discussions.
(h) TELEPHONIC CONFERENCES. In the court's discretion and with the parties' consent, any pretrial communications may be conducted by telephone or other form of electronic communication.
(i) SANCTIONS.
(1) *In General*. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney:
(A) fails to appear at a scheduling or pretrial conference;
(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or
(C) fails to obey a scheduling or pretrial order.
(2) *Imposing Fees and Costs*. Instead of or in addition to any other sanction, the Court may require the party, its attorney, or both, to pay the reasonable expenses--including attorney's fees--incurred because of any noncompliance with this rule unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

Rule 40. [Deleted].

COMMENT TO 2018 AMENDMENT

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

Rule 40-I [Deleted].

Rule 40-II [Deleted].

Rule 41. Dismissal of Actions

(a) VOLUNTARY DISMISSAL.

(1) *By the Plaintiff*.

(A) *Without a Court Order*. Subject to Rule 66 and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) *Effect*. Unless the notice or stipulation states otherwise, the dismissal is without prejudice.

(2) *By Court Order; Effect*. Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under Rule 41(a)(2) is without prejudice.

(b) INVOLUNTARY DISMISSAL; EFFECT.

(1) *By the Court*.

(A) *In General*. If the plaintiff fails to prosecute or to comply with these rules or a court order:

(i) a defendant may move to dismiss the action or any claim against it; or

(ii) the court may, on its own initiative, enter an order dismissing the action or any claim.

(B) *Result of Dismissal*. An order dismissing a claim for failure to prosecute must specify that the dismissal is without prejudice, unless the court determines that the delay in prosecution of the claim has resulted in prejudice to an opposing party. Unless the dismissal order states otherwise or as provided elsewhere in these rules, a dismissal by the court—except one for lack of jurisdiction or failure to join a party under Rule 19--operates as an adjudication on the merits.

(2) *By the Clerk*.

(A) *Failure to File Proof of Service*. In accordance with Rule 4(i), the clerk may, on his or her own initiative, and with written notice to the parties:

(i) in a case where there is only one defendant, dismiss the case for failure to file proof of service;

(ii) in a case where there are multiple defendants, dismiss any individual defendant for whom no proof of service has been filed;

(iii) dismiss a case for failure to comply with a court order requiring the filing of supplemental proof of service by a date certain, unless the court has ordered otherwise; and

(iv) require a supplementation, for the judge or magistrate judge to consider, of any proof of service that is incomplete, unclear, or does not on its face adequately explain why the person allegedly served was authorized to accept service on behalf of the defendant.

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

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

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

(D) *Result of Dismissal*. Unless a court order specifies otherwise, a dismissal by the clerk is without prejudice.

(3) *Effect*. Any order of dismissal entered by the court or the clerk under this rule does not take effect until 14 days after the date on which it is docketed and must be vacated upon the granting of a motion filed by the plaintiff within the 14-day period showing good cause why the case should not be dismissed.

(c) DISMISSING A COUNTERCLAIM, CROSSCLAIM, OR THIRD-PARTY CLAIM. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) COSTS OF A PREVIOUSLY DISMISSED ACTION. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

Rule 41-I. [Deleted].

Rule 42. Consolidation; Separate Trials

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

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

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

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

Rule 43. Evidence

(a) IN GENERAL. The admissibility of evidence and the competency and privileges of witnesses are governed by the principles of the common law as they may be interpreted by the courts in the light of reason and experience, except when a statute or these rules otherwise provide.

(b) IN OPEN COURT. At trial, the witnesses' testimony must be taken in open court unless otherwise provided by these rules. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(c) MODE AND ORDER OF EXAMINING WITNESSES AND PRESENTING EVIDENCE. *Federal Rule of Evidence 611* is incorporated herein.

(d) RULINGS ON EVIDENCE. *Federal Rule of Evidence 103* is incorporated herein.

(e) AFFIRMATION INSTEAD OF AN OATH. When these rules require an oath, a solemn affirmation suffices.

(f) EVIDENCE ON A MOTION. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

COMMENT TO 2018 AMENDMENTS

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

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

COMMENT

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

Rule 43-I. [Deleted].

Rule 43-II. [Deleted].

COMMENT

The subject matter of former Rule 43-II is now treated in Rule 7-I

Rule 44. Proving an Official Record

(a) MEANS OF PROVING.

(1) *Domestic Record*. Each of the following evidences an official record—or an entry in it—that is otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

(i) by a judge of a court of record of the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) *Foreign Record*.

(A) *In General*. Each of the following evidences a foreign official record—or an entry in it—that is otherwise admissible:

(i) an official publication of the record;

(ii) the record—or a copy—that is attested by an authorized person and accompanied by either a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) *Final Certification of Genuineness*. A final certification must certify the genuineness of the signature and official position of the attestor or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) *Other Means of Proof*. If all parties have had a reasonable opportunity to investigate a foreign record’s authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the record to be evidenced by an attested summary with or without a final certification.

(b) LACK OF RECORD. A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with Rule 44(a)(2)(C)(ii).

(c) OTHER PROOF. A party may prove an official record—or an entry or lack of an entry in it—by any other method authorized by law.

COMMENT TO 2018 AMENDMENTS

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

Rule 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination must be treated as a ruling on a question of law.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 44.1.

Rule 44-I. Proving Statutes, Ordinances, and Regulations

Printed books or pamphlets purporting on their face to be the statutes, ordinances, or regulations of the United States, or of any state or territory of the United States, or of any foreign jurisdiction, which are either published by the authority of the state, territory, or foreign jurisdiction or are commonly recognized in its courts, must be presumptively considered by the court to constitute the statutes, ordinances, or regulations. The court's determination must be treated as a ruling on a question of law.

COMMENT TO 2018 AMENDMENTS

This rule conforms to Civil Rule 44-I.

Rule 45. Subpoena

(a) IN GENERAL.

(1) *Form and Contents*.

(A) *Requirements—In General.* Every subpoena must:

(i) state the name of the court;

(ii) state the title of the action, its case number, the calendar designation when known, and if assigned to a specific judge or magistrate judge, the name of that judge or magistrate judge;

(iii) command each person to whom it is directed to do the following at a specified time and place within the District of Columbia, unless the parties and person subpoenaed otherwise agree or the court, upon application, fixes another convenient location: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(c) and (d).

(B) *Command to Attend a Deposition—Notice of the Recording Method*. A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information*. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) *Command to Produce; Included Obligations*. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding person to permit inspection, copying, testing, or sampling of the materials.

(2) [Deleted].

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

(4) *Notice to Other Parties Before Service*. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

(b) SERVICE.

(1) *By Whom and How; Tendering Fees*. Any person who is at least 18 years of age and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for one day's attendance and the mileage allowed by law, except that:

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

(B) fees and mileage need not be tendered when the subpoena issues on behalf of the United States or the District of Columbia or any officers or agencies of either.

