Rule 1. Scope of Rules

These Rules govern the procedure in summary proceedings for possession brought in this Court pursuant to D.C. Code §§ 45-1409 and 16-1501 et seq. (1981). When any case so brought is certified to the Civil Division pursuant to SCR LT 6, such case shall be scheduled for trial on an expedited basis and shall remain subject to these Landlord and Tenant Rules except as provided for in SCR LT 13-I. When any case so brought is certified to the Civil Division pursuant to SCR LT 5(c), it shall be subject in all respects to the Superior Court Rules of Civil Procedure.

These Rules may be known as Superior Court Rules of Civil Procedure for the Landlord and Tenant Branch and may be cited as Superior Court Rules -- Landlord and Tenant or SCR-LT. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

Rule 2. Applicability of Certain Superior Court Rules of Civil Procedure

The following Superior Court Rules of Civil Procedure are applicable to proceedings in the Landlord and Tenant Branch of the Court, except where inconsistent with the provisions of the Landlord and Tenant Rules or the summary nature of proceedings in this Branch:

Rules 5, 6, 8, 9, 10, 11, 12(b)-(h), 12-I(k), 15, 16 (exclusive of 16-I), 17, 19, 20, 21, 22, 23, 23.2, 24, 25, 38, 39, 40-I, 41, 42, 43, 44, 44.1, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 63, 64, 65, 65.1, 66, 67, 68 (exclusive of 68-I), 69, 70, 71, 73, 77 (exclusive of 77-I, 77-II), 79, 80, 82, 83-I, 84, 86, 101, 102, 103, 201, 202, and 203.

The following Superior Court Rules shall apply if the Court, pursuant to Landlord and Tenant Rule 10, permits discovery: SCR Civil 26, 28, 29, 30, 31, 32, 33, 34, 36 and 37. Any Civil Rule not listed herein shall not apply to any case filed in this Branch of the Court.

COMMENT

Any reference herein to a particular Rule, as for example, "Rule 5", comprehends both the original Rule and any addenda thereto, e.g., "Rule 5-I".

Rule 3. Commencement of Action

(a) IN GENERAL.

(1) *Complaint for Possession of Real Property*. A landlord and tenant action is commenced by filing with the clerk a verified Complaint for Possession of Real Property completed on one of the following landlord and tenant forms:

(A) Form 1A (Nonpayment of Rent—Residential Property);

(B) Form 1B (Violation of Obligations of Tenancy or Other Grounds for Eviction—Residential Property);

(C) Form 1C (Nonpayment of Rent and Other Grounds for Eviction—Residential Property); or

(D) Form 1D (Commercial Property).

(2) *Summons*. Together with the complaint, the plaintiff must deliver to the clerk a prepared Form 1S (Summons to Appear in Court and Notice of Hearing), accompanied by information for litigants, as required by administrative orders of the Chief Judge.

(3) *Copies*. The plaintiff must provide the clerk with the original complaint and summons and with a copy of the complaint and summons for each defendant named in the complaint.

(b) ADDITIONAL CLAIMS.

(1) *Other Claims Allowed in a Landlord and Tenant Action*. In addition to a claim for possession of real property, an original or amended complaint in one of the forms set out in Rule 3(a) may include a claim for the following:

(A) the recovery of personal property located in the premises and belonging to the plaintiff;

(B) a money judgment based on rent in arrears and late fees as permitted by law; or

(C) the relief listed in both Rule 3(b)(1)(A) and (B).

(2) *Requirements for a Money Judgment*. A money judgment may be rendered against a defendant only if the defendant:

(A) has been personally served; or

(B) asserts a counterclaim for a money judgment.

(c) JUDGMENT BY DEFAULT. If the defendant fails to appear, the verification entitles the plaintiff to a judgment by default in accordance with Rule 14.

COMMENT TO 2017 AMENDMENT

This rule has been amended consistent with the stylistic changes to the civil rules. Subsection (b)(1)(B) was also modified in response to the Rental Housing Late Fee Fairness Amendment Act of 2016, D.C. Law No. 21-0172 (Dec. 8, 2016), which prohibits a landlord from evicting a tenant on the basis of nonpayment of a late fee. The rule now permits landlords to seek late fees as part of a money judgment.

COMMENT

D.C. Code § 16-1501 requires that a complaint for possession be made “under oath verified by the person aggrieved by the detention, or by his agent or attorney having knowledge of the facts.” Therefore, although SCR-Civ. 9-I is incorporated into the Landlord and Tenant Rules, a complaint for possession must be verified under oath

before a notary public or other person authorized by law to administer an oath and may not be based on an unsworn declaration. *See* SCR-Civ. 9-I(e).

Rule 3-I. Properties Subject to Court-Ordered Receiverships

(a) *Owners and owner's agents*. No owner or owner's agent may file a complaint for possession of real property based, in whole or in part, on nonpayment of rent if the property is subject to a court-ordered receivership pursuant to D.C. Code §§ 34-1300 et seq., 42-3301 et seq., or 42-3651.01 et seq. (2001), unless authorized by court order in the receivership action. A copy of any such order authorizing the filing of a complaint for possession of real property based, in whole or in part, on nonpayment of rent shall be attached as an exhibit to the complaint.

(b) *Receivers*. A receiver may file a complaint seeking to recover possession of real property that is the subject of a court-ordered receivership pursuant to D.C. Code § 42-3301 et seq. or § 34-2300 et seq. (2001). In any case brought by a receiver, a copy of the receivership order shall be attached as an exhibit to the complaint. Unless the receiver files along with the complaint a sworn statement signed by the owner reflecting the owner's consent to be joined as a party plaintiff, the receiver shall file a motion, along with the complaint, for leave to join the owner as a party defendant under SCR-Civ. 19(a). The receiver shall serve the complaint and the motion for joinder upon the owner in any manner permitted by SCR-Civ. 4 at least seven days, not counting Sundays and legal holidays, in advance of the initial hearing. At least five days, not counting Saturdays, Sundays, and legal holidays, in advance of the initial hearing, the receiver shall demonstrate proof of such service by filing an affidavit naming the person(s) served and establishing the manner of service and the date(s) on which service was affected. Upon a judicial determination at the initial hearing that the owner may be joined under SCR-Civ. 19(a) and the receiver has affected service of process upon the owner, the owner shall be realigned as a party plaintiff. The complaint shall be dismissed without prejudice at the initial hearing if the judicial officer determines that the receiver has not effected service of process upon the owner or that the owner may not properly be joined under SCR-Civ. 19(a).

(c) *Complaints that do not involve a claim of nonpayment of rent*. Unless prohibited by the receivership order, an owner or owner's agent may file a complaint for possession of property subject to a court-ordered receivership, under D.C. Code § 34-2300 et seq., § 42-3301 et seq., or § 42-3651.01 et seq. (2001), that is not based, in whole or in part, on the nonpayment of rent. The owner or owner's agent shall attach a copy of the receivership order as an exhibit to any such complaint. At least fourteen calendar days before the initial hearing, the owner or owner's agent shall file a certificate of service certifying that a file-stamped copy of the complaint has been sent by first-class mail to the receiver at the most recent address on file with the Clerk in the receivership action. In an action brought by an owner or owner's agent in which the complaint is not based, in whole or in part, on the nonpayment of rent, the court may not enter a protective order unless the receiver has been joined as a party under SCR-Civ. 19(a) and served with process as required by section (b) of this rule. No monies paid into the court registry pursuant to a protective order may be released except in a manner consistent with the court's orders in the receivership action.

