice to counsel.

Rule 36-I. Recording of Court Proceedings; Release of Transcripts

(a) All Proceedings Recorded. All proceedings must be recorded by a court reporter or by a suitable recording device.

(b) Ordering Transcripts.

(1) 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 in open court.

(2) In a case tried to a jury, any party to the proceedings who has made suitable arrangements to pay the fee specified, or any judge of the District of Columbia Court of Appeals or any judge or magistrate judge, is entitled to obtain a transcript of any part of the recorded proceedings, whether or not held in open court.

(3) In a case tried to a jury, prior to rendition of a verdict or discharge of the jury, any person other than a party to the proceedings must apply to the judge presiding over the trial for permission to obtain a transcript of any part of the recorded proceedings not held in open court. In determining whether such an application should be granted in whole or in part, the judge must consider the parties' right to a fair trial and the public's interest in a free press. The judge may condition the granting of such application upon such terms as may be appropriate, may sequester the jury, or may take such other approved procedures as seem necessary to insure a fair trial in the case.

(4) As used in this rule, ‘‘proceedings in open court’’ means:

(A) all recorded judicial proceedings in a non-jury case; or

(B) in a case tried by a jury, all recorded judicial proceedings except pretrial hearings on the admissibility of evidence, discussions in chambers, bench conferences or other recorded proceedings in which the jury does not participate. After rendition of a verdict or discharge of the jury, however, all recorded proceedings of a case tried to a jury will be treated as proceedings in open court.

(c) 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."

(d) 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 5 days hence. 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 5 day period in the manner prescribed in Superior Court Rule of Civil Procedure 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.

(e) 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 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.

(f) Private Reporters. Except as provided in Rule 36-I(g), only a court reporter who is a court employee, or who is under contract to the court to provide reporting services, is permitted to record proceedings held before a judge or magistrate judge.

(g) Restriction on the Use of Electronic Recording Devices. No electronic recording equipment, other than that in the custody and control of official court reporters or court personnel in the performance of their official duties, may be used to record proceedings held before a judge or magistrate judge.

COMMENT TO 2016 AMENDMENTS

This rule, retained from the former rule, has no federal counterpart. In keeping with general stylistic changes made to the federal rules, the rule has been redrafted to make it more easily understood and to maintain consistency throughout the rules.

The former version of paragraph (a) allowed for the recordation of proceedings by electronic sound recording device "when permitted by rule of court." *Federal Rules 5.1(g), 6(e)(1), 11(g), 12(f), 32.1(b)(1)(B), 41(d)(2)(C),(d)(3)(D), and 58(e)* added new provisions or revised former provisions by stating that proceedings must be recorded "by a court reporter or by a suitable recording device." Paragraph (a) of this rule was amended to track the federal rules' language. Accordingly, all proceedings in the Criminal Division of the Superior Court must be recorded "by a court reporter or by a suitable recording device."

Due to the revision of paragraph (a), former paragraph (g), regarding electronic recording devices, was deleted as unnecessary.

Rule 37. Appeals

Appeals from judgments or orders of the Superior Court to the District of Columbia Court of Appeals are governed by the rules of that court.

COMMENT TO 2016 AMENDMENTS

This rule, retained from the former rule, has no federal counterpart. The rule no longer states the specific fee for filing a notice of appeal, because that fee is set forth in Rule 50 of the Rules of the District of Columbia Court of Appeals.

Rule 38. Staying a Sentence

(a) [Omitted].

(b) Imprisonment.

(1) Stay Granted. If the defendant is released pending appeal, the court must stay a sentence of imprisonment.

(2) Stay Denied; Place of Confinement. If the defendant is not released pending appeal, the court may recommend to the Attorney General that the defendant be confined near the place of the trial or appeal for a period reasonably necessary to permit the defendant to assist in preparing the appeal.

(c) Fine. If the defendant appeals, the court, or the Court of Appeals under District of Columbia Court of Appeals Rule 8, may stay a sentence to pay a fine or a fine and costs. The court may stay the sentence on any terms considered appropriate and may require the defendant to:

(1) deposit all or part of the fine and costs into the Superior Court's registry pending appeal;

(2) post a bond to pay the fine and costs; or

(3) submit to an examination concerning the defendant's assets and, if appropriate, order the defendant to refrain from dissipating assets.

(d) Probation. If the defendant appeals, the court may stay a sentence of probation. The court must set the terms of any stay.

(e) Restitution and Reparation.

(1) In General. If the defendant appeals, the court, or the Court of Appeals under District of Columbia Court of Appeals Rule 8, may stay—on any terms considered appropriate—any sentence providing for restitution or reparation under D.C. Code § 16-711 (2012 Repl.).

(2) Ensuring Compliance. The court may issue any order reasonably necessary to ensure compliance with a restitution or reparation order after disposition of an appeal, including:

(A) a restraining order;

(B) an injunction;

(C) an order requiring the defendant to deposit all or part of any monetary restitution or reparation into the court's registry; or

(D) an order requiring the defendant to post a bond.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) of the federal rule regarding a stay of execution for a sentence of death is not applicable in the Superior Court. The District of Columbia has no death penalty.

Paragraphs (c) and (e) of this rule refer to the local appellate rule; paragraph (e) refers to the local statute regarding restitution and reparation.

Paragraph (f) of the federal rule dealing with forfeitures is inapplicable to the Superior Court. Proceedings for the forfeiture of property in the Superior Court are brought pursuant to Superior Court Civil Rule 71A-I.

Paragraph (g) of the federal rule has not been adopted in the Superior Court.

Rule 39. [Vacant].

COMMENT TO 2016 AMENDMENTS

There is currently no *Federal Rule of Criminal Procedure 39*.