(2) *Service in the District of Columbia*. Subject to Rule 45(c)(3)(A)(ii), a subpoena may be served at any place:

(A) within the District of Columbia;

(B) outside the District of Columbia but within 25 miles of the place specified for the deposition, hearing, trial, production, or inspection; or

(C) that the court authorizes on motion and for good cause, if an applicable statute so provides.

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

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

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

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

(2) *Command to Produce Materials or Permit Inspection*.

(A) *Appearance Not Required*. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for deposition, hearing or trial.

(B) *Objections*. A person commanded to produce documents, electronically stored information, or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If objection is made, following rules apply:

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

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena*.

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

(i) fails to allow reasonable time to comply;

(ii) requires a person who is neither a party nor a party’s officer to travel more than 25 miles from where that person resides, is employed, or regularly transacts business in

person—except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place to the place of trial;

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

(iv) subjects a person to undue burden.

(B) *When Permitted*. To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 25 miles to attend trial.

(C) *Specifying Conditions as an Alternative*. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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

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

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) *Producing Documents or Electronically Stored Information*. These procedures apply to producing documents or electronically stored information.

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

(B) *Form for Producing Electronically Stored Information Not Specified*. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form*. The person responding need not produce the same electronically stored information in more than one form.

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

(2) *Claiming Privilege or Protection*.

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

(i) expressly make the claim; and

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

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

(e) TRANSFERRING A SUBPOENA-RELATED MOTION. A subpoena-related motion may be transferred to the court where the action is pending if the person subject to the subpoena consents or if the court finds exceptional circumstances. To enforce its order, the court where the action is pending may transfer the order to the court where the motion was made

(f) CONTEMPT. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

Rule 46. Objection to a Ruling or Order

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or the action it objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

COMMENT TO 2018 AMENDMENTS

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

COMMENT

Identical to SCR-Civil 46.

Rule 47. [Deleted].

COMMENT

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

Rule 48. [Deleted].

COMMENT

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

Rule 49. [Deleted].

COMMENT

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

Rule 50. Judgment as a Matter of Law; Related Motion for a New Trial; Conditional Ruling

(a) JUDGMENT AS A MATTER OF LAW.

(1) *In General*. If a party has been fully heard on an issue during a trial and the court finds that there is no legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) *Motion*. A motion for judgment as a matter of law may be made at any time before the end of the trial. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) RENEWING THE MOTION AFTER TRIAL; ALTERNATIVE MOTION FOR A NEW TRIAL. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the movant may file, no later than 28 days after the entry of judgment, a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

(1) allow the judgment to stand;

(2) order a new trial; or

(3) direct entry of judgment as a matter of law.

(c) GRANTING THE RENEWED MOTION; CONDITIONAL RULING ON A MOTION FOR A NEW TRIAL.

(1) *In General*. If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) *Effect of a Conditional Ruling*. Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) TIME FOR A LOSING PARTY'S NEW-TRIAL MOTION. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after the entry of the judgment.

(e) DENYING THE MOTION FOR JUDGMENT AS A MATTER OF LAW; REVERSAL ON APPEAL. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

COMMENT TO 2018 AMENDMENTS

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

Rule 51. [Deleted].

COMMENT

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

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

(a) FINDINGS AND CONCLUSIONS.

(1) *In General*. Unless expressly waived by all parties, in an action tried on the facts, the court must make written findings of fact and separate conclusions of law. Judgment must be entered under Rule 58.

(2) *For an Interlocutory Injunction*. In granting or refusing an interlocutory injunction, the court must state the findings and conclusions that support its action.

(3) *For a Motion.* The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) *Effect of a Master's Findings*. A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) *Questioning the Evidentiary Support.* A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) *Setting Aside the Findings.* Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(b) AMENDED OR ADDITIONAL FINDINGS. On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(c) JUDGMENT ON PARTIAL FINDINGS. If a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

COMMENT TO 2018 AMENDMENTS

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

COMMENT TO 2015 AMENDMENTS

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

COMMENT

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

Rule 53. Masters

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

(b) REFERENCE.

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

(A) some exceptional condition; or

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

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

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

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

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

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

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

(c) MASTER’S AUTHORITY.

(1) *In General*. Unless the order of reference directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) if conducting an evidentiary hearing, exercise the referring court’s power to compel, take, and record evidence.

(2) *Sanctions*. The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) PROCEEDINGS.

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

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

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

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

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

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

(e) REPORT.

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

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

(A) *Opportunity for a Hearing; Action in General*. In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(B) *Time to Object or Move to Adopt or Modify*. A party may file objections to—or a motion to adopt or modify—the master's order, report, or recommendations no later than 14 days after a copy is served, unless the court sets a different time.

(C) *Reviewing Factual Findings*. The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:

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

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

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

(E) *Reviewing Procedural Matters*. Unless the order of reference establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

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

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

(f) FEES AND COMPENSATION.

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

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

(A) by a party or parties; or

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

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

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

COMMENT TO 2018 AMENDMENTS

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

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

Rule 53-I. [Deleted].

Rule 53-II. [Deleted].

Rule 54. Judgments; Costs

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

(b) JUDGMENT ON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES. When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) DEMAND FOR JUDGMENT; RELIEF TO BE GRANTED. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) COSTS; ATTORNEY'S FEES.

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

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

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

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

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

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

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

(4) *Witness Fees*. Witness fees may be awarded at the court's discretion. Proof of the attendance of witnesses shall be by certificate of the attorney of record in the form prescribed by the clerk's office. The certificate must be served upon the opposing party or counsel and filed within 5 days after the entry of any final order or judgment, otherwise witness fees shall not be taxed or recovered as costs. Within 5 days after the certificate is served, any party may move to amend or strike it.

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

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

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

(e) [Deleted].
(f) [Deleted].

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

Rule 54-I [Deleted].

Rule 54-II. Waiver of Costs, Fees, or Security

(a) IN GENERAL. The court may waive the prepayment of costs, fees, or security or the payment of costs, fees, or security accruing during any action upon the presentation of Form 106A (Application to Proceed Without Prepayment of Costs, Fees, or Security) and a finding that the party is unable to pay such costs, fees, or security without substantial hardship to the applicant or the applicant's family. The court must not deny an application solely because the applicant is at or above the federal poverty guidelines. An application may be submitted at any point in the proceedings. Unless the court orders otherwise, the application need not be served on the other parties and will be resolved ex parte. When an application is granted in whole or in part, a notation will be made in the record of that action.

(b) PUBLIC BENEFITS. If an applicant receives Temporary Assistance for Needy Families, General Assistance for Children, Program on Work, Employment and Responsibility, or Supplemental Security Income, the court must grant the application without requiring additional information from the applicant.

(c) HEALTH CARE BENEFITS. Consistent with Form 106A, if an applicant receives Interim Disability Assistance (IDA), Medicaid, or the D.C. HealthCare Alliance, the court may grant the application without requiring additional information from the applicant.

(d) SIGNIFICANT COSTS. In determining whether to waive the prepayment of costs, fees, or security, the court must take into account the likelihood that the matter may entail significant costs to the litigant, such as the costs of e-filing.

(e) MERIT OF UNDERLYING ACTION. The court may not refuse to waive costs, fees, or security based on the perceived lack of merit of the underlying action.