(d) *Service of process*. Nothing in this rule relieves a plaintiff's obligation to serve a tenant or occupant with process in accordance with Landlord and Tenant Rule 4.

(e) *Sanctions*. Any party who files a complaint in violation of this rule, shall be subject to such sanctions as are just, including among others, reimbursement of the other parties'

expenses, payment of reasonable attorneys' fees and/or dismissal of the complaint. In lieu of these sanctions or in addition thereto, a violation of a court order issued pursuant to this rule or in connection with the receivership may result in an order treating such a violation as a contempt of court.

Comment

Generally, when a property is subject to a court-ordered receivership under one of the statutory provisions cited in the rule, neither the owner nor the owner's agent is permitted to collect rent from a tenant or to maintain an action for possession of the property based upon a tenant's alleged nonpayment of rent. The owner is a necessary party, however, in the event that the receiver brings a complaint for possession of the property. *Shannon & Luchs Co. v. Jeter*, 469 A.2d 812 (D.C. 1983). To join an owner who will not join voluntarily, the federal counterpart of SCR-Civ. 19 requires that the owner be served with process, joined as a defendant, and realigned as a plaintiff. *JTG of Nashville, Inc. v. Rhythm Band, Inc.*, 693 F. Supp. 623, 628 (M.D. Tenn. 1988). *See also Raskauskas v. Temple Realty Co.,* 589 A.2d 17, 20 n.2, 21-22 (D.C. 1991). Tenant receiverships are not included in section (b) because the reasoning in *Jeter* is inapplicable in tenant receiverships in which the receiver has the right to demand possession of the property. D.C. Code § 42-3651.06(a)(1) (2001).

Rule 4. Process

Service of process shall be made in compliance with D.C. Code § 16-1502 (1981) by any competent person not less than 18 years of age who is not a party to the suit.

If service of process is made by posting pursuant to D.C. Code § 16-1502 (1981), the plaintiff or the plaintiff's agent shall send to the defendant, by first class mail, a copy of the summons and complaint at the address named in the complaint within 3 calendar days of the date of the posting. Proof of the mailing of such notice shall be on a form prescribed by the Court and certified by an attorney or sworn to by a special process server.

The return of service of the complaint shall be made under oath and shall be in the format set forth in SCR-LT Form 3 which is incorporated herein by reference. Proof of compliance with the mailing of the summons to the defendant within 3 calendar days of posting under D.C. Code § 16-1502 (1981) may be made on SCR-LT Form 3. Costs in excess of $ 8.50 for service by a special process server, costs in excess of $ 2.00 for notarization of the complaint and costs in excess of the actual costs for first-class postage shall be allowed only upon the Court's finding of good cause therefor.

COMMENT

This rule requires that the plaintiff mail to the defendant a copy of the summons and complaint when service is made by posting pursuant to D.C. Code 2001, § 16-1502. *See Greene v. Lindsey*, 456 U.S. 444, 102 S. Ct. 1874, 72 L. Ed. 2d 249 (1982). This requirement is not intended to excuse the plaintiff's obligation to make a “diligent and conscientious effort” to secure personal or substitute service before resorting to service by posting. *See, e.g., Parker v. Frank Emmet Real Estate*, 451 A.2d 62 (D.C. App. 1982).

Rule 5. Pleading by the Defendant

(a) *In general*. In this Branch it shall not be necessary for the defendant to file any answer, plea, affidavit, or other defense in writing except as provided in Landlord and Tenant Rules 6 and 13(b).

(b) *Counterclaims*. In actions in this Branch for recovery of possession of property in which the basis of recovery is nonpayment of rent or in which there is joined a claim for recovery of rent in arrears, the defendant may assert an equitable defense of recoupment or set-off or a counterclaim for a money judgment based on the payment of rent or on expenditures claimed as credits against rent or for equitable relief related to the premises. No other counterclaims, whether based on personal injury or otherwise, may be filed in this Branch. This exclusion shall be without prejudice to the prosecution of such claims in other Branches of the Court.

(c) *Plea of title*. A defendant desiring to interpose a plea of title must file such plea in writing, under oath, accompanied by a certification that it is filed in good faith and not for the purpose of delay and must also file an application for an undertaking or for waiver of undertaking, the form and amount of any such undertaking to be approved by the Court. Upon such approval by the Court, the undertaking shall be filed within 4 days thereafter and the case shall be certified to the Civil Division for trial on an expedited basis. Upon failure to so file the undertaking, the Clerk shall strike the plea of title unless the Court for good cause shown shall extend the time within which the undertaking may be filed.

Rule 6. Jury Demand

Any party entitled to a jury trial may demand a trial by jury of any action brought in this Branch by filing a demand for such jury trial signed by the party or his attorney of record. The demand must be filed not later than the time for appearance of the defendant stated in the summons, or such extended time as the Court may allow for good cause shown, and must be accompanied by (1) the fee provided in SCR Civil 202, unless the Court has authorized the party to proceed without payment or prepayment of costs, and (2) a verified answer setting out the facts upon which the defense is based, if the jury demand is made by the defendant. If a trial by jury is properly demanded, the case will be certified to the Civil Division and scheduled for trial on an expedited basis.

Rule 7. Time of Sessions, Office Hours, and Trials

(a) *Sessions*. The Landlord and Tenant Branch shall hold sessions every business day except as determined by the Chief Judge.

(b) *Office hours*. The Office of the Clerk of this Branch shall be open for the transaction of business as determined by the Chief Judge.

(c) *Initial hearing*. All cases shall be set for initial hearing on the date and time specified in the summons, provided that any party may appear at any session prior to such date and request that the Court order the initial hearing date continued. Prior to seeking such continuance, the movant shall be required to notify the non-moving party.

(d) *Non-jury trials*. Cases shall be set for trial by the Court or by consent of the parties after consultation with the Clerk about available trial dates.

Rule 7-I. [Deleted].

COMMENT

Repealed by Court Order dated Dec. 17, 2003, effective January 5, 2004.

Rule 8. Attorneys: Limitation of Cases

Engagement by an attorney in another court (except the Supreme Court of the United States, the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, and the District of Columbia Court of Appeals) or in any other Division of this Court will not be a ground for postponing to another day the trial of a case in the Landlord and Tenant Branch when such attorney is counsel of record in more than 25 unconsolidated, contested cases pending in the Landlord and Tenant Branch or pending in the Civil Division after referral thereto from the Landlord and Tenant Branch. Failure of an attorney so engaged to appear for trial when a case is called for trial in the Landlord and Tenant Branch, or in the Civil Division after referral thereto from the Landlord and Tenant Branch, may be grounds for (1) striking the appearance of the absent counsel, (2) a dismissal with prejudice or a default judgment, as appropriate, or (3) any other appropriate sanction. Nothing herein shall preclude a natural person represented by such an attorney from proceeding pro se.