Rule 40. Release and Detention of Federal Defendants

In any criminal case over which the United States District Court for the District of Columbia has jurisdiction, the Superior Court may release or detain the defendant in accordance with *18 U.S.C. § 3141 et seq.*

COMMENT TO 2016 AMENDMENTS

The federal rule deals with commitment and removal procedure between federal districts. This rule, in contrast, relates to the power of the Superior Court to release or detain persons charged with any offense over which the United States District Court for the District of Columbia has jurisdiction. See *18 U.S.C. § 3041*. It makes clear that the applicable bail law under current law is *18 U.S.C. § 3141 et seq.*

Rule 40-I. State Fugitives and Extradition

(a) Warrants for the Arrest of Fugitives from Justice. A judge may issue a warrant to bring a defendant before the court to answer a complaint on oath of any credible witness setting forth:

(1) that the defendant has committed a specified offense in any state;

(2) that the defendant is a fugitive from justice;

(3) that the defendant is within the District of Columbia;

(4) that the defendant is liable by the Constitution and laws of the United States to be delivered over upon the demand of the governor of that state; and

(5) such other matters as are necessary to bring the case within the provisions of law.

(b) Preliminary Examination.

(1) The defendant arrested on a warrant issued under Rule 40-I(a) shall be taken before the court for preliminary examination.

(2) If there is reasonable cause to believe that the complaint is true and that the person may be lawfully demanded of the Chief Judge, the defendant shall be detained or released according to law, in like manner as if the offense had been committed in the District of Columbia.

(3) The defendant shall be ordered to appear before the court at a future date, allowing 30 days to obtain a requisition from the governor of the state from which the person is a fugitive.

(4) The complaint of fugitivity from another jurisdiction shall create a presumption that the person is unlikely to appear if released, which may be overcome only by clear and convincing proof.

(c) Appearance Date. If the defendant appears before the court on the date ordered, the defendant shall be discharged, unless the defendant is demanded by requisition or unless the court finds cause to detain or to release the defendant until a later date.

(d) Period of Detention. A defendant detained on a fugitive warrant shall not be held in jail longer than to allow a reasonable time for a proper requisition to be applied for and obtained. In determining what is a reasonable time the court must consider the circumstances of the case and the distance of the place where the offense allegedly was committed.

(e) Waiver of Further Proceedings.

(1) A defendant arrested on a fugitive warrant may waive further proceedings, orally and in writing, in open court at any time prior to the filing of a requisition.

(2) Following waiver, the court, if the United States Attorney consents, may release the defendant on such conditions as the court deems necessary to ensure the defendant's appearance before the proper official in the state from which the defendant is a fugitive, and shall order the defendant's return to the jurisdiction of that state in the custody of a proper official.

(3) Following waiver, if the defendant is not released, the defendant shall be ordered to return to the jurisdiction from which the defendant is a fugitive in the custody of a proper official and may be detained to await return. Such detention shall not exceed 3 days, not including Saturdays, Sundays, and holidays, unless the court finds good reason to extend the defendant's detention for an additional 3 days to obtain the attendance of a proper official of the demanding jurisdiction.

(f) Further Proceedings Not Waived. If a defendant has not waived further proceedings and a requisition from the governor of the jurisdiction from which the person is a fugitive is presented to the court, the court shall order the requisition to be filed and referred to the Chief Judge for extradition proceedings and shall order the defendant committed pending those proceedings.

(g) Extradition.

(1) In all cases where the laws of the United States so provide, the Chief Judge shall cause to be apprehended and delivered up in the manner and under the regulations provided by *18 U.S.C. § 3181 et seq.* any fugitive from justice who shall be found in the District of Columbia.

(2) The Chief Judge may also surrender, on demand of the governor of any state, any defendant in the District of Columbia charged in that state with committing an act in the District of Columbia or in another state, intentionally resulting in a crime in the state whose authority is making the demand, even though the accused was not in that state at the time of the commission of the crime and has not fled from that state.

(3) No defendant shall be delivered over to the executive authority or an agent demanding the defendant unless the defendant first is taken before the Chief Judge who shall inform the defendant of the demand for the defendant's surrender, of the crime with which the defendant is charged, and that the defendant has the right to legal counsel.

(4) If the defendant states a desire to test the legality of the arrest, the Chief Judge shall hold a hearing to determine whether the defendant shall be delivered over as demanded. At the hearing, the defendant shall have the same rights to challenge the defendant’s detention and extradition as if the hearing were upon a writ of habeas corpus.

(5) An order delivering over a defendant shall state the time of day when it was issued.

(6) A defendant may waive the right to appear before the Chief Judge and voluntarily return in custody of a proper official to the jurisdiction of the state demanding the defendant.

(7) No defendant demanded by the governor of a state shall be released upon bond or other obligation except pursuant to an order of a court of the demanding state.

(8) A judge designated by the Chief Judge or acting Chief Judge shall have the same power to act pursuant to this paragraph as the Chief Judge.

COMMENT TO 2016 AMENDMENTS

This rule, retained from the former rule, has no federal counterpart. In keeping with general stylistic changes made to the federal rules, the rule has been redrafted to make it more easily understood and to maintain consistency throughout the rules.

In paragraph (a), the phrase "a judge" has been substituted for "the court." The latter phrase is now defined to include both judges and magistrate judges. A magistrate judge is not authorized to issue an arrest warrant on a complaint.

Rule 41. Search and Seizure

(a) Scope and Definition. This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances. The term "property" as used in this rule includes documents, books, papers, any other tangible objects, and information.

(b) Authority to Issue a Warrant. A search warrant authorized by this rule may be issued by a judge.

(c) Persons or Property Subject to Search or Seizure. A warrant may be issued for any of the following:

(1) evidence of a crime;

(2) contraband, fruits of crime, or other items illegally possessed;

(3) property designed for use, intended for use, or used in committing a crime; or

(4) a person to be arrested or a person who is unlawfully restrained.

(d) Obtaining a Warrant.

(1) Probable Cause. Upon application of a law enforcement officer or attorney for the government, a judge may issue a search warrant if there is probable cause to search for and seize a person or property under Rule 41(c). The finding of probable cause may be based upon hearsay evidence in whole or in part.

(2) Application for Search Warrants. Each application for a search warrant must be made in writing upon oath to a judge. Each application must include:

(A) the name and title of the applicant;

(B) a statement that there is probable cause to believe that property or persons described in Rule 41(c) as subject to seizure are likely to be found in a designated premise, in a designated vehicle or object, or upon designated persons;

(C) allegations of fact supporting such statement; and

(D) a request that the judge issue a search warrant directing a search for and seizure of the property or person in question.