(f) DISMISSING ACTIONS; ENJOINING REPEAT FILERS OF FRIVOLOUS MATTERS. Nothing in this rule should be construed to limit the authority of courts to dismiss actions or to enjoin repeat filers of frivolous matters from filing future cases without prior approval of the court.

(g) REQUIRING ADDITIONAL INFORMATION. If there is good cause to believe the information contained in Form 106A is inaccurate or misleading, or that the applicant has undergone a change of circumstances or submitted an incomplete application, the court may require additional evidence in support of the request to waive prepayment of costs, fees, or security accruing during any action.

(h) DECLARATION. The application must include the signed declaration in Form 106A. Notarization is not required.

(i) WITNESS FEES. Where an application to proceed without prepayment of costs, fees, or security is granted, witnesses will be subpoenaed without prepayment of witness fees, and the same remedies will be available as are provided for by law in other cases.

(j) RULING IN WRITING OR ON THE RECORD. If the court denies the application to proceed without prepayment of costs, fees, or security, the court must state its reason(s) for denial in writing or on the record in the presence of the applicant or his or her counsel.

(k) MOTION FOR FREE TRANSCRIPTS. An applicant who has received a waiver of the prepayment of costs, fees, or security may file a motion requesting that free transcripts be prepared for appeal and explaining the basis for the motion. The court may not refuse to provide free transcripts unless the appeal is frivolous. In making this

determination, the court must resolve doubt about the merits of the appeal in favor of the applicant. The court may order that only those portions of the trial proceedings necessary to resolution of the appeal be transcribed.

COMMENT TO 2018 AMENDMENTS

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

COMMENT TO 2010 AMENDMENT

D.C. Code § 15-712 governs *in forma pauperis* applications. There is no Federal Rule of Civil Procedure addressing such applications, but *28 U.S.C. § 1915* does. The District of Columbia statute, unlike the federal statute, does not provide the court with discretion to deny an application for *in forma pauperis* based upon the merit of the underlying action. *Compare* D.C. Code § 15-712 *with 28 U.S.C. § 1915(e)(2)*; *see In re Turkowski,* 741 A.2d 406, 407 (D.C. 1999) (per curiam) ("the court must grant the request for *in forma pauperis* status if a proper application is made, and, having done so, thereafter treat the case as any other, including, of course, any appropriate dispositive actions"); *accord Lewis v. Fulwood,* 569 A.2d 594, 595 (D.C. 1990) (per curiam).

The Rule requires applicants seeking *in forma pauperis* status to submit their request utilizing Form 106A (Application to Proceed Without Prepayment of Costs, Fees or Security), which includes citations to pertinent statutes and case law.

Subsection (k) sets forth the standards for ruling upon a motion for free transcripts. *See, e.g., P.F. v. N.C.,* 953 A.2d 1107, 1119 (D.C. 2008) (noting that an appellant proceeding *in forma pauperis* is entitled to a free transcript "if the trial judge . . . certifies that the appeal is not frivolous" and that "[d]oubts about [the] substantiality of the questions on appeal and the need for a transcript to explore them should be resolved in favor of the petitioner") (internal quotation marks and citations omitted); *Hancock v. Mut. of Omaha Ins. Co.,* 472 A.2d 867 (D.C. 1984), as discussed in *P.F.*, 953 A.2d at 1119.

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

Rule 55. Default; Default Judgment or Order

(a) ENTERING A DEFAULT.

(1) *In General*. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, the clerk or court must enter the party's default.

(2) *Effective Date of Default; Motion by Defendant*. Any default entered on the court's or the clerk's own initiative, including a default for failure to respond to the complaint or petition within the time prescribed in Rule 12(a), will not take effect until 14 days after the date on which it is docketed and must be vacated if the court grants a motion filed by the defendant or respondent within the 14-day period showing good cause why the default should not be entered.

(3) *Extension of Time to Plead or Otherwise Defend*. Before a default is issued, the time to plead or otherwise defend may be extended by one of the following:

(A) an order granting a motion, which shows good cause for the extension; or

(B) a document, signed by the parties or their representatives, and filed with the court, which provides for a one-time extension of not more than 21 days within which to plead or otherwise respond.

(b) ENTERING A DEFAULT JUDGMENT OR ORDER.

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

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

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

(2) *Default Parentage Order*.

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

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

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

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

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

(3) *Minors and Incompetents*. Unless otherwise permitted by statute or rule, a default judgment or order may be entered against a minor or incompetent person only if represented by a general guardian, committee, conservator, or other like fiduciary who has appeared.

(4) *Members of the Military; Military Status Unknown*. If the plaintiff or petitioner indicates that the defendant or respondent is in the military or that his or her military status is unknown, the court must follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (*50 U.S.C. § 3931*).

(5) *Dismissal*. A plaintiff's or petitioner's failure to comply with Rule 55(b)(1) or (2) will result in the dismissal without prejudice of the complaint or petition.

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

(1) *By the Clerk*. The clerk may vacate a default or default judgment, within 60 days after its entry, if the claimant and the defaulted party, or their attorneys, file a signed document so requesting and bearing evidence of its service on all parties that have appeared. When required by Rule 55(c)(2), the document must be accompanied by a verified answer.

(2) *By the Court.* The court may set aside an entry of default for good cause on the filing of a verified answer setting up a defense sufficient, if proved, to bar the claim in whole or in part. The movant does not need to file an answer if the motion is accompanied by a settlement agreement or a proposed consent judgment signed by both parties. In addition, an answer is not required when the movant asserts a lack of subject-matter or personal jurisdiction or when the default was entered after the movant had filed an answer. The court may set aside a final default judgment or order under Rule 60(b).

COMMENT TO 2018 AMENDMENTS

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

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

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

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

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

aside a final default judgment under Rule 60(b)." The inclusion of this word helps to clarify the difference between a final default judgment that could be reviewed under Rule 60(b) and a default judgment that does not dispose of all of the claims. The latter is not final until the court directs entry under Rule 54.

COMMENT

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

Rule 55-I. [Deleted].

COMMENT

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

Rule 55-II. [Deleted].

COMMENT

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

Rule 56. Summary Judgment

(a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) TIME TO FILE A MOTION; FORMAT.

(1) *Time to File*. Unless the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(2) *Format: Parties' Statements of Fact*.

(A) *Movant's Statement*. In addition to the points and authorities required by Rule 7(b)(1)(C), the movant must file a statement of the material facts that the movant contends are not genuinely disputed. Each material fact must be stated in a separate numbered paragraph.

(B) *Opponent's Statement*. A party opposing the motion must file a statement of the material facts that the opponent contends are genuinely disputed. The disputed material facts must be stated in separate numbered paragraphs that correspond to the extent possible with the numbering of the paragraphs in the movant's statement.

(c) PROCEDURES.