Rule 9. Persons Appearing in a Representative Capacity

(a) *In general*. Except as provided in sections (b) and (c) of this Rule, and District of Columbia Court of Appeals Rule 49(c), no person other than a member in good standing of the Bar of this Court shall be permitted to appear in this Branch in a representative capacity for any purpose other than securing a continuance.

(b) *Corporations*. No corporation shall appear as a plaintiff in this Branch except through a member in good standing of the Bar of this Court. Corporations may appear as defendants without a member of the Bar in good standing, through an authorized officer, director, or employee solely for the purpose of entering into consent agreements as approved by the Court or as provided by LT Rule 11-I, provided that the requisite proof of authority of the non-lawyer to appear for the corporation has been filed in accordance with Court of Appeals Rule 49(c).

(c) *Law students*. Any law student admitted to the limited practice of law pursuant to the Rules of the District of Columbia Court of Appeals may engage in the limited practice of law in the Landlord Tenant Branch subject to the provisions of SCR Civil 101.

COMMENT

This rule does not alter the requirement that defendant corporations may not appear pro se to defend a case and must be represented by counsel for any matter other than a consent judgment. Court of Appeals Rule 49(c)(8) provides that the non-lawyer's appearance on behalf of the corporation shall be accompanied by an affidavit of a corporate officer or corporate resolution vesting in the representative the requisite authority to bind the corporation in a settlement or consent judgment. See SCR LT Form 6.

Rule 10. Discovery

(a) Except as provided in subsection (b) and (d), there shall be no discovery without leave of court.

(b) *Ledgers and other documentary evidence of rent payment history*.

(1) *Plaintiff's obligation to bring to court and produce upon request*. In any case involving an allegation of nonpayment of rent, the plaintiff shall bring to every court hearing, including the initial hearing and any mediation session, copies of all rent ledgers within the plaintiff's possession, custody, or control that tend to show the defendant's payment or nonpayment of rent owed throughout all periods of time in which the defendant's rental payments are alleged to be delinquent, i.e., back to the most recent point in time at which there was a zero balance. A plaintiff who has not maintained a rent ledger for the premises shall bring to court other materials, such as bank statements and rent receipts, that establish the defendant's payment history for the time periods in dispute. Upon request of the defendant or the court, the plaintiff shall promptly produce all ledgers and other materials the plaintiff has brought to court pursuant to this subsection.

(2) *Sanctions for plaintiff's failure to produce*. If the plaintiff fails upon request to produce any or all of the materials described in subsection (b)(1), then the court, on the oral or written motion of a party, or on its own initiative, may enter an order requiring the plaintiff to produce such materials and, until the materials have been produced, may grant a continuance, decline to enter a protective order, or vacate, suspend, or modify an existing protective order.

(3) *Order for production by defendant*. At the initial hearing or any subsequent hearing, the court, on the oral or written motion of the plaintiff, or on its own initiative, may enter an order requiring the defendant to produce copies of all materials within the defendant's possession, custody, or control, including rent receipts, cancelled checks, and money order receipts, that tend to establish the defendant's payment or nonpayment of rent owed throughout all periods of time in which the defendant's rental payments are alleged to be delinquent.

(4) *Sanctions for noncompliance with court order compelling production*. A failure by a party to comply with an order compelling production pursuant to subsection (b)(1) or (3) may subject that party to sanctions as set forth in SCR Civil 37(b). In no event, however, may a default or a judgment for possession be entered as a sanction for a defendant's failure to produce materials as required by an order compelling production entered pursuant to this section. In the event the court enters a dismissal as a sanction for the plaintiff's noncompliance with a court order compelling production entered pursuant to this section, the dismissal will be without prejudice unless the court specifies that a dismissal with prejudice is warranted.

(5) *Limitations*. Nothing in this section shall be construed to require a party to create a rent ledger or any other document that does not already exist.

(c) *Cases scheduled for trial in the Landlord and Tenant Branch*. Upon the filing of a written motion requesting permission to engage in discovery, accompanied by the discovery requests to be propounded, for good cause shown, and with due regard for the summary nature of the proceedings, the Court may authorize a party to proceed with discovery pursuant to SCR Civil 26 through 37. In addition to the protective orders

provided in SCR Civil 26(c), the Court may shorten the time within which a party is required to perform any act or make any response in connection with discovery.
(d) *Cases certified to the Civil Actions Branch*. When a case is certified to an individual calendar in the Civil Actions Branch, limited discovery is permitted as a matter of right. The limited discovery shall consist of a request for production of no more than 10 documents and 10 interrogatories, including subparts, unless otherwise ordered by the Court for good cause shown. All requests for additional discovery must be by written motion and unless consented to by the parties, must be accompanied by the discovery requests to be propounded.

COMMENT

Section (b) has been added to the Rule. It is intended to assist the court and parties in resolving cases fairly and expeditiously at the initial hearing or thereafter. It is not intended to require the plaintiff to present documentary evidence of the defendant's nonpayment of rent at trial, although such evidence, if competent, would likely be relevant and may be a significant part of the plaintiff's proof.

Rule 11. Preliminary Proceedings by the Clerk

(a) *Introductory Statement*. At the beginning of each session of the Court, the judge shall make an introductory statement approved by the Chief Judge or his or her designee that describes the procedures and legal framework governing cases brought in the Landlord and Tenant Branch.

(b) *Roll call and entry of a default when the defendant fails to appear*. The Clerk shall then call the cases scheduled for initial hearings that day to determine if any parties are absent. The Clerk shall enter a default against the defendant in any such case in which (1) the plaintiff or the plaintiff's attorney is present, (2) neither the defendant nor the defendant's representative is present, (3) there is no question as to the validity of service upon the defendant, and (4) the complaint alleges facts sufficient, if true, to entitle the plaintiff to possession of the premises.

(c) *Dismissal when both parties or the plaintiff fail to appear*. The Clerk shall dismiss the case without prejudice for want of prosecution if both parties fail to appear for the roll call, either personally or through counsel, or if the defendant appears, personally or through counsel, but neither the plaintiff nor the plaintiff's attorney is present.

(d) *All other cases*. The Clerk shall present all other cases to the Court for disposition except that the Clerk may continue a case to a later date upon agreement of the parties.

(e) *Entry of judgment for possession by default*.

(1) In any case in which a default is entered under section (b) and in which either the plaintiff seeks possession pursuant to section 1303 of the Residential Drug-Related Evictions Re-Enactment Act of 2000 (D.C. Code § 42-3602) (authorizing evictions for maintaining a “drug haven”) or the defendant has previously entered an appearance, a judgment for possession in favor of the plaintiff may be entered only upon the plaintiff's presentation of ex parte proof and the filing of a Form CA 114 satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.) indicating the defendant is not in the military service as defined by the Act. In cases requiring the presentation of ex parte proof, the plaintiff shall appear before the judge on the day that the default is entered to present ex parte proof or to schedule a hearing for a later date for the presentation of ex parte proof. If the presentation of ex parte proof is scheduled for another date, the Clerk shall send written notice to all parties.