(3) Applications for Warrants to be Executed at Any Time. The application may contain a request that the search warrant be made executable at any hour of the day or night, if accompanied and supported by allegations of fact supporting that:

(A) there is probable cause to believe that it cannot be executed during the hours of daylight;

(B) the property sought is likely to be removed or destroyed if not seized forthwith; or

(C) the property or person sought is not likely to be found except at certain times or in certain circumstances.

(4) Depositions and Affidavits. The applicant may submit depositions or affidavits of other persons containing allegations of fact supporting or tending to support those contained in the application.

(e) Contents of the Warrant. A search warrant must contain:

(1) The name of the issuing court, the name and signature of the issuing judge, and the date of issuance;

(2) If the warrant is addressed to a specific law enforcement officer, the name of that officer, otherwise, the classifications of officers to whom the warrant is addressed;

(3) A designation of the premises, vehicles, objects, or persons to be searched, sufficient for certainty of identification;

(4) A description of the property or person whose seizure is the object of the warrant;

(5) A direction that the warrant be executed during the hours of daylight, or an authorization for execution at any time of the day or night where

(A) the judge has found cause therefor under Rule 41(d)(3), or

(B) the warrant is issued under D.C. Code § 48-921.02 (2014 Repl.);

(6) A direction that the warrant and an inventory of any property or person seized pursuant thereto be returned to the court on the next court day after its execution.

(f) Executing and Returning the Warrant.

(1) Time of Execution. A search warrant must not be executed more than 10 days after the date of issuance. A search warrant may be executed on any day of the week and, in the absence of express authorization in the warrant, must be executed only during hours of daylight.

(2) Place of Execution. A search warrant may be executed anywhere within the District of Columbia.

(3) Manner of Execution. An officer executing a warrant directing a search of a dwelling house, other building, or vehicle may break and enter any of these premises pursuant to *18 U.S.C. § 3109*. An officer executing a warrant directing a search of a person must give, or make reasonable effort to give, notice of the officer's identity and purpose to the person.

(4) Noting the Time. An officer executing the warrant must enter on its face the exact date and time it is executed.

(5) Inventory. An officer executing a search warrant must write and subscribe an inventory setting forth the property or person seized under it.

(6) Receipt. An officer executing the warrant must:

(A) give a copy of the warrant and the inventory to the person from whom, or from whose premises, the property was taken; or

(B) if that person is not present, leave a copy of the warrant and the inventory with an occupant, custodian, or other person present, or if no person is present, at the place where the officer took the property.

(7) Return. An officer must return a copy of the warrant—together with a copy of the inventory—to the court on the next court day after its execution.

(8) Disposition of Seized Property. Property seized in the execution of the warrant must be safely kept for use as evidence. No property seized shall be released or destroyed except in accordance with law and upon order of a court or an attorney for the government.

(g) Motion to Return Property. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

(h) Motion to Suppress. A defendant may move to suppress evidence, as Rule 12 provides.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) excludes definitions that are not applicable to Superior Court practice.

Paragraph (b) omits language dealing with the authority of certain judges and federal magistrates to issue search warrants.

Subparagraph (d)(1) retains the language of the former rule regarding the use of hearsay to support probable cause. The language was removed from the federal rule as unnecessary, in part because this principle is addressed in *Federal Rule of Evidence 1101*. Because this jurisdiction has not adopted the Federal Rules of Evidence, the Superior Court rule did not follow this change.

Subparagraphs (d)(2)-(4) retain the language of paragraph (c) of the former rule.

Paragraph (e) retains the language of paragraph (d) of the former rule, and is analogous to *Federal Rule 41(e)(2)*. Its provisions conform to D.C. Code § 23-521 et seq. (2012 Repl.). Subparagraph (e)(5) has been added to make explicit that a search warrant for controlled substances must contain a direction that it may be served at any time of day or night. See D.C. Code § 48-921.02 (h) (2014 Repl.).

Subparagraphs (f)(1)-(3), which have no federal counterpart, retain the language of subparagraphs (e)(1)-(3) of the former rule. Subparagraph (f)(3) cites *18 U.S.C. § 3109* (the federal "knock and announce" statute), which is made applicable by D.C. Code § 23-524 (a) (2012 Repl.).

Subparagraphs (f)(4)-(7) adopt the organizational format of the federal rule; they also clarify and make consistent the terms "inventory" and "return." No change in substance from the former rule is intended.

Subparagraph (f)(8), which has no federal counterpart, retains the language of paragraph (f) of the former rule.

Rule 41-I. Interception of Wire or Oral Communications

(a) Authorization to Apply. When authorized in writing by the United States Attorney or by a designated assistant, any investigative or law enforcement officer may make application to the court for an order authorizing the interception of wire or oral communications or for an order of approval of a previous interception of any wire or oral communication qualifying under D.C. Code § 23-546 (b) (2012 Repl.). An application for an order of authorization or of approval may be authorized by the United States Attorney or by a designated assistant only when the interception may provide or has provided evidence of the commission of or a conspiracy to commit any of the offenses listed in D.C. Code § 23-546 (c) (2012 Repl.).

(b) Application; Form and Contents. Each application must be made in writing upon oath to a judge and must state the applicant's authority to make the application. The application must include:

(1) the identity of the investigative or law enforcement officer making the application and of the officer authorizing the application;

(2) a full and complete statement of facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued, including

(A) details as to the particular offense that has been, is being, or is about to be committed;

(B) a particular description of the nature and location of the facilities from which or the place where the communication is to be or was intercepted;

(C) a particular description of the type of communications sought to be or which were intercepted; and

(D) the identity of the person, if known, who committed, is committing, or is about to commit the offense and whose communications are to be or were intercepted;

(3) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear or appeared to be unlikely to succeed if tried or to be too dangerous;

(4) a statement of the period of time for which the interception is or was required to be maintained or a particular description of facts establishing probable cause to believe that additional communications of the same type will or would occur thereafter so that the authorization will or would not automatically terminate;

(5) a full and complete statement of the facts concerning all previous applications, known to the individual authorizing or making the application, made to any judge involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application; and

(6) where the application is for an extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

(c) Issuance. Upon application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the District of Columbia, if the judge determines on the basis of facts submitted that:

(1) there is or was probable cause for belief that a person whose communication is to be or was intercepted is or was committing, has committed, or is about to commit an offense listed in D.C. Code § 23-546 (c) (2012 Repl.);

(2) there is or was probable cause for belief that particular communications concerning that offense will or would be obtained through the interception;

(3) normal investigative procedures have or would have been tried and have or had failed or reasonably appear or appeared to be unlikely to succeed if tried or to be too dangerous; and

(4) there is or was probable cause for belief that the facilities from which, or the place where, the communications are to be or were intercepted were used, are being used, or are about to be used in connection with commission of such offense, or are or were leased to, listed in the name of, or commonly used by the person referred to in Rule 41-I(c)(1).