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) WHEN FACTS ARE UNAVAILABLE TO THE NONMOVANT. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) FAILING TO PROPERLY SUPPORT OR ADDRESS A FACT. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) JUDGMENT INDEPENDENT OF THE MOTION. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) FAILING TO GRANT ALL THE REQUESTED RELIEF. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) AFFIDAVIT OR DECLARATION SUBMITTED IN BAD FAITH. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

COMMENT TO 2018 AMENDMENTS

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

Rule 57. Declaratory Judgments

These rules govern the procedure for obtaining a declaratory judgment under *28 U.S.C. § 2201* or otherwise. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory judgment action.

COMMENT TO 2018 AMENDMENTS

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

Rule 58. Entering Judgment

(a) ENTERING JUDGMENT.

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

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

(B) the court denies all relief.

(2) *Court's Approval Required*. Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when the court grants other relief not described in Rule 58(a)(1).

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

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

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

Rule 59. Amending a Judgment; New Trial

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

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

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

(A) open the judgment if one has been entered;

(B) take additional testimony;

(C) amend findings of fact and conclusions of law or make new ones; and

(D) direct the entry of a new judgment.

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

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

(d) ON COURT'S INITIATIVE; NOTICE; SPECIFYING GROUNDS. No later than 28 days after the entry of judgment, the court, on its own, may alter or amend the judgment or may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

Rule 60. Relief from a Judgment or Order

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

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

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

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) TIMING AND EFFECT OF THE MOTION.

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality*. The motion does not affect the judgment's finality or suspend its operation.

(d) OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding; or

(2) set aside a judgment for fraud on the court.

COMMENT TO 2018 AMENDMENTS

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

Rule 61. Harmless Error

Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial or for vacating, modifying or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

COMMENT TO 2018 AMENDMENTS

This rule conforms to the corresponding civil rule.

COMMENT

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

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) AUTOMATIC STAY; EXCEPTIONS FOR INJUNCTIONS, RECEIVERSHIPS, AND CHILD CUSTODY, SUPPORT, AND VISITATION ORDERS. Except as stated in this rule or expressly provided in a child custody, support, or visitation order, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. But unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction or a receivership action is not stayed after being entered, even if an appeal is taken.

(b) STAY PENDING THE DISPOSITION OF A MOTION. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment—or any proceedings to enforce it—pending the disposition of any of the following motions:

(1) under Rule 52(b), to amend the findings or for additional findings;

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

(3) under Rule 60, for relief from a judgment or order.

(c) INJUNCTION PENDING AN APPEAL. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

(d) STAY WITH BOND ON APPEAL. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a). The bond may be given on or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) STAY WITHOUT BOND ON AN APPEAL BY THE UNITED STATES, THE DISTRICT OF COLUMBIA, OR AN OFFICER OR AGENCY OF EITHER. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States or the District of Columbia or an officer or agency of either or on an appeal directed by a department of either.

(f) [Deleted].

(g) APPELLATE COURT'S POWER NOT LIMITED. This rule does not limit the power of the appellate court or one of its judges or justices:

(1) to stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) STAY WITH MULTIPLE CLAIMS OR PARTIES. A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

Rule 62-I. Supersedeas Bond

(a) IN GENERAL.

(1) *Court Approval*. An appellant who is entitled to a stay on appeal may present a supersedeas bond or undertaking to the court for its approval.

(2) *Requirements*. The bond or undertaking must:

(A) have a surety or sureties if the court so requires; and

(B) be conditioned to satisfy the judgment in full, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full any modification of the judgment and the costs, interest, and damages awarded by the appellate court, if any.

(3) *Value of Bond or Undertaking*. When the judgment is for the recovery of money not otherwise secured, the amount of the bond or undertaking will be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court, after notice and hearing and for good cause, fixes a different amount or orders security other than the bond.

(4) *Supplementing a Bond or Undertaking*. When the appellant has already filed in the trial court security, which was intended to include adequate security in the event of an appeal, a separate supersedeas bond need not be given, except for the difference in amount, if any, unless the court orders otherwise.

(b) EVIDENCE OF FINANCIAL ABILITY. Before the court approves any bond or undertaking, the party offering the bond or undertaking must furnish to the court any evidence establishing the financial ability of the surety or sureties to discharge the financial obligations of the bond as might be required by the court.

COMMENT TO 2018 AMENDMENTS

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

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

(a) APPLICATION.

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

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

(A) the conditions of the stay;

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

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

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

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

(b) ACTION BY THE CLERK.

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

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

COMMENT TO 2018 AMENDMENTS

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

Rule 62-III. Enforcing Foreign Judgments

(a) FILING REQUIREMENTS. A copy of a judgment, decree or order of a court of the United States, or of any other court entitled to full faith and credit in the District of Columbia, may be filed with the clerk by the party who obtained it or by that party's attorney only if:

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

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

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

(b) JUDGMENTS ENTITLED TO FULL FAITH AND CREDIT IN THE DISTRICT OF COLUMBIA; EFFECT, ENFORCEMENT, AND SATISFACTION. A foreign judgment, decree, or order of a court of the United States or of any other court entitled to full faith and credit in the District of Columbia, which is filed with the clerk, has the same effect and is subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner, subject to the provisions of the Uniform Enforcement of Foreign Judgments Act of 1990, D.C. Code §§ 15-351 to -357 (2012 Repl.).

COMMENT TO 2018 AMENDMENTS

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

Rule 62.1. Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal

(a) RELIEF PENDING APPEAL. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state that it would grant the motion if the District of Columbia Court of Appeals remands for that purpose.

(b) NOTICE TO THE COURT OF APPEALS. The movant must promptly notify the District of Columbia Court of Appeals under District of Columbia Court of Appeals Rule 4(f) if the trial court states that it would grant the motion.

(c) REMAND. The trial court may decide the motion if the District of Columbia Court of Appeals remands for that purpose.

COMMENT TO 2018 AMENDMENTS

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

Rule 63. Judge's or Magistrate Judge's Inability to Proceed

If a judge or magistrate judge conducting a hearing or trial is unable to proceed, any other judge or magistrate judge (if authorized by law) may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. The successor judge or magistrate judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge or magistrate judge may also recall any other witness.

COMMENT TO 2018 AMENDMENTS

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

Rule 63-I. Bias or Prejudice of a Judge or Magistrate Judge

(a) RECUSAL FOR BIAS OR PREJUDICE. Whenever a party to any proceeding makes and files a sufficient affidavit that the judge or magistrate judge before whom the matter is to be heard has a personal bias or prejudice either against the party or in favor of any adverse party, such judge or magistrate judge must proceed no further, and the Chief Judge or the Chief Judge's designee must assign another judge or magistrate judge to hear such proceeding.

(b) CONTENT OF AFFIDAVIT; FILING. The affidavit must state the facts and the reasons for the belief that bias or prejudice exists and must be accompanied by a certificate of counsel of record stating that it is made in good faith. The affidavit must be filed at least 24 hours prior to the time set for hearing of such matter unless good cause is shown for the failure to file by such time.

COMMENT TO 2018 AMENDMENTS

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

Rule 64. Seizing a Person or Property

(a) IN GENERAL. At the commencement of and throughout an action, every remedy is available that, under the law of the District of Columbia, provides for seizing a person or property to secure satisfaction of the potential judgment.