(2) In all other cases in which a default is entered under section (b), the Clerk shall enter a judgment for possession in favor of the plaintiff upon the filing of a Form CA 114 satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.) indicating the defendant is not in the military service as defined by the Act.

(f) *Entry of money judgment by default*. The plaintiff shall appear before the judge to request the entry of a money judgment following the entry of a default under section (b). The Court may hear and rule upon the plaintiff's request; however, entry of a money judgment by default shall be deferred until the plaintiff files a Form CA 114 satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.) indicating the defendant is not in the military service as defined by the Act.

Rule 11-I. Entry of Consent Judgment by the Interview and Judgment Officer

(a) *Where 1 or more parties are appearing pro se*. Where 1 or more parties are appearing pro se and the Interview and Judgment Officer has ascertained to his or her satisfaction that (i) the consent judgment was executed by the defendant after the complaint was filed; (ii) that the defendant has received a copy of the consent judgment praecipe; and (iii) that the defendant understands the nature and consequences of his or her agreement, the Interview and Judgment Officer shall have authority to:

(1) Enter judgment by consent without judicial approval upon the filing of an executed L&T Form 4 or L&T Form 4a praecipe, signed by each party or his or her counsel, and

(2) Enter other orders by consent which continue cases or order monies deposited in or disbursed from the Court registry.

(b) *Where all parties are represented by counsel*. The Interview and Judgment Officer shall also have authority to:

(1) Enter judgment by consent without judicial approval by stipulation signed by the attorneys for all parties in any pending case, and

(2) Enter other orders as consent orders without judicial approval by stipulation signed by the attorneys for all parties including but not limited to certification to the Civil Division for jury trial or continuance or any other order enterable under paragraph (a) above.

(c) *Court approval*. All other requests for entry of judgment by consent shall be submitted to the Court.

(d) *Record of proceedings before Interview and Judgment Officer*. All matters before the Interview and Judgment Officer shall be on the record.

Rule 12. Proceedings by the Court

(a) *Calling the calendar*. After the judge takes the bench, the Clerk will call the cases remaining on the calendar for that day and the Court will inquire in each instance as to the nature of the claims, the defenses, and any other matters which will serve the ends of justice. In the course of these inquiries the Court shall make an earnest effort to help the parties settle their differences by conciliation. In cases involving unrepresented defendants alleged to be in arrears in the payment of rent, the Court shall specifically ask the defendant:

(1) Whether the defendant has not in fact paid the rental amount alleged by the plaintiff to be due and

(2) If the rent has not been paid, the defendant's reasons for not so paying.

(b) *Setting of trial*. Should the case remain unresolved, the Court shall set a non-jury trial date, or in the case of a defendant wishing to request a jury trial pursuant to SCR-LT 6, the Court may continue the matter for two weeks for the filing of a verified answer, except for good cause shown. Nothing in this section shall be construed to limit the parties' ability to consent to further proceedings.

(c) *Motions*. The Court may consider such other matters as have been scheduled on the Court's calendar pursuant to SCR-LT 13.

(d) *Plaintiff's non-appearance*. If in any case the plaintiff shall fail to appear without prior notice, the action may be dismissed without prejudice for want of prosecution, or the case may be continued or returned to the files for further proceedings on a later date, as the Court may direct.

Rule 12-I. Protective Order

(a) *Entry of protective order.*

(1) *In general.* Any party may move for the entry of a protective order on the initial return date or at any time thereafter. If entered, the protective order shall require the defendant to deposit money into the court registry instead of paying rent directly to the plaintiff. A protective order may be entered only after a hearing at which the Court finds that the equities merit the entry of such an order or by consent of the parties in accordance with section (c) of this rule. A protective order shall be prospective only and, except in accordance with section (d) of this rule, shall not require the defendant to deposit money for periods prior to the entry of the order. In a case that does not include an allegation of nonpayment of rent, the Court may enter a protective order over the defendant's objection only if, after inquiry by the Court, the defendant declines to stipulate that the plaintiff's acceptance of rent from that date forward shall be without prejudice to the plaintiff's ability to prosecute the action.

(2) *Motions and hearings.* If the parties are present in court, a request for the entry of a protective order may be made by oral motion. Any other motion for the entry of a protective order shall be made in writing in accordance with SCR-LT 13. If the amount or other terms of the proposed protective order are in dispute, the Court shall permit both parties to make arguments regarding the amount or other terms of the protective order and, if the Court deems it appropriate, to present evidence in support of their arguments. The Court may continue the hearing on a motion for a protective order for a reasonable period of time to permit the parties to prepare arguments and evidence for presentation to the Court. The Court shall state on the record the reasons for its ruling on the request for a protective order.

(3) *Instructions to defendant.* Upon the entry of a protective order, the Clerk shall immediately provide the defendant with a completed Landlord and Tenant Form 8, which shall include written instructions regarding the amount, due dates, and form of payments, as well as the location and business hours of the Clerk's Office.

(b) *Modification of protective order.* Upon motion and a showing of good cause, any party may seek modification of a protective order at any time after its entry. Unless the Court determines otherwise, such a motion shall be made in writing, in accordance with SCR-LT 13. If the requested modification to the protective order is in dispute, the Court shall permit both parties to make arguments regarding the modification and, if the Court deems it appropriate, to present evidence in support of their arguments. The Court may continue the hearing on a motion for modification of a protective order for a reasonable period of time to permit the parties to prepare arguments and evidence for presentation to the Court. The Court shall state on the record the reasons for its ruling on the request for a modification of the protective order.

(c) *Protective orders by consent.* Parties, whether pro se or represented by counsel, may enter into, vacate, or otherwise modify protective orders by consent, with the approval of either the Court or the Interview and Judgment Officer in accordance with SCR-LT 11-I.

(d) *Continued cases.* In any case that is continued from the initial return date for ascertainment of counsel, for a hearing on the amount of the protective order, or for any other reason, the Court may, for such time as is reasonable, defer ruling on a motion for a protective order until counsel, if any, has been retained, until a hearing has been held

on the amount of the protective order, or until the other reason for the continuance has been addressed by the Court. At the time the continuance is ordered, the Court shall inform the parties that, unless otherwise ordered by the Court, a protective order, whenever entered, shall be retroactive to the date on which it was first requested in open court.

(e) *Form of payment.* Payment into the court registry shall be made by any combination of cash, money order, certified check, attorney's escrow account check, or other form of payment approved by the Budget and Finance Division. Any money order, certified check, or attorney's escrow account check shall be made payable to "Clerk, D.C. Superior Court."