(d) Issuance in Specified Instances. If the facilities from which a wire communication is to be or was intercepted are or were being used by, are or were about to be used by, or are or were leased to, listed in the name of or commonly used by, a licensed physician, a licensed attorney, or practicing clergyman, or if the place where an oral communication is to be or was intercepted is or was a place used primarily for habitation by a husband and wife or primarily by a licensed physician, licensed attorney, or practicing clergyman for that person's own professional purposes, no order authorizing or approving such interception may be issued unless the judge, in addition to the matters provided in Rule 41-I(c), determines that:

(1) such facilities or place are or were being used or are or were about to be used in connection with conspiratorial activities characteristic of organized crime; and

(2) such interceptions will be so conducted as to minimize or eliminate the number of interceptions of privileged wire or oral communications between licensed physicians and patients, licensed attorneys and clients, practicing clergyman and confidants, and husbands and wives. No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this rule shall lose its privileged character.

(e) Specifications in and Contents of the Order. Each order authorizing or approving the interception of any wire or oral communications must specify or contain:

(1) the identity of the person, if known, or otherwise a particular description of the person, if known, whose communications are to be or were intercepted;

(2) the nature and location of the communication facilities as to which, or the place where, authority to intercept or any approval of interception is or was granted;

(3) a particular description of the type of communication sought to be or which was intercepted, and a statement of the particular offense to which it relates;

(4) the identity of the agency authorized to intercept or whose interception is approved, and of the person authorizing the application;

(5) the period of time during or for which the interception is authorized or approved, including a statement as to whether or not the interception will automatically terminate when the described communication has been first obtained; and

(6) a provision that the authorization to intercept must be executed as soon as practicable, must be conducted in such a way as to minimize or eliminate the interception of communications not otherwise subject by law to interception, and must terminate upon attainment of the authorized objective, or in any event in 30 days.

(f) Further Contents.

(1) By Direction of the Judge. An order issued pursuant to Rule 41-I(c) and, if applicable, Rule 41-I(d), may require reports to be made to the judge who issued the order showing what progress has been made toward the achievement of the authorized objective and the need for continued interception. Reports must be made at such intervals as the judge may require.

(2) Upon Request of the Applicant. Upon the request of the applicant, an order issued pursuant to Rule 41-I(c), and, if applicable, Rule 41-I(d), must direct that a communication common carrier, landlord, custodian, or other person must furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according the person whose communications are to be intercepted.

(g) Extensions. An application for extension may be made in accordance with Rule 41-I(a), but no extension order may be granted on such application unless the judge makes the determinations listed in Rule 41-I(c) and, if applicable, the determinations listed in Rule 41-I(d).

(h) Additional Procedures on Certain Orders of Approval.

(1) Organized Crime Emergencies. Notwithstanding any other paragraph of this rule, any investigative or law enforcement officer, specially designated by the United States Attorney for the District of Columbia or a designated assistant, who reasonably determines that

(A) an emergency situation exists with respect to conspiratorial activities characteristic of organized crime that requires a wire or oral communication to be intercepted before an order authorizing the interception can with due diligence be obtained; and

(B) there are grounds upon which an order could be entered under Rule 41-I(c) and (d) to authorize interception, may intercept the communication if an application for an order approving the interception is initiated within 12 hours and is completed within 72 hours after the interception has occurred, or begins to occur. Such application must be treated under Rule 41-I(c) and (d).

(2) Other than Authorized Offenses. When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized under Rule 41-I(c), (d), or (h)(1), intercepts wire or oral communications relating to offenses other than those so authorized, the officer must make as soon as practicable an application to a judge for approval for disclosure and use of the information intercepted. Such application must be treated under Rule 41-I(c) and (d).

(i) Maintenance and Custody of Records.

(1) Contents of Interceptions. The contents of any intercepted oral or wire communication must, if possible, be recorded on tape or wire or other comparable device. Immediately upon the expiration of the period of the order, or extensions thereof, the recordings must be made available to the judge issuing the order and sealed under the judge's directions. Custody of the recordings must be wherever the judge orders. They must not be destroyed except upon an order of the issuing or denying judge and in any event must be kept for 10 years.

(2) Contents of Applications Made and Orders Granted. Applications made and orders granted under this rule must be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Except as otherwise provided in Rule 41-I(k) the applications and orders may be disclosed only upon a showing of good cause before a judge of competent jurisdiction and must not be destroyed except on order of the issuing or denying judge, and in any event must be kept for 10 years.

(j) Inventory.

(1) Recipients; Time of Inventory. Within a reasonable time not to exceed 90 days after the filing of an application for an order of approval under Rule 41-I(h) which is denied, or the termination of the period of any order or extensions thereof, the issuing or denying judge must cause an inventory to be served on the persons named in the order or the application and such other parties to intercepted communications as the court may determine are necessary in the interest of justice. On an ex parte showing of good cause to a judge, the serving of the inventory may be postponed.

(2) Contents of the Inventory. The inventory described in Rule 41-I(j)(1) must include notice of

(A) the fact of the entry of the order or the application for an order of approval which was denied;

(B) the date of the entry of the order or the denial of the application for an order of approval;

(C) the period of authorized, approved, or disapproved interception; and

(D) whether during the period wire or oral communications were intercepted.

(3) Inspection. The judge, upon the filing of a motion, may make available to the person or the person's counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice.

(k) Use of Intercepted Communications.

(1) In General. Any communication intercepted in conformity with this rule, or evidence derived therefrom, may be disclosed or used by any person who has lawfully obtained knowledge of its contents while giving testimony under oath in any criminal trial, hearing, or proceeding before any grand jury or court. Any other disclosure or use must be in conformity with law.