(b) SPECIFIC KINDS OF REMEDIES. The remedies available under this rule include the following—however designated:

(1) arrest;
(2) attachment;
(3) garnishment;
(4) replevin;
(5) sequestration; and
(6) other corresponding or equivalent remedies.

(c) [Deleted.]

COMMENT TO 2018 AMENDMENTS

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

Rule 64-I. Attachment Before Judgment

(a) APPLICATION AND NOTICE TO DEFENDANT.

(1) *Requirements*. An application for a writ of attachment and garnishment before judgment must be accompanied by:

(A) an affidavit setting forth specific facts meeting the requirements of D.C. Code § 16-501 (c) and (d) (2012 Repl.);

(B) a Notice to Defendant on a form provided by the clerk; and

(C) if the defendant's address is unknown, an affidavit setting forth the plaintiff's reasonable efforts to ascertain the defendant's mailing address.

(2) *Actions by the Clerk*. The clerk must:

(A) send the notice to the defendant by first class mail at the address shown on the notice, or in the case of a foreign corporation, to its registered agent, if any; and

(B) note on the docket the date the notice is mailed.

(b) ISSUANCE. An application for a writ of attachment before judgment and a bond required under D.C. Code § 16-501 (e) (2012 Repl.) must be submitted as provided in General Family Rule R(a)(2) to the judge—who may approve or deny issuance or direct further hearings before issuance as deemed appropriate.

(c) GARNISHEE'S ANSWER; APPLICANT'S RESPONSE. Within 10 days after accepting service of the writ of attachment, a garnishee must file an answer to the interrogatories with the clerk and serve a copy of the answer on the defendant and the party for whom the garnishment was issued. If within 14 days after service of the answer, or at a later time if the court allows, the party for whom the garnishment was issued fails to contest the answer to the interrogatories in accordance with D.C. Code § 16-522 (2012 Repl.), the garnishee's obligations under the attachment will be limited by his or her answer.

(d) HEARING. If a hearing is held as a result of the defendant or the garnishee filing a traversing affidavit under D.C. Code § 16-506 (2012 Repl.), the plaintiff must establish the validity or probable validity of the underlying claim and the existence of the ground for issuing the attachment.

(e) PRIORITY OF LIENS. For purposes of determining priority of successive liens, a writ of attachment issued under Rule 64-I(b) becomes effective the date it is delivered to the United States marshal or deputy marshal.

(f) EXPEDITION OF MOTIONS TO QUASH. The court must hear all motions to quash attachments on an expedited basis. On at least 5 days notice to all parties, the court may, in appropriate cases, order that the action in which the motion was filed be tried on the merits at the same time the motion is heard.

(g) DISCOVERY. For good cause, the court may in its discretion permit discovery in attachment before judgment proceedings in the manner provided in Rule 69-I.

COMMENT TO 2018 AMENDMENTS

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

Rule 64-II. Replevin Actions

(a) INITIATING ACTION; NOTIFYING THE JUDGE. A complaint in replevin must be accompanied by an affidavit meeting the requirements of D.C. Code § 16-3703 (2012 Repl.). On filing any action in replevin and before process is placed in the hands of the United States marshal or deputy marshal or other process server, the plaintiff, personally or by his or her attorney, will bring the action to the attention of the judge to whom the case is assigned under General Family Rule R(a)(2).

(b) HEARING ON APPLICATION FOR WRIT; ORDER TO PRESERVE PROPERTY.

(1) *Setting a Hearing*. When notifying the judge of the action, the plaintiff may request that the judge set a date for a hearing at which the plaintiff will be required to establish the probable validity of the claim and the defendant will be given an opportunity to appear and be heard with respect to whether a writ of replevin should issue.

(2) *Order to Preserve Property*. If the judge determines the plaintiff has filed a verified complaint alleging the defendant is wrongfully detaining the specified property that the plaintiff is entitled to possess, the judge may issue an order:

(A) directing the defendant to preserve the property that is the subject of the action in his or her possession or under his or her control so as to keep it amenable to the process of the court pending further order of the court;

(B) indicating the date on which the plaintiff's application for a writ of replevin will be heard; and

(C) informing the defendant that he or she may be heard at that time, with or without witnesses, on whether the writ should issue.

(3) *Service of Process*. The order must direct the plaintiff to serve a copy of the summons, complaint, and order on the defendant at least 7 days prior to the hearing date. A plaintiff who does not effect service on time must apply to the judge to whom the case is assigned to set a later hearing date, which will provide the defendant with sufficient time to adequately prepare. The order may require actions by the plaintiff designed to accomplish prompt and expeditious notice to the defendant.

(c) ISSUING THE WRIT AFTER HEARING; REQUIRING A SECURITY FROM THE DEFENDANT. At the conclusion of the hearing, the judge may authorize the issuance and execution of a writ of replevin or may, if it appears just, permit all or part of the property to remain in the possession of the defendant pending further order of the court. If the defendant remains in possession of the property, the court may require the defendant to post an appropriate surety bond or other undertaking or may otherwise provide for the protection of the property pursuant to D.C. Code § 16-3708 (2012 Repl.).

(d) ISSUING THE WRIT PRIOR TO HEARING.

(1) *In General*. In the initial application, the plaintiff may apply for issuance of the writ without prior adversary hearing on the ground that there is an immediate danger that the defendant will destroy or conceal the property in dispute or on any other ground set forth in D.C. Code § 16-501 (d)(2)-(5) (2012 Repl.) as a basis for attachment before judgment.

(2) *Judicial Action*. The judge may authorize the immediate issuance of the writ prior to the hearing only if the application is supported by affidavit or sworn testimony reciting specific facts that tend to establish the required grounds. If the judge authorizes the issuance of the writ, findings of fact and conclusions of law, which state the basis of the need for immediate issuance must be entered on the record.

(3) *Vacating the Writ*. After at least 24 hours notice to the plaintiff, the defendant against whom a writ has been issued without a hearing may apply to the court to have the writ vacated. Regardless, if such writ issues, a hearing must take place on the fifth day after execution of the writ. It is the duty of plaintiff's counsel to notify the court promptly of the execution of the writ.

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

COMMENT TO 2018 AMENDMENTS

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

Rule 65. Injunctions and Restraining Orders

(a) PRELIMINARY INJUNCTION.

(1) *Notice*. The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits*. Before or after beginning the hearing of a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

(b) TEMPORARY RESTRAINING ORDER.

(1) *Issuing Without Notice*. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the court finds that:

(i) the movant has made reasonable efforts under the circumstances to furnish to the adverse party's attorney, if known, otherwise to the adverse party, at the earliest practicable time prior to the hearing on the motion for such order,) actual notice of the hearing and copies of all pleadings and other papers filed to date in the action or to be presented to the court at the hearing; or

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

(2) *Contents; Expiration*. Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was granted without notice; and be promptly filed in the clerk’s office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing*. If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) *Motion to Dissolve*. On 2 days’ notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) SECURITY. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, the District of Columbia, and officers or agencies of either are not required to give security. Where a temporary restraining order or preliminary injunction is granted for the physical protection of any party or for custody of children, no security is required of the movant.