(f) *Late and partial protective order payments.* Payments due under a protective order shall be made on or before the dates specified in the order. The Clerk's Office shall accept for deposit any protective order payment, even if it is a partial payment and even if it is not timely made, without prejudice to the plaintiff's right to file a motion for sanctions in accordance with section (g)

(g) *Sanctions for untimely, partial, or missed payments.*

(1) *In general.* If a defendant fails to make one or more payments required by a protective order or makes one or more untimely or incomplete payments, the plaintiff may file a written motion, in accordance with SCR-LT 13, seeking sanctions against the defendant. In determining whether to impose any sanction for untimely, incomplete, or missed payments, the Court shall hold a hearing on the motion and shall consider, among any other facts or arguments raised by the parties, the extent of and reasons for the defendant's noncompliance and any prejudice the plaintiff would suffer were the requested sanction not imposed. If the Court determines that a sanction should be imposed, the sanction may include those sanctions generally available to the Court for noncompliance with court orders, including but not limited to striking the defendant's jury demand or counterclaim, precluding certain defenses, and entering a judgment for possession in favor of the plaintiff. No money judgment may be entered on the underlying claims as a sanction for noncompliance with a protective order.

(2) *Judgments for possession.*

(A) *Nonpayment of rent cases.* In a case based upon the defendant's alleged nonpayment of rent, the Court shall not enter a judgment for possession as a sanction for the defendant's failure to comply with a protective order without first requiring the plaintiff to present proof of liability and damages. The plaintiff may present proof of liability and damages on the same day that the motion for sanctions is scheduled for hearing or may ask the Court to schedule a hearing for a later date. If the hearing is scheduled for a later date, the Clerk shall send written notice to all parties. In its discretion, the Court may permit the plaintiff to present proof of liability and damages by sworn affidavits, provided that the plaintiff has attached to its motion seeking sanctions against the defendant the affidavits on which it seeks leave to rely. Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court shall not enter a judgment for possession unless the Court is satisfied with the proof presented. Any

such judgment shall be subject to the defendant's right to redeem the tenancy and avoid eviction.

(B) *Cases without allegations of nonpayment of rent.* The Court shall not enter a judgment for possession as a sanction for the defendant's failure to comply with a protective order in a case in which the plaintiff seeks the entry of a judgment for possession that is not subject to the defendant's right to redeem the tenancy and avoid eviction. On motion of the plaintiff, however, the Court, upon a finding that the defendant has failed to comply with the terms of a protective order, shall consider any appropriate sanction other than the entry of a judgment for possession, including advancing the trial date and, in a case that has been certified to the Civil Actions Branch under SCR-LT 6 pursuant to the defendant's demand for a jury trial, striking the defendant's jury demand.

(C) *Cases involving allegations of nonpayment of rent and other allegations*. Where the defendant has failed to comply with a protective order in a case that involves allegations of nonpayment of rent and allegations upon which the plaintiff seeks the entry of a judgment for possession that is not subject to the defendant's right to redeem the tenancy and avoid eviction, the Court may, on the plaintiff's motion, and in accordance with section (g)(1),

(i) dismiss the allegations that do not relate to nonpayment of rent and enter a judgment for possession under section (g)(2)(A), subject to the defendant's right to redeem the tenancy;

(ii) allow the plaintiff to proceed under section (g)(2)(B) with respect to all of the allegations in the complaint; or

(iii) enter a judgment for possession under section (g)(2)(A) on the claim of nonpayment of rent, subject to the defendant's right to redeem the tenancy, and, as to the plaintiff's allegations other than nonpayment of rent, consider any appropriate sanction other than the entry of a non-redeemable judgment for possession, including advancing the trial date and, in a case that has been certified to the Civil Actions Branch under SCR-LT 6 pursuant to the defendant's demand for a jury trial, striking the defendant's jury demand.

(3) *Cases that have been certified to Civil Actions Branch*. If the Court strikes the defendant's jury demand in accordance with section (g)(2)(B) or section (g)(2)(C), then the case shall be certified back from the Civil Actions Branch to the Landlord and Tenant Branch, and the Court shall vacate all discovery, mediation, pretrial conference, and trial dates pending in the Civil Actions Branch and, with notice to the defendant, shall set the case for a non-jury trial in the Landlord and Tenant Branch on the earliest available date deemed fair to all parties in light of the totality of the circumstances. If the Court decides not to strike the defendant's jury demand in accordance with section (g)(2)(B) or section (g)(2)(C), then the Court shall immediately attempt to contact the judge in the Civil Actions Branch to whom the case has been assigned and shall inform the assigned judge of the circumstances; the assigned judge shall in turn consider whether to advance the date for a jury trial or otherwise modify the scheduling order. If, having decided not to strike the defendant's jury demand, the Court is unable to reach the assigned judge, then the Court, with notice to the defendant, shall set the case for a status conference before the assigned judge on the earliest available date; at the status conference, the assigned judge shall consider whether to advance the date for a jury trial or otherwise modify the scheduling order.

Rule 13. Motions

(a) *In general*. When a motion depends on facts not apparent in the record, the motion must be in writing and must contain a memorandum of points and authorities setting forth the facts on which the motion is based. The movant may support the motion with affidavits or other forms of sworn testimony, and the court may require the submission of such evidence.

(b) *Motions to be decided in the Landlord and Tenant Branch.* A motion to be decided in the Landlord and Tenant Branch must be served and filed as follows:

(1) *Obtaining a hearing date.* Before serving or filing the motion, the movant must contact the Landlord and Tenant Clerk in person or by telephone or electronic mail and obtain a hearing date that is not earlier than the earliest date permitted by section (b)(2). The movant then must include the following notice of the date, time, and location of the hearing on the original and each copy of the motion, immediately following the certificate of service: "THIS MOTION HAS BEEN SET FOR HEARING IN THE LANDLORD AND TENANT COURTROOM ON ……. AT ……. I have confirmed this date and time with the Clerk of the Landlord and Tenant Branch."

(2) *Time of hearing.* A motion for summary judgment filed in accordance with section (d) will be set for hearing not earlier than the 10th calendar day after the day of filing of the motion if served by hand or the 13th calendar day after the day of filing of the motion if served by mail. All other motions will be set for hearing not earlier than the 7th calendar day after the day of filing of the motion if served by hand or the 10th calendar day after the day of filing of the motion if served by mail.

(3) *Service and filing.* After receiving the assigned hearing date and completing the notice of hearing required by section (b)(1):

(A) *Movants represented by counsel.* A movant represented by counsel must serve the motion in accordance with SCR Civ. 5. Once service of the motion has been completed, the original motion with a completed certificate of service must be filed.

(B) *Movants not represented by counsel.* A movant not represented by counsel must choose one of the following methods to serve and file a motion:

(i) *Service by the Clerk*. The movant must file the original motion and a copy for each of the other parties. The Clerk will serve a copy of the motion on each of the other parties and will note the date and method of service on the docket.

(ii) *Service by the party by hand*. Before filing the motion, the movant must serve a copy of the motion, with a completed notice of hearing, on each of the other parties by hand-delivery. If another party is represented by counsel, then service must be on the other party's counsel; if another party is not represented by counsel, then service must be on the other party directly. Once service by hand-delivery on all other parties has been completed, the movant must file the original motion, including a completed certificate of service as to all other parties.

(4) *Parties opposing motions.* A party intending to oppose a motion must attend the hearing on the motion, either personally or through counsel. Such a party also may file a memorandum of opposing points and authorities before the time set for hearing, although the filing of a memorandum of opposing points and authorities does not excuse the party's attendance at the hearing on the motion.