(2) Exceptions. The presence of a seal as provided under Rule 41-I(i) or the satisfactory explanation for the absence thereof is a prerequisite for such disclosure or use. A further prerequisite for disclosure or use is the service not less than 10 days before trial, hearing or other proceeding:

(A) of the inventory provided in Rule 41-I(j) and

(B) of the parties to the action with a copy of the order and accompanying application under which the interception was authorized or approved.

The 10-day period may be waived by court order when the court finds it was not possible to furnish the information and the party will not be prejudiced by the delay in receiving the information.

(l) Motion to Suppress.

(1) By Whom. Any aggrieved person in any trial, hearing or other proceeding before any court, department, officer, agency, regulatory body, or other authority of the United States or District of Columbia may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom.

(2) Grounds. A motion made under Rule 41-I(l)(1) may be based on the grounds that:

(A) the communication was unlawfully intercepted;

(B) the order of authorization or approval under which it was intercepted is insufficient on its face;

(C) the interception was not made in conformity with the order of authorization or approval;

(D) service was not made as provided in Rule 41-I(k); or

(E) the seal prescribed by Rule 41-I(i) is not present and there is no satisfactory explanation for its absence.

(3) Time of Making Motion. The motion must be made before trial, hearing, or other proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion.

(4) Disposition. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom shall not be received in evidence in the trial, hearing, or proceeding.

(5) Inspection. Upon the filing of the motion by the aggrieved person, the judge may make available to the aggrieved person or the person's counsel for inspection such portions of the intercepted communication, or evidence derived therefrom, as the judge determines to be in the interest of justice.

COMMENT TO 2016 AMENDMENTS

This rule, retained from the former rule, has no federal counterpart. It details the procedure involved in the interception of wire or oral communications. See D.C. Code § 23-546 et seq. (2012 Repl.). Minor stylistic changes have been made to maintain consistency throughout the rules.

Rule 42. Criminal Contempt

(a) Disposition After Notice. Any person who commits criminal contempt may be punished for that contempt after prosecution on notice.

(1) Notice. The court must give the person notice in open court, in an order to show cause, or in an arrest order. The notice must:

(A) state the time and place of the trial;

(B) allow the defendant a reasonable time to prepare a defense; and

(C) state the essential facts constituting the charged criminal contempt and describe it as such.

(2) Appointing a Prosecutor. The court must request that the contempt be prosecuted by an attorney for the government, unless the interest of justice requires the appointment of another attorney. If the government declines the request, the court must appoint another attorney to prosecute the contempt.

(3) Trial and Disposition. A person being prosecuted for criminal contempt is entitled to a jury trial in any case in which the law so provides and must be released or detained as provided by statute or these rules. If the criminal contempt involves disrespect toward or criticism of a judge, that judge is disqualified from presiding at the contempt trial or hearing unless the defendant consents. Upon a finding or verdict of guilty, the court must impose the punishment.

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

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in two respects.

The federal rule allows for a jury trial in contempt proceedings where provided for under "federal law." Subparagraph (a)(3) substitutes "the" for "federal." In Superior Court the right to a jury trial is defined by D.C. Code § 16-705 (2012 Repl.).

Paragraph (b) of the federal rule refers to the federal statute dealing with contempt proceedings before magistrate judges. In Superior Court, such proceedings are governed by Rule 117(h).

Rule 43. Defendant's Presence

(a) When Required. Unless this rule, Rule 5, or Rule 10 provides otherwise, the defendant must be present at:

(1) the initial appearance, the initial arraignment, and the plea;

(2) every trial stage, including jury impanelment and the return of the verdict; and

(3) sentencing.

(b) When Not Required. A defendant need not be present under any of the following circumstances:

(1) Organizational Defendant. The defendant is an organization represented by counsel who is present.

(2) Misdemeanor Offense. The offense is punishable by fine or by imprisonment for not more than one year, or both, and with the defendant's written consent, the court permits arraignment, plea, trial, and sentencing to occur in the defendant's absence.

(3) Conference or Hearing on a Legal Question. The proceeding involves only a conference or hearing on a question of law.

(4) Sentence Correction. The proceeding involves the correction or reduction of sentence under Rule 35.

(c) Waiving Continued Presence.

(1) In General. A defendant who was initially present at trial waives the right to be present under the following circumstances:

(A) when the defendant is voluntarily absent after the trial has begun, regardless of whether the court informed the defendant of an obligation to remain during trial;

(B) when the defendant is voluntarily absent during sentencing; or

(C) when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior, but the defendant persists in conduct that justifies removal from the courtroom.

(2) Waiver's Effect. If the defendant waives the right to be present, the trial may proceed to completion, including the verdict's return and sentencing, during the defendant's absence.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule except that subparagraph (c)(1)(B) omits the phrase "in a noncapital case" since there are no such cases in Superior Court.

The former Superior Court rule did not permit the court to impose sentence on a defendant who was voluntarily absent. As amended, this rule does permit it, and so conforms to the changes made in the federal rule in 1995.

Rule 44. Right to Appointed Counsel; Joint Representation

(a) Right to Appointed Counsel. A defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right.

(b) Inquiry Into Joint Representation.

(1) Joint Representation. Joint representation occurs when:

(A) two or more defendants have been charged jointly under Rule 8(b) or have been joined for trial under Rule 13, and

(B) the defendants are represented by the same counsel, or counsel who are associated in law practice.

(2) Court's Responsibilities in Cases of Joint Representation. The court must promptly inquire about the propriety of joint representation and must personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless there is good cause to believe that no conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant's right to counsel.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in one respect. Paragraph (b) of the federal rule (Appointment Procedure) is omitted from this rule; in Superior Court, appointment of counsel is governed by Rule 44-I.

Rule 45. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any period of time specified in these rules or any court order:

(1) Day of the Event Excluded. Exclude the day of the act, event, or default that begins the period.

(2) Exclusion from Brief Periods. Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.

(3) Last Day. Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or any part of a day in which the clerk's office is closed. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk's office is closed.

(4) "Legal Holiday" Defined. As used in this rule, ''legal holiday'' means:

(A) the day set aside by statute for observing:

(i) New Year's Day;

(ii) Martin Luther King, Jr.'s Birthday;

(iii) Washington's Birthday;

(iv) Memorial Day;

(v) Independence Day;

(vi) Labor Day;

(vii) Columbus Day;

(viii) Veterans' Day;

(ix) Thanksgiving Day;

(x) Christmas Day; and

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

(b) Extending Time.