(d) CONTENTS AND SCOPE OF EVERY INJUNCTION AND RESTRAINING ORDER.

(1) *Contents*. Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) *Persons Bound*. The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

COMMENT TO 2018 AMENDMENTS

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

Rule 65-I. [Deleted].

Rule 65.1. Proceedings Against a Surety

Whenever these rules require or allow a party to give security, and security is given through a bond or other undertaking with one or more sureties, each surety submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for receiving service of any papers that affect its liability on the bond or undertaking. The surety's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly mail a copy of each to every surety whose address is known.

COMMENT TO 2018 AMENDMENTS

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

Rule 66. Receivers

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

COMMENT TO 2018 AMENDMENTS

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

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

(a) DEPOSIT INTO COURT.

(1) *Depositing Property.* If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party—on notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

(2) *Investing and Withdrawing Funds*. Money paid into court under this rule must be deposited and withdrawn in accordance with D.C. Code § 11-1723 (b) (2012 Repl.) or any like statute.

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

COMMENT TO 2018 AMENDMENTS

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

Rule 67-I. [Deleted].

Rule 68. Offer of Judgment

(a) MAKING AN OFFER; JUDGMENT ON AN ACCEPTED OFFER. At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The court must then enter judgment, unless it finds that the custody, visitation, or support provisions are not in the best interests of the child.

(b) UNACCEPTED OFFER. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) OFFER AFTER LIABILITY IS DETERMINED. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time—but at least 14 days—before the date set for a hearing to determine the extent of liability.

(d) PAYING COSTS AFTER AN UNACCEPTED OFFER. If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

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

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

Rule 68-I. [Deleted].

COMMENT

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

Rule 69. Execution

(a) IN GENERAL.

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

(2) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in Rule 69-I.

(b) [Omitted].

COMMENT TO 2018 AMENDMENTS

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

Rule 69-I. Attachment After Judgment

(a) DISCOVERY IN GENERAL. All discovery procedures authorized by Rules 26-37 are available to the judgment creditor in the manner prescribed by these rules, except that a subpoena ad testificandum addressed to a person other than the judgment debtor and a subpoena duces tecum may issue only on order of the court. The first subpoena ad testificandum or notice of deposition addressed to the judgment debtor may issue without court order, but any subsequent subpoena or notice so addressed may issue only upon order of the court. This rule does not require that a party be paid a witness fee for attendance.

(b) ORAL EXAMINATION IN COURT. The plaintiff may summon the defendant and, on leave of court, any other person to appear in court on a date certain and submit to oral examination respecting execution of any judgment rendered. Any person so summoned may, on leave of court, be required to produce papers, records, or other documents at the examination. If the person summoned was personally served but fails to appear, the court may, on plaintiff's request, issue a bench warrant for the person's arrest.

(c) OTHER CLAIMS TO PROPERTY. Before the final disposition of the property attached or its proceeds—except where it is real property—any person may file a motion and affidavit setting forth a claim to, interest in, or lien on it. Without other pleadings, the court must try the issues raised by the claim and may make all orders necessary to protect any right of the claimant. Any party to the proceeding may demand a jury trial by filing a demand within 7 days of the filing of the motion and affidavit.

(d) GARNISHEE'S ANSWER. Within 10 days after accepting service of the writ of attachment, a garnishee must file an answer to the interrogatories with the clerk and serve a copy of the answer on the defendant and the party for whom the garnishment was issued. If within 14 days after service of the answer or at a later time if the court allows, the party for whom the garnishment was issued fails to contest the answer to the interrogatories under D.C. Code § 16-522 (2012 Repl.), the garnishee's obligations under the attachment will be limited by the garnishee's answer.

(e) JUDGMENT AGAINST GARNISHEE. No judgment against a garnishee under D.C. Code § 16-556 or -575 (2012 Repl.) will be entered except by court order. Applications for a judgment must be filed:

(1) within 4 weeks after answers to the interrogatories are due and not filed;

(2) as to property other than "wages" as defined in D.C. Code § 16-571 (2012 Repl.), within 4 weeks after the garnishee has filed answers to the interrogatories;

(3) as to such "wages," within 15 weeks of the date on which a garnishee fails to make a payment due under the writ; or

(4) within a later time authorized by the court on a motion made within the applicable period.

(f) DISMISSAL OF GARNISHMENT AND ATTACHMENT. If no judgment of condemnation or of recovery has been applied for or entered within the time provided by this rule, the garnishment and attachment must stand dismissed. On oral or written request, the clerk must enter a dismissal of the garnishment and attachment and must furnish a certificate of the dismissal to the garnishee, the defendant, or any other person.

(g) CONTENT OF WRIT OF ATTACHMENT ON NON-WAGES. The writ must:

(1) contain:

(A) the caption of the action;
(B) the name and last known address of the judgment debtor;
(C) the name and address of the judgment creditor; and
(D) the date of issuance;

(2) list the amount of the total balance due under the judgment;

(3) direct the garnishee to hold, subject to further proceedings, the non-exempt property of the judgment debtor up to the amount of the total balance due at the time of the issuance of the writ and which is in the possession or charge of the garnishee at the time of service of the writ;

(4) direct the garnishee not to hold, and to make available to the account holder, all funds from an account that consists solely of direct deposited benefits that are exempt:

(A) under federal law, including:
(i) Social Security benefits;
(ii) Supplemental Security Income;
(iii) Social Security disability benefits;
(iv) veterans' benefits;
(v) Civil Service Retirement System benefits;
(vi) Federal Employee Retirement System benefits;
(vii) Black Lung or Railroad Retirement benefits; or

(B) under District of Columbia law, including:
(i) disability or unemployment benefits;
(ii) public assistance/Temporary Assistance for Needy Families benefits; or
(iii) workers' compensation benefits;

(5) direct the garnishee, in any account that consists in part of benefits that are exempt under federal law, not to hold, and to make available to the account holder, an amount equal to the total amount of exempt funds deposited into the account in the 2 months prior to the service of a writ of attachment; and

(6) contain interrogatories to be answered by the garnishee regarding the nature of the property in possession of the garnishee and indebtedness of the garnishee to the judgment debtor.

(h) NOTICE TO THE JUDGMENT DEBTOR. The judgment creditor must mail to the judgment debtor at his or her last known address, by certified and first-class mail, a copy of the writ and the Notice to Debtor of Non-Wage Garnishment and Exemptions on the form available in the clerk's office, no more than 3 days after service of the writ on the garnishee.

(i) FUNDS EXEMPT FROM ATTACHMENT.

(1) *Motion Claiming Exemption*. A party may raise a claim that funds are exempt from a writ of attachment by filing a motion with the Presiding Judge, or his or her designee, claiming an exemption and requesting a hearing.