(c) *Motions not to be automatically scheduled for hearings in the Landlord and Tenant Branch.*

(1) *Service and filing.* A motion to be heard by a judge in the Civil Actions Branch pursuant to SCR-LT 13-I must be served and filed in accordance with section (b)(3) but should not include a notice of hearing.

(2) *Motions to alter, amend, or for relief from a ruling or sanction.* A motion to alter, amend, or for relief from a ruling or sanction must be served and filed in accordance with section (b)(3) but should not include a notice of hearing. A motion to alter, amend, or for relief from a ruling or sanction entered by a judge in the Landlord and Tenant Branch must, whenever practicable, be decided by the same judge who issued the ruling or sanction, and the motion must include that judge's name in the caption immediately below the case number.

(3) *Parties opposing motions.* A party opposing a motion not scheduled for a hearing before the judge sitting in the Landlord and Tenant Branch may file a statement of opposing points and authorities within 14 days after service of the motion as calculated by SCR Civ. 6 or such further time as the court may grant.

(4) *Oral hearings.* Any party may request an oral hearing on a motion filed pursuant to this section by stating at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested". If the judge decides to hold a hearing on the motion, the judge must give all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing. Regardless of whether the judge holds a hearing on the motion, the judge must decide the motion on the merits and may not grant a motion to which the opposing party has not consented until a statement of opposing points and authorities has been filed or the time period set forth in section (c)(3) has expired.

(d) *Summary judgment*. Any party seeking to recover upon or defend against a claim or counterclaim may, at any time after the appearance date indicated in the summons, move with or without supporting affidavits for summary judgment on all or any part of the claim or counterclaim in accordance with SCR Civ. 12-I(k) and 56. Oppositions to motions for summary judgment must be presented as follows:

(1) *Motions to be decided in the Landlord and Tenant Branch*. A party intending to oppose a motion for summary judgment to be decided in the Landlord and Tenant Branch must attend the hearing scheduled pursuant to section (b)(2) and must set forth specific facts showing the existence of a genuine issue for trial by either (A) filing a written opposition in accordance with SCR Civ. 12-I(k) and 56; or (B) presenting live testimony or producing affidavits or other admissible evidence at the hearing. Except where it would prejudice a party's ability to oppose the motion on the merits, the court may require the filing of a written opposition in accordance with SCR Civ. 12-I(k) and 56 instead of the presentation of live testimony or other admissible evidence.

(2) *Motions to be decided in the Civil Actions Branch*. A party intending to oppose a motion for summary judgment to be decided by a judge in the Civil Actions Branch pursuant to SCR-LT 13-I must file a written opposition in accordance with SCR Civ. 12-I(k) and 56. Any party may request a hearing on such a motion by stating at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested." If the judge decides to hold a hearing on the motion, the judge must give all parties appropriate notice of the hearing and may specify the matters to be addressed

at the hearing. Regardless of whether the judge holds a hearing on the motion, the judge must decide the motion on the merits and may not grant a motion to which the opposing party has not consented until a statement of opposing points and authorities has been filed or the time period set forth in section (c)(3) has expired.

(e) *Assignment of motions by the Presiding Judge.* Any judge sitting in the Landlord and Tenant Branch may retain a particular motion for decision by notifying the parties and causing a notation to be made in the docket. In addition, the Presiding Judge of the Civil Division may assign any motion arising in the Landlord and Tenant Branch to a particular judge for decision by that judge.

COMMENT

"In matters involving pleadings, service of process, and timeliness of filings, *pro se* litigants are not always held to the same standards as are applied to lawyers. Indeed, the trial court has a responsibility to inform *pro se* litigants of procedural rules and consequences of noncompliance [including] at least minimal notice . . . of pleading requirements. *Pro se* litigants are allowed more latitude than litigants represented by counsel to correct defects in service of process and pleadings." *Padou v. District of Columbia*, 998 A.2d 286, 292 (D.C. 2010) (citations omitted).

A motion captioned as a "Motion for Reconsideration" is considered under subsection (c)(2) as a motion to alter, amend, or for relief from a ruling or sanction and will be treated as such under this Rule. *See Fleming v. District of Columbia*, 633 A.2d 846, 848 (D.C. 1993); *Wallace v. Warehouse Employees Union #730*, 482 A.2d 801, 804-05 (D.C. 1984).

"The trial court is not free to treat as conceded an unopposed motion for summary judgment" filed under section (d). *Milton Props., Inc. v. Newby*, 456 A.2d 349, 354 (D.C. 1983). "Even if an unopposed motion for summary judgment is deemed to establish that no genuine issue of material fact exists, the court must still review the pleadings and other papers to determine whether the moving party is legally entitled to judgment." *Id.*

Rule 13-I. Motions in Cases Certified to Civil Actions Branch

(a) *Motions to be decided by the assigned judge*. The judge to whom a case has been assigned for a jury trial pursuant to SCR-LT 6 will determine the following motions in accordance with the Superior Court Rules of Civil Procedure, the general order, and any applicable calendar orders:

(1) motions to dismiss or for judgment on the pleadings;

(2) motions concerning discovery;

(3) motions for summary judgment under SCR Civ. 56;

(4) motions concerning the conduct of the trial (e.g., motions *in limine* to exclude or receive evidence);

(5) motions to amend the pleadings;

(6) motions filed pursuant to SCR Civ. 17-25;

(7) motions to continue trial or any other hearing scheduled before the assigned judge;

(8) motions relating to the entry and withdrawal of counsel;

(9) motions for recusal of the assigned judge;

(10) motions to consolidate or sever;

(11) motions relating to any subject that are filed during trial or so close to trial that a hearing cannot be scheduled in the Landlord and Tenant Branch before the trial date;

(12) post-trial motions concerning the conduct or outcome of the trial or an appeal of the judgment;

(13) motions to vacate dismissals, defaults, or default judgments entered by the assigned judge;

(14) motions to alter, amend, or for relief from, an order issued by the assigned judge; and

(15) motions for enlargement of time to file any motion, opposition, or other paper that will be determined by the assigned judge in accordance with paragraphs (1)-(14) of this section.

(b) *Parties opposing motions*. Any party opposing a motion filed pursuant to section (a) may serve and file a statement of opposing points and authorities within 14 days after service of the motion upon the party as calculated by SCR Civ. 6 or such further time as the assigned judge may grant.

(c) *Oral Hearings*. Any party may request an oral hearing on a motion filed pursuant to section (a) by stating at the bottom of the party's motion or opposition, above the party's signature, "Oral Hearing Requested." If the assigned judge decides to hold a hearing on the motion, that judge will give to all parties appropriate notice of the hearing and may specify the matters to be addressed at the hearing. Regardless of whether the judge holds a hearing on the motion, the judge must decide the motion on the merits and may not grant a motion to which the opposing party has not consented until a statement of opposing points and authorities has been filed or the time period set forth in section (b) has expired.