(1) In General. When an act must or may be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party's motion made:

(A) before the originally prescribed or previously extended time expires; or

(B) after the time expires if the party failed to act because of excusable neglect.

(2) Exception. The court may not extend the time to take any action under Rule 35, except as stated in that rule.

(c) Additional Time After Certain Kinds of Service. Whenever a party must or may act within a specified period after service and service is made in the manner provided under Superior Court Rule of Civil Procedure 5(b)(2)(B), (C), or (D), 3 days are added after the period would otherwise expire under Rule 45(a).

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002, and to conform to a change in paragraph (c) of the federal rule in 2007. It is substantially identical to the federal rule. It retains a distinction, now in subparagraph (a)(3), that permits an extra day for computing time when the clerk's office is actually closed.

In subparagraph (a)(4)(B), the phrase "or observed as a holiday by the court" was added to account for local holidays, such as District of Columbia Emancipation Day, that are observed by the court.

Subparagraph (b)(2) includes a change made to the federal rule in 2005. In that year, *Federal Rule 45* was amended to conform to contemporaneous changes made to *Federal Rules 29* (Motion for Judgment of Acquittal), *33* (New Trial) and *34* (Arresting Judgment), removing the requirement that the court act within seven days on motions for enlargement of time.

The subject matter of former paragraph (d), concerning the timing of written motions and affidavits, is addressed in Rule 47. That paragraph has been deleted from this rule.

Rule 46. Release from Custody; Supervising Detention

(a) Before Trial. The provisions of D.C. Code §§ 23-1321 to -1331 (2012 Repl.) govern pretrial release or detention.

(b) Pending Sentence or Appeal. The provisions of D.C. Code § 23-1325 (2012 Repl.) govern release or detention pending sentence or pending appeal.

(c) Material Witnesses. The provisions of D.C. Code § 23-1326 (2012 Repl.) govern release or detention of a material witness.

(d) Orders. Upon ordering release pursuant to D.C. Code § 23-1321 (2012 Repl.), the court must issue an order as provided in D.C. Code § 23-1321 (c)(1) (2012 Repl.). If the court orders detention of the defendant before trial pursuant to D.C. Code § 23-1322 (b) (2012 Repl.), it must issue an order as provided in D.C. Code § 23-1322 (g) (2012 Repl.).

(e) Supervising Detention. To eliminate unnecessary detention, the court, in cooperation with the District of Columbia Pretrial Services Agency acting pursuant to D.C. Code § 23-1303 (h)(6) (2012 Repl.), must supervise the detention of any defendants awaiting trial and any persons held as material witnesses.

(f) Producing a Statement.

(1) In General. Rule 26.2(a)-(d) and (f) applies at a detention hearing under D.C. Code §§ 23-1322, -1323, -1325 (a) and -1329 (2012 Repl.), unless the court for good cause rules otherwise.

(2) Sanctions for Not Producing a Statement. If a party disobeys a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony at the detention hearing.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraphs (a)-(d) and (f) refer to the local statutes governing release and detention.

Paragraph (e) (Supervising Detention) differs from the corresponding paragraph (h) of the federal rule by retaining a reference to the role of the Pretrial Services Agency.

Paragraph (b) of the federal rule (governing release during trial) has not been adopted by the Superior Court.

This rule also omits paragraphs (e), (f), and (g) of the federal rule (governing sureties, bail forfeitures and exoneration). These matters are addressed in Superior Court Rule 116.

Paragraph (i) of the federal rule (Forfeiture of Property) is omitted as locally inapplicable.

In addition, paragraph (g) of the former rule (Definition of "Court") has been omitted. Definitions are now in Rule 1.

Rule 47. Motions and Supporting Affidavits

(a) In General. A party applying to the court for an order must do so by motion.

(b) Form and Content of a Motion and Opposition. A motion or an opposition—except when made during a trial or hearing—must be in writing, unless the court permits the party to make the motion or opposition by other means. It must state the grounds on which it is based, the legal authorities upon which it relies, and the relief or order sought. It may be supported by affidavit.

(c) Time for Filing. All motions, except motions to compel discovery, to dismiss for lack of speedy trial, for review of release conditions, or for continuance, must be filed within 20 days after the initial status hearing following arraignment in felony cases and in misdemeanor cases where a jury trial has been demanded, unless otherwise provided by the court or by rule. In misdemeanor cases scheduled for a bench trial, all such motions must be filed within 10 days of arraignment or entry of appearance of counsel, whichever date is later, unless otherwise provided by the court. Any opposition must be filed within 10 days thereafter and be served upon all parties, unless otherwise provided by the court. If no opposition is filed by the time set by this rule or by the court, the court may treat the motion as conceded.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraphs (b) and (c) substantially incorporate provisions of former Superior Court Rule 47-I. Paragraph (b) includes the requirement of former Rule 47-I(b) that a motion state the legal authorities upon which it relies, although it omits the requirement that the authorities appear in a separate statement. It states parallel requirements for oppositions. Paragraph (c) incorporates, with minor stylistic changes, the substance of former Rule 47-I(c). It sets the time for filing motions and oppositions and allows for motions to be treated as conceded.

Paragraph (d) of the federal rule (Affidavit Supporting a Motion) has been omitted as unnecessary.

Rule 47-I. [Deleted].

COMMENT TO 2016 AMENDMENTS

Paragraph (a) of the former rule has been omitted as unnecessary since its subject matter, service and filing, is addressed in Rule 49.

Paragraphs (b) and (c) of the former rule have been incorporated in substantial part into Rule 47.

Earlier revisions of this rule deleted paragraphs (d) - (f) and (i).

Paragraphs (g) and (h) of the former rule have been reincorporated into Rule 12.

COMMENT TO 2014 AMENDMENTS

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

Rule 48. Dismissal

(a) By the Government.

(1) Information or Complaint. The government may file a dismissal or nolle prosequi of an information or complaint. Such a dismissal is without prejudice unless otherwise stated. The government may not dismiss the prosecution during trial without the defendant's consent.

(2) Indictment. The government may, with leave of court, dismiss an indictment. Such a dismissal is without prejudice unless otherwise stated. The government may not dismiss the prosecution during trial without the defendant's consent.