(2) *Hearing on Motion*. On the filing of a motion, the clerk must set a hearing before the Presiding Judge, or his or her designee, as soon as practicable, but no later than 7 days after the motion is filed unless:

(A) the moving party requests a later date; or
(B) the parties otherwise agree.

(3) *Effect of Filing Motion*. On the filing of a motion, any further action on the writ of attachment, including any condemnation of funds, must be stayed until a decision is made by the Presiding Judge, or his or her designee, on the merits of the motion.

COMMENT TO 2018 AMENDMENTS

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

Rule 69-II. Particular Provisions for Attachments of Wages After Judgment

(a) APPLICABILITY. The provisions of this rule do not supersede or repeal any other rule of this court unless in express conflict and must apply only to attachments issued pursuant to D.C. Code § 16-571 to -584 (2012 Repl.) and *15 U.S.C. § 1601* et seq.

(b) REPORTING CREDITS AGAINST JUDGMENT. It is the duty of a judgment creditor who is receiving payments on account of the judgment from an employer-garnishee and who will receive credits upon said judgment from a source other than said employer-garnishee to notify said employer-garnishee and the clerk in writing of such receipt within 14 days, including the date, amount, and source.

(c) SCHEDULE AND RECEIPT FOR PAYMENTS. Every judgment creditor receiving payments from an employer-garnishee pursuant to the issuance of a wage attachment is obligated to credit the payments first against the accrued interest on the unpaid balance of the judgment, if any, second on the principal amount of the judgment, and third on those attorney's fees and costs actually assessed in the cause, and must send a receipt to the garnishee within 7 days after such payment, which receipt must set forth the application of such payment pursuant to the schedule above.

(d) NONCOMPLIANCE. If any judgment creditor fails to comply with this rule or with the statutory provisions cited in Rule 69-II(a), the court may in its discretion, on motion of any interested party:

(1) enter an order vacating and setting aside the attachment and continuing levy of said judgment creditor then in force and effect, but without prejudice to the refiling and serving of another attachment, which must follow prior attachment of wages of the judgment debtor in the hands of the same employer-garnishee; and

(2) enter a judgment of a reasonable attorney's fee and tax costs in favor of the party filing the motion to vacate and set aside the attachment.

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

COMMENT TO 2018 AMENDMENTS

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

Rule 70. Enforcing a Judgment for a Specific Act

(a) PARTY'S FAILURE TO ACT; ORDERING ANOTHER TO ACT. If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done—at the disobedient party's expense—by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) VESTING TITLE. If the real or personal property is within the District of Columbia, the court—instead of ordering a conveyance—may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) OBTAINING A WRIT OF ATTACHMENT OR SEQUESTRATION. On application by a party entitled to performance of an act and approval by the court, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) OBTAINING A WRIT OF EXECUTION OR ASSISTANCE. On application by a party who obtains a judgment or order for possession and approval by the court, the clerk must issue a writ of execution or assistance.

(e) HOLDING IN CONTEMPT. The court may also hold the disobedient party in contempt.

COMMENT TO 2018 AMENDMENTS

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

Rule 71. Enforcing Relief for or Against a Nonparty

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

COMMENT TO 2018 AMENDMENTS

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

Rule 71A. [Deleted].

COMMENT

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

Rule 71A-I. [Deleted].

COMMENT

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

IX. APPEALS

Rule 72. [Deleted].

COMMENT TO 2018 AMENDMENTS

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

COMMENT

Rule 72 is intended to implement the Uniform Enforcement of Foreign Judgments Act of 1990 (D.C. Code §§ 15-351 - 15-357), which has been adopted by the District of Columbia. As a "Uniform Act," it should be construed to effectuate its general purpose to make consistent the law of all jurisdictions that enact it. Accordingly, where there are no interpretations of the Act's provisions in this jurisdiction, guidance may be found in the decisions of other jurisdictions that have adopted the Act. While the Act was intended to provide a simple and expeditious procedure to enforce a foreign judgment in the District of Columbia, it does not impair the right of a party to resort to the cumbersome prior practice of bringing suit to enforce a foreign judgment.

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

Rules 73 to 76. [Deleted].

X. SUPERIOR COURT AND CLERK

Rule 77. Conducting Business; Clerk's Authority; Notice of an Order or Judgment

(a) WHEN THE SUPERIOR COURT IS OPEN. The Superior Court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(b) CLERK'S OFFICE HOURS; CLERK'S ORDERS.

(1) *Hours*. The clerk's office—with a clerk or deputy on duty to assist the public—must be open during normal business hours as set by the Chief Judge. When practicable, those hours will comport with the hours of operation posted on the Superior Court's website.

(2) *Orders*. Subject to the court's power to suspend, alter, or rescind the clerk's action for good cause, the clerk may:

(A) issue process;

(B) enter a default; and

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

(c) SERVING NOTICE OF AN ORDER OR JUDGMENT.

(1) *Service*. Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Rule 5, on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Rule 5.

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

(3) *Who Can Perform the Clerk's Function*. Nothing in this rule precludes a judge or magistrate judge or his or her authorized staff member from performing the function of the clerk prescribed in Rule 77(c).

COMMENT TO 2018 AMENDMENTS

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

Rule 77-I. [Deleted].

Rule 77-II. [Deleted].

Rule 78. [Deleted].

COMMENT

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

Rule 78-I. [Deleted].

Rule 79. Records Kept by the Clerk

(a) DOCKET.

(1) *In General*. The clerk must keep a record known as the "docket" in the form and manner prescribed by the Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge. The clerk must enter each domestic relations action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.

(2) *Items to Be Entered*. The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk;

(B) process issued, and proofs of service or other returns showing execution; and

(C) appearances, orders, and judgments.

(3) *Contents of Entries*. Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the substance and date of entry of each order and judgment

(b) JUDGMENTS AND ORDERS. The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The Executive Officers of the District of Columbia Courts will, subject to the supervision of the Chief Judge, prescribe the form and manner in which such copies must be kept.

(c) INDEXES; CALENDARS. Under the court's direction, the clerk must:

(1) keep indexes of the docket and of the judgments and orders described in Rule 79(b); and

(2) prepare calendars of all actions ready for trial.

(d) OTHER RECORDS. The clerk must keep any other records required by the Executive Officer of the District of Columbia Courts, subject to the supervision of the Chief Judge.

(e) ENTRY ON DOCKET. Nothing in these rules precludes a judge or magistrate judge or his or her authorized judicial staff member from making entries on the docket.

COMMENT TO 2018 AMENDMENTS

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

Rule 79-I. Copies and Custody of Filed Papers

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

(b) CERTIFIED COPIES.

(1) *In Person Filings*. When a paper is received and filed, the clerk must stamp the date of filing on the face of the paper in any manner that is legible and must also stamp the date of filing separately on any exhibit. If any person filing any paper requests a certification of such filing, a copy of the paper provided by such person must be marked to show the time and date of the filing and initialed by the person with whom the paper was filed. Such certified copy is prima facie evidence in any proceeding that the original of the paper was filed as shown by the certification.

(2) *Electronic Filings.* Any filings made electronically as permitted by these rules or by administrative order is considered date stamped as specified by administrative order.