(d) *Motions to be decided in the Landlord and Tenant Branch*. Except as provided in subsection (a)(11), the following motions will be heard and decided by the judge sitting in the Landlord and Tenant Branch pursuant to the rules of that Branch:

(1) motions relating to a protective order;

(2) motions for an administrative stay of the proceedings;

(3) motions for a temporary restraining order or preliminary injunction;
(4) motions to enforce a settlement agreement or consent judgment, unless otherwise specified by the Court in the agreement; and
(5) post-trial motions not concerning the conduct or outcome of the trial or an appeal of the judgment.

(e) *Motions to alter, amend, or for relief from rulings or sanctions entered in the Landlord and Tenant Branch*. A motion to alter, amend, or for relief from a ruling or sanction entered by a judge sitting in the Landlord and Tenant Branch will be decided by that judge whenever practicable. Such a motion must include the judge's name in the caption below the case number. A party opposing the motion may file a statement of opposing points and authorities within 14 days after service of the motion as calculated by SCR Civ. 6 or such further time as the court may grant. A hearing on the motion will not automatically be set, but a hearing may be requested or held in accordance with SCR-LT 13(c)(4).

(f) *All other motions.* Except as provided in subsection (a)(11), all other motions will be heard and decided by the judge sitting in the Landlord and Tenant Branch pursuant to the rules of that Branch, except that the Presiding Judge of the Civil Division has the discretion to certify any other motion not listed in section (a) to the assigned judge.

COMMENT

A motion captioned as a "Motion for Reconsideration" is considered under sections (a)(14) and (e) as a motion to alter, amend, or for relief from a ruling or sanction and will be treated as such under this Rule. *See Fleming v. District of Columbia*, 633 A.2d 846, 848 (D.C. 1993); *Wallace v. Warehouse Employees Union #730*, 482 A.2d 801, 804-05 (D.C. 1984).

Rule 14. Entry of Judgment

(a) A judgment for possession may be entered:

(1) by the Clerk in favor of the plaintiff if the defendant fails to appear at the 9:00 a.m. roll call and the plaintiff files a Form CA 114 satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. app. § 501 et seq.) indicating the defendant is not in the military service as defined by the Act, unless the presentation of ex parte proof is required.

(2) by the Interview and Judgment Officer by consent in the case of a consent judgment executed in accordance with Rule 11-I;

(3) by the Court;

(A) upon the defendant's confession of liability before the Court; or

(B) as a sanction for the defendant's failure to comply with a protective order, as provided in SCR-LT 12-I; or

(C) upon the entry of summary judgment; or

(D) in accordance with D.C. Code § 16-1501 in a trial proceeding; or

(E) when ex parte proof is required, upon the presentation of ex parte proof and the filing of a Form CA 114 satisfying the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.) indicating the defendant is not in the military service as defined by the Act.

(b) Summary judgment may be entered in favor of the plaintiff or defendant on the issue of possession.

(c) A money judgment may be entered:

(1) in favor of the plaintiff, upon default by the defendant, when the plaintiff has prayed for such relief in the complaint, obtained personal service, and filed a Form CA 114 satisfying the Servicemembers Civil Relief Act. (2003) (50 U.S.C. App. § 501 et seq.) indicating the defendant is not in the military service as defined by the Act. A money judgment entered based upon the defendant's default shall be limited to the amount sued for in the complaint.

(2) in favor of the prevailing party in accordance with Rule 3 or 5(b), at the conclusion of a trial or other hearing to the extent of the total amount proven; or

(3) by consent of the parties.

(d) Additional relief may be entered:

(1) by consent of the parties; or

(2) in favor of either party, by the Court at the conclusion of a trial or a hearing.

COMMENT

This rule clarifies the situations when the prevailing party is entitled to the entry of a money judgment and/or to the entry of a judgment for possession. This rule does not change the Court's authority to fashion appropriate relief for a prevailing party.

This rule is procedural only and is not intended to modify any case law or statutory provisions.

Rule 14-I. Dismissal for Failure to Prosecute

The Clerk shall dismiss the complaint without prejudice if, within 90 days of the entry of a default, the plaintiff fails to file a Form CA 114 in compliance with the Servicemembers Civil Relief Act (2003) (50 U.S.C. App. § 501 et seq.) or to request an opportunity to present ex parte proof, when such proof is required. The Clerk shall mail written notice of the dismissal to all parties. This rule shall apply to any complaint or counterclaim on which a default has been entered.

Rule 14-II. Redemption of Tenancy

(a) In any case in which the Court, following a trial on the merits, has entered a judgment for possession in favor of the plaintiff based upon the defendant's nonpayment of rent, the Court shall determine and, in the presence of the parties, shall state on the record the amount of money that the defendant must pay to the plaintiff, as of that time, to redeem the tenancy and avoid eviction. The Court shall advise the parties that the amount of money that the defendant must pay to avoid eviction will increase as additional rents become due and, if applicable, as the plaintiff incurs additional court costs.

(b) In any other case in which a judgment for possession is entered in favor of the plaintiff based upon the defendant's nonpayment of rent, the Court may, at any time at or after the entry of judgment, determine and, in the presence of the parties, state on the record the amount of money that the defendant must pay to the plaintiff, as of that time, to redeem the tenancy and avoid eviction. The Court shall advise the parties that the amount of money that the defendant must pay to avoid eviction will increase as additional rents become due and, if applicable, as the plaintiff incurs additional court costs.

(c) In any case in which a default against a defendant has been entered pursuant to Rule 11 or a judgment for possession has been entered in favor of the plaintiff based upon the defendant's nonpayment of rent and in which the Court has not set the redemption amount on the record pursuant to section (a) or (b), the plaintiff, unless the Court rules otherwise, shall file a Notice to Tenant of Payment Required to Avoid Eviction, in the form prescribed in Landlord and Tenant Form 6, within five days, excluding Saturdays, Sundays, and legal holidays, of the date on which the default or judgment was entered. However, if a judgment has been stayed pursuant to a consent judgment agreement or otherwise, the five-day period for the filing of a Notice to Tenant of Payment Required to Avoid Eviction shall not begin to run until the stay has been lifted. The Clerk shall promptly mail a copy of the Notice to Tenant of Payment Required to Avoid Eviction to the defendant and shall make an entry in the record indicating the date and time of mailing.

(d) A plaintiff who fails to file a Notice to Tenant of Payment Required to Avoid Eviction within five days of the entry of a default or judgment for possession against a defendant shall not be permitted to file the notice late except with leave of Court after a hearing. A plaintiff who wishes to file such notice late shall file an Application seeking leave of Court. The plaintiff shall attach to the Application a copy of the Notice and an affidavit by the plaintiff justifying a finding of excusable neglect or good cause. The Application also shall inform the defendant of the hearing date and the defendant's opportunity to be heard on the Application. A copy of the Application, Notice, and affidavit shall be served on the defendant. The hearing shall be set by the plaintiff for no earlier than the fifth day after service on the defendant of the Application, Notice, and affidavit, whether service is by hand or by mail. At the hearing, the judge shall determine whether the plaintiff has established that the failure to file the Notice timely was due to the plaintiff's excusable neglect or that there is otherwise good cause why the plaintiff should be permitted to file the Notice late.