(b) By the Court. The court may dismiss an indictment, information, or complaint if unnecessary delay occurs in:

(1) presenting a charge to a grand jury;

(2) filing an information against a defendant; or

(3) bringing a defendant to trial.

(c) Abandonment of Prosecution.

(1) Determination of Abandonment. If any defendant charged with a criminal offense is committed or held to bail to await the action of the grand jury and after nine months the grand jury has not taken action, either by ignoring the charge or by returning an indictment, the prosecution of such charge must be deemed abandoned and the defendant must be set free or have the bail discharged.

(2) Enlargement of Time. The court may enlarge the time for taking action by the grand jury when practicable, so long as good cause for enlargement is shown in writing, and due notice is given to the defendant.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) is divided into two parts. Subparagraph (a)(1) allows the government to enter a dismissal or nolle prosequi of an information or complaint without leave of court, while the federal rule requires leave of court to dismiss an indictment, information, or complaint. Subparagraph (a)(2), like the federal rule, requires leave of court to dismiss an indictment.

Paragraph (c) details abandonment of prosecution pursuant to D.C. Code § 23-102 (2012 Repl.).

Rule 49. Serving and Filing Papers

(a) When Required. A party must serve on every other party any written motion (other than one to be heard ex parte), opposition, written notice, designation of the record on appeal, or similar paper.

(b) How Made. Service must be made in the manner provided for in a civil action. When these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party, unless the court orders otherwise.

(c) Notice of a Court Order.

(1) In all cases where a party or the party's attorney is not present, immediately upon the entry of an order on a post-arraignment motion, the clerk must serve on each party a notice of the entry of the order and must make a note in the docket of the service. Service must be made in the manner provided for in a civil action. A party's lack of notice of the entry of the order does not affect the time to appeal, or relieve—or authorize the court to relieve—the party's failure to appeal within the time allowed, except as permitted by the Rules of the District of Columbia Court of Appeals.

(2) Nothing in this rule shall preclude a judge or magistrate judge or his or her authorized staff member from performing the function of the clerk prescribed in Rule 49(c)(1).

(d) Filing. A party must file with the court a copy of any paper the party is required to serve. A paper must be filed in a manner provided for in a civil action.

(e) Communications by Counsel to the Court. Copies of all communications, memoranda and briefs (other than those regarding matters to be heard ex parte) submitted by counsel to a judge or magistrate judge and relating to a proceeding pending before him or her must be delivered to each of the parties.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (a) includes “opposition” in the list of papers a party must serve on every other party.

Consistent with the former rule, paragraph (c) explicitly requires the clerk to notify the parties of orders on motions entered outside their presence. The clerk must mail notice of the entry of the orders to the parties and must make an entry on the docket that the notice has been mailed. This requirement is in keeping with District of Columbia Court of Appeals Rule 4(b)(5), which defines entry of an order made outside the presence of the parties with reference to the entry on the criminal docket reflecting the mailing of notice.

Paragraph (e) is retained from the former rule. It was added to insure that all parties are informed of any communication delivered to a judicial officer. The term "judge" in former paragraph (e) of this rule was replaced with the term "judge or magistrate judge" to make it applicable to communications by counsel with magistrate judges. The parenthetical phrase "other than those regarding matters to be heard ex parte" was added to parallel similar language in paragraph (a) of this rule.

Rule 50. [Omitted].

COMMENT TO 2016 AMENDMENTS

Federal Rule of Criminal Procedure 50, dealing with scheduling preference for criminal cases, is inapplicable in the Superior Court.

Rule 51. Preserving Claimed Error

(a) Exceptions Unnecessary. Exceptions to rulings or orders of the court are unnecessary.

(b) Preserving a Claim of Error. A party may preserve a claim of error by informing the court—when the court ruling or order is made or sought—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection. If a party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party.

COMMENT TO 2016 AMENDMENTS

This rule differs from the federal rule in one respect. It omits the last sentence of paragraph (b) of the federal rule, which refers to *Federal Rule of Evidence 103*.

Rule 52. Harmless and Plain Error

(a) Harmless Error. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

(b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

COMMENT TO 2016 AMENDMENTS

This rule is identical to the federal rule.

Federal Rule 52(b) was amended in 2002 by deleting the words "or defect" after the words "plain error." The change was intended to remove any ambiguity in the rule. As noted by the Supreme Court, in reference to the former federal rule, the language "plain error or defect" was misleading to the extent that it might be read to create two separate categories: "plain errors" and "defects affecting substantial rights." See *United States v. Olano*, 507 U.S. 725, 732 (1993) (incorrect to read Rule 52(b) in the disjunctive); *United States v. Young*, 470 U.S. 1, 14 n. 12 (1985) (use of disjunctive in Rule 52(b) is misleading).

Rule 53. Photography, Broadcasting, Recording, and Other Disclosures.

(a) Disclosures by Courthouse Personnel. All courthouse supporting personnel, including among others, marshals, court clerks, law clerks, messengers and court reporters, must not disclose to any person information relating to any pending criminal proceeding that is not part of the public records of the court without specific authorization of the court, nor may any such personnel discuss the merits or personalities involved in any such proceeding with any members of the public.

(b) Photographing, Broadcasting, Recording.

(1) Except as otherwise provided by a statute or these rules, the taking of photographs, the use of any recording device, and any form of broadcasting in the Superior Court are prohibited.

(2) Exceptions.

(A) Photographs may be taken and recording devices used at ceremonial functions and educational activities.

(B) Photographs may be taken and recording devices used in any room other than a courtroom, its adjacent anterooms, the cellblock, the corridors and the lobby, with the permission of the person in charge of the room and of the person being photographed or recorded.

(C) A judge or a magistrate judge may permit the taking of photographs or the use of recording devices for the presentation or preservation of evidence or perpetuation of the record.

(c) Release of Information by or Opinions of Counsel. Neither an attorney who has undertaken the representation of a defendant nor the attorney for the government, whether the case is in progress or is imminent, shall release or authorize the release of information not in the public record for dissemination by any means of public communication which is likely to interfere with a fair trial or otherwise prejudice the due administration of justice. No statement by any such attorney may be so disseminated containing the attorney's opinion as to guilt or innocence, as to credibility of witnesses, as to motives of the other party, or as to similar matters bearing on the conduct of the litigation.