(c) CUSTODY OF DOCUMENTS. The clerk or his or her designee is the custodian of all papers filed in all civil cases. No original paper, document, or record in any case may be removed from its place of filing or custody, except under the following conditions:

(1) Except with approval of the court, no paper, document, or record may be taken from the courthouse by any person other than the custodian of the paper, document, or record, who must retain possession of it and must return it to its place of filing immediately upon completion of the purpose for which it was removed.

(2) When required for use before a division of the court or a person to whom the case has been referred for consideration, or when ordered by a judge of the court, the custodian, the custodian's designee, any attorney or party to the case, or any person designated by a judge may be permitted to remove such paper, document, or record for the use required or ordered.

(3) In any case where the paper, document or record is removed by any person other than the custodian, or the custodian's designee, a receipt must be given to the custodian and the paper, document or record, must be returned to its place of filing or custody immediately upon completion of the purposes for which it was removed.

COMMENT TO 2018 AMENDMENTS

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

Rule 80. [Deleted].

XI. GENERAL PROVISIONS

Rule 81. [Deleted].

COMMENT

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

Rule 82. [Deleted].

Rule 83. [Deleted].

COMMENT

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

Rule 83.I. [Deleted].

Rule 84. Forms

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

COMMENT TO 2018 AMENDMENTS

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

Rule 85. [Deleted].

Rule 86. Effective Dates

(a) IN GENERAL. These rules and any amendments take effect at the time specified by the Chief Judge in promulgation orders. They govern:

(1) proceedings in an action commenced after their effective date; and

(2) proceedings after that date in an action then pending unless:

(A) the Chief Judge in the promulgation order specifies otherwise; or

(B) the court determines that applying them in a particular action would be infeasible or work an injustice.

(b) [Omitted].

COMMENT TO 2018 AMENDMENTS

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

Rule 86-I. [Deleted].

XII. PRACTICE BEFORE THIS COURT

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

(a) WHO MAY PRACTICE.

(1) *Bar Membership*. An attorney who is a member in good standing of the District of Columbia Bar may enter an appearance, file pleadings, and practice in this court.

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

(3) *Attorneys Admitted Pro Hac Vice*.

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

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

(4) *State Attorneys General*. A state attorney general or the attorney general's designee, who is a member in good standing of the bar of the highest court in any state or any United States court, may appear and represent the state or its agency.

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

(c) WITHDRAWAL OF APPEARANCE.

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

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

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

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

(2) *Withdrawal by Motion*.

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

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

(B) *Notice to Client*. Unless the client is represented by another attorney or the motion is made in open court in the client's presence, a motion to withdraw an appearance must be accompanied by a certificate of the moving attorney listing the client's last known address and stating that the attorney has served upon the client a copy of the motion and a notice advising the client to obtain other counsel, or, if the client intends to represent himself or herself or to object to the withdrawal, to so notify the Clerk in writing within 14 days of service of the motion on the client.

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

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

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

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

(3) the attorney files with this court, and the District of Columbia Court of Appeals' Committee on Unauthorized Practice a certificate that the attorney is providing representation in that particular case without compensation.

(e) APPOINTMENT OF ATTORNEY; COMPENSATION.

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

(2) *How Appointed*.

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

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

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

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

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

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

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

Rule 102. [Deleted].

Rule 103. [Deleted].

XIII. MISCELLANEOUS PROVISIONS

Rule 201. Release of Transcripts

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

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

Rule 202. [Omitted].

COMMENT

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

Rule 203. [Deleted].

XIV. FIDUCIARY RULES

Rules 301 to 308. [Deleted].

COMMENT

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

Rule 309. [Deleted].

XV. DOMESTIC RELATIONS SPECIAL RULES

Rule 401. Reciprocal Enforcement of Support Proceedings

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

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

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

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

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

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

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

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

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

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

Rule 402. [Deleted].

Rule 403. Payment of Support

(a) CHILD SUPPORT PAYMENTS.

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

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

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

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

COMMENT TO 2018 AMENDMENTS

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

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

COMMENT

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

Rule 404. Social Service Referrals

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

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

Rule 405. [Deleted].

COMMENT TO 2018 AMENDMENTS

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

COMMENT

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

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

Rule 406. Writ of *Ne Exeat*

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

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

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

COMMENT TO 2018 AMENDMENTS

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

SUPERIOR COURT RULES GOVERNING
PARENTAGE AND SUPPORT PROCEEDINGS

Rule 1. Title and Scope of Rules

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

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

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

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

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

COMMENT

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

Rule 2. Definitions; Unsworn Declarations

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

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

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

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

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

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

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

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

(b) UNSWORN DECLARATIONS.

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

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

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

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

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

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

(A) a deposition;

(B) an oath of office; or

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

COMMENT

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

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

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

(1) proceedings to determine parentage of any child;

(2) actions for support of minor children;

(3) actions to enforce child support orders; and

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

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

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

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

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

(4) other requests for relief.

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

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

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

(3) facts concerning parentage; and

(4) other requests for relief.

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

COMMENT

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

Rule 4. Process

(a) CONTENTS; AMENDMENTS.

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

(A) name the court and the parties;

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

(C) be directed to the respondent;

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

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

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

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

(H) be signed by the clerk; and

(I) bear the court's seal.

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

(3) *Service Outside the District of Columbia*. A notice or order in lieu of notice should correspond as nearly as possible to the requirements of a statute or rule whenever service is made pursuant to a statute or rule that provides for service of a notice or order in lieu of notice on a party not an inhabitant of or found within the District of Columbia.

(b) ISSUANCE OF NOTICE.

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

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

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

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

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

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

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

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

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

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

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

(5) in any manner authorized by applicable statute.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) PROVING SERVICE.

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

(A) *Service by Delivery*. If service is made by personal delivery pursuant to Rule 4(c)(1), (3), or (4), the return of service must be made under oath (unless service was made by the United States marshal or deputy marshal) and must specifically state:

(i) the caption and number of the case;

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

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

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

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

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

(i) the caption and number of the case;

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

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

(iv) if the return receipt does not purport to be signed by the party named in the notice, then specific facts from which the court can determine that the person who signed the receipt meets the appropriate qualifications for receipt of process set out in Rule 4(c)(1)(B) or (C);

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

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

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

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

(g) TIME LIMIT FOR SERVICE.

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

(2) *Extensions of Time*.

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

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

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

(h) BENCH WARRANT.

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

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

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

COMMENT

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

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

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

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

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

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

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

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

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

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

(C) the case number;

(D) the name of the pleading;

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

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

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

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

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

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

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

(d) PARAGRAPHS.

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

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

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

(B) state that there are no such cases.

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

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

COMMENT

This rule is substantially similar to Domestic Relations Rule 10.

Rule 6. Disclosures; Additional Discovery; Initial Hearings

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

(1) 2 most recent pay statements;

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

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

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

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

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

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

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

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

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

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

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

(13) any other document required by the court.

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

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

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

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

(f) INITIAL HEARING.

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

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

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

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

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

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

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

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

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

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

COMMENT

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