(e) A defendant who wishes to challenge the redemption amount set forth in a Notice to Tenant of Payment Required to Avoid Eviction that has been filed by the plaintiff may

file an Application to Reduce Payment Required to Avoid Eviction, in the form prescribed in Landlord and Tenant Form 7. The defendant shall serve the Application to Reduce Payment Required to Avoid Eviction upon the plaintiff and shall set the application for a hearing not less than five days after service of the application on the plaintiff, whether service is by hand or by mail. However, if the defendant also has filed an application for a stay of execution of a writ of restitution pursuant to Rule 16(c), the defendant's Application to Reduce Payment Required to Avoid Eviction may be heard together with the application for a stay of execution.

(f) A judgment for possession entered in favor of the plaintiff based upon the defendant's nonpayment of rent shall be stayed permanently in any case in which the defendant, prior to the completion of an eviction, has paid to the plaintiff the full amount of money necessary to redeem the tenancy and avoid eviction.

Rule 15. Fees and Costs

(a) FEES. Fees must be in accordance with the schedule set out in Civil Rule 202.

(b) COSTS. On entry of judgment, the prevailing party must be awarded, as a matter of course, all taxable costs in the action including the filing fee, notary fee, postage, and a maximum of $ 10.00 per defendant to cover the costs incurred for service by a special process server. Notwithstanding Civil Rule 54(d), any court filing fee and U.S. Marshals Service administrative fee for any writ of restitution, including alias writs, must be awarded as a cost without further action by the court. Any other fee associated with any writ of restitution must be awarded as a cost if the United States Marshals Service appears on the premises to execute the writ, regardless of whether the writ is executed. The clerk must tax costs on the filing of the writ of restitution pursuant to Rule 16(a) and payment of the required fees. Other costs may, in the court's discretion, be awarded to the prevailing party or any other party, as appropriate, and costs may be awarded so as to discourage the filing of frivolous, vexatious, or premature actions or defenses.

COMMENT TO 2014 AMENDMENTS

The fee for a writ of restitution includes a filing fee charged by the court, and an administrative fee and an execution fee charged by the U.S. Marshals Service. The court's filing fee and U.S. Marshals Service's administrative fee are awarded as costs upon payment by the plaintiff to the clerk. The execution fee must be paid by the plaintiff to the court upon filing of a writ of restitution, but is awarded as a cost only if charged by the U.S. Marshals Service.

In many instances, the plaintiff does not seek to schedule an eviction after a judgment for possession is obtained because the tenant redeems the tenancy, or vacates the premises, or for other reasons. If the U.S. Marshals Service does not appear on the premises to conduct an eviction, then the U.S. Marshals Service generally does not charge the execution fee and the court returns the fee to the plaintiff. The fee is returned approximately 90 days after the writ of restitution expires or is quashed, including any alias or reissued writ, or earlier if the plaintiff files a praecipe stating that the plaintiff will not be seeking re-issuance of the writ. In some instances, the U.S. Marshals Service may appear on the premises to supervise an eviction that does not take place, for example, because the writ of restitution is quashed or stayed before the eviction is concluded. In those circumstances, as well as in circumstances where the writ is executed, the U.S. Marshals Service does charge the execution fee, and that fee therefore is taxable as a cost.

In the past, the court has required the defendant to include the execution fee in the amount required to redeem the tenancy. Based on the amended rule, the execution fee will be required as part of the amount the tenant must pay to redeem the tenancy only if the redemption is taking place when the U.S. Marshals Service has appeared on the premises to execute the writ.

Rule 16. Execution

(a) *Issuance of the writ*.

(1) No writ of restitution may issue in a case in which a judgment for possession has been entered in favor of the plaintiff based upon the defendant's nonpayment of rent until (A) the Court has set a redemption amount on the record in the presence of the parties or the plaintiff has filed a Notice to Tenant of Payment Required to Avoid Eviction pursuant to Rule 14-II, and (B) the expiration of two days after the entry of (i) a default judgment entered pursuant to Rule 11 or (ii) a judgment entered pursuant to Rule 11-I or 14.

(2) No writ of restitution may issue in any other case until the expiration of two days after the entry of (A) a default judgment entered pursuant to Rule 11 or (B) a judgment entered pursuant to Rule 11-I or 14. A prepared writ of restitution and the United States Marshal's 3-day notice to tenant shall be filed with the Clerk at the time that said writ is ordered. If alias writs of restitution are ordered, prepared writs and notices shall be filed with the Clerk. The Clerk shall deliver the original or alias writ and notice to the Marshal, who shall mail all such notices to the tenants before executing the original or alias writs. A writ of restitution shall be valid for a period of 75 days.

(b) *Stay of execution*. In its discretion and upon the posting of a bond or on such other conditions for the security of the adverse party as are proper, the Court may stay the execution of judgment in a Landlord and Tenant action pending the disposition of any motion made pursuant to Superior Court Rules of Civil Procedure 50, 52(b), or 59 or any appeal of the judgment, provided that any such motion or notice of appeal is filed within 3 days of the date of judgment.

(c) *Motion for stay of execution*. A party may seek a stay of execution of a writ of restitution by either oral or written motion. Said motion shall include a statement that the adverse party has been notified and has been given an opportunity to appear. Prior to a hearing on movant's request for a stay, the Court shall inquire of the Clerk's office when the defendant is pro se or of counsel when movant is represented by counsel, whether or not the adverse party has been notified of the movant's intent to appear before the Court on an Application for Stay.

(i) *Notice*.

(A) *By counsel*. When the movant is represented by counsel, the movant's attorney shall notify the adverse party of the date and time that the Motion for Stay will be presented before the Court.

(B) *By Clerk's Office*. When the movant is not represented by counsel, the Landlord-Tenant Clerk's Office shall notify the adverse party on the movant's behalf.

(ii) *Appearance by adverse party*. If the Clerk's Office is notified that the adverse party intends to oppose the request for a stay or if the adverse party cannot be reached, the motion shall be held in abeyance until the adverse party has an opportunity to be heard if the writ of restitution is not capable of being executed. If the writ is capable of being executed, then the Motion may be presented to the Court, which may, in its discretion, impose a stay of execution no greater than three business days unless the adverse party consents to a longer stay, in order to give the adverse party an opportunity to appear before the Court.

(iii) *New hearing date*. If the Court grants a stay of execution, the Court shall set a date for further hearing on the request. If the adverse party was absent for the

Application for Stay, the Clerk's Office shall notify the adverse party by facsimile transmission, mail or telephone of the date so set by the Court.

(d) *Ninety day time limit*. No writ of restitution shall be issued later than (1) 90 days after entry of judgment; or (2) 90 days after entry of default, if a default was taken; or (3) 90 days after vacation of a stay of execution; except by leave of court granted not less than 3 days after service of notice on the defendant in the form set forth in L&T Form 2.

(e) *Automatic stay of the enforcement of a money judgment*. No execution shall issue, or proceedings be taken to enforce, a money judgment until the expiration of 10 days after its entry. Nothing herein shall be construed to interfere with the Court's right to enter a stay pursuant to paragraph (b) of this Rule or with a party's right to funds deposited in accordance with SCR Civ. 67.