(d) Widely Publicized or Sensational Cases. In a widely publicized or sensational criminal case, the court on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused and of the government to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses and any other matters which the court may deem appropriate in the administration of justice.

COMMENT TO 2016 AMENDMENTS

Paragraphs (a), (b)(2), (c), and (d) are retained from the former rule. They have no federal counterparts. Subparagraph (b)(2) has been revised to make it more comprehensive. Minor stylistic changes have been made to maintain consistency throughout the rules.

Subparagraph (b)(1) is similar to the federal rule, but extends the prohibitions of the rule to places outside courtrooms.

Superior Court Rule of Civil Procedure 203 addresses similar issues.

Rule 54. [Deleted].

COMMENT TO 2016 AMENDMENTS

All of Rule 54, as modified, was moved to Rule 1.

Rule 55. Records of the Clerk

(a) Required Entries. The clerk must keep records of criminal proceedings in the form prescribed by administrative orders of the Chief Judge. The entry of an order or judgment must show the date the entry is made.

(b) Fees for Criminal Record Checks. The clerk must charge a fee of $10.00 for each search of an individual's criminal record. The fee will not apply to: an individual requesting a search for his or her own record; any governmental agency; or an attorney for or an employee of a non-profit organization located in the District of Columbia that provides legal services for indigent clients without fee or for a nominal processing fee or an attorney appointed pursuant to D.C. Code § 11-2602 or 16-2304 (2012 Repl.) or any individual who has been approved by the court to proceed in forma pauperis who certifies that such a search is necessary pursuant to such an appointment.

COMMENT TO 2016 AMENDMENTS

Minor stylistic changes have been made to this rule to maintain consistency throughout the rules. It differs from the federal rule in several respects.

Paragraph (a) refers to administrative orders of the Chief Judge rather than to the Administrative Office of the United States Courts.

Paragraph (b) retains the local requirement that fees be charged by the clerk for a search of criminal records except under delineated circumstances. It has no federal counterpart.

Rule 55-I. Removal of Records

(a) Grounds for Removal. No jacket, document, or record in any criminal case shall be removed from the clerk's office except

(1) when required for use before a division of this court or a person to whom the case has been referred for consideration or

(2) when ordered by a judge or magistrate judge.

(b) By Whom. A judge or magistrate judge, the clerk, the clerk's assistant, an attorney or party to the case, or a person designated by a judge or magistrate judge may be permitted to remove a jacket, document, or record for the use required or ordered under Rule 55-I(a).

(c) Physical Limits. Except with the approval of a judge or magistrate judge, no jacket, document, or record shall be taken from the courthouse by any person other than the clerk or the clerk's assistant, who shall retain possession thereof.

(d) Receipt. In any case where the jacket, document, or record is removed by a person other than the clerk or the clerk's assistant, a receipt shall be required.

(e) Return. Any jacket, document or record removed from the clerk's office must be returned immediately upon completion of the purpose for which it was removed. Such return must be noted by the clerk or the clerk's assistant on the receipt given under Rule 55-I(d).

COMMENT TO 2016 AMENDMENTS

This rule, retained from the former rule, has no federal counterpart. Minor stylistic changes have been made to maintain consistency throughout the rules. The term "judge or magistrate judge" is substituted for "judge" in the former rule to make clear that magistrate judges may also access court records.

Rule 56. When Court Is Open

(a) In General. The Superior Court is considered always open for any filing, and for issuing and returning process, making a motion, or entering an order.

(b) Office Hours. The clerk's office—with the clerk or a deputy in attendance—must be open during business hours on all days except Saturdays, Sundays, and legal holidays. The Criminal Finance Office must be open on any day that the court is in session and must remain open until one hour after the session is completed.

(c) Special Hours. The Chief Judge may order that the clerk's office will be open for specified hours on Saturdays or legal holidays.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraph (b) requires that the Criminal Finance Office remain open until one hour after court proceedings have ended.

Paragraph (c) omits the federal rule's prohibition on setting special hours for the clerk's office on certain legal holidays.

In addition, unlike the former rule, this rule does not state the particular hours when the clerk's office and the Criminal Finance Office must be open.

Rule 57. Rules of Courts

(a) Applicability of Civil Rules. The following Superior Court Rules of Civil Procedure shall apply to the Criminal Division:

Rule 43-I (Record made in regular course of business; photographic copies);
Rule 63-I (Bias or prejudice of a judge);
Rule 101 (Appearance and withdrawal of attorneys);
Rule 102 (Disciplinary proceedings against attorneys);
Rule 103 (Employees not to practice law); and
Rule 104 (Avoidance and resolution of conflicts in engagements of counsel among the courts in the District of Columbia).

(b) Procedure When There Is No Controlling Law. The court may regulate practice in any manner consistent with applicable law and these rules. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in applicable law or these rules unless the alleged violator was furnished with actual notice of the requirement before the noncompliance.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Paragraphs (a) and (c) of the federal rule, which deal with the promulgation, amendment, and enforcement of local rules of court, are omitted as locally inapplicable.

Paragraph (a) of this rule adopts certain Superior Court civil rules by reference.

Paragraph (b) refers to locally applicable law and rules.

Rule 58. [Omitted].

COMMENT TO 2016 AMENDMENTS

Federal Rule of Criminal Procedure 58 (Petty Offenses and Other Misdemeanors) is omitted as locally inapplicable.

Rule 59. [Deleted].

COMMENT TO 2016 AMENDMENTS

Former Superior Court Rule 59 (Effective Date) has been deleted as no longer necessary. *Federal Rule 59* (Matters before a Magistrate Judge) has not been adopted; in Superior Court such matters are addressed in D.C. Code §§ 11-1732 and -1732A (2012 Repl.) and Criminal Rule 117.

Rule 60. Title.

These rules may be known and cited as the Superior Court Rules of Criminal Procedure.

* * *

By the Court:

Date: March 10, 2016

/s/
Lee F. Satterfield
Chief Judge

Copies to:

All Judges
All Magistrate Judges
All Senior Judges
Dan Cipullo, Director, Criminal Division
Library
Daily Washington Law Reporter
Laura Wait, Assistant General Counsel