

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ORDER

By action of the Board of Judges of this Court and pursuant to D.C. Code § 11-946, it is this 21st day of June, 2004:

ORDERED that the Family Court of the Superior Court Rules Governing Neglect and Abuse Proceedings are promulgated as set forth below; and it is

FURTHER ORDERED that upon the above-entitled rules taking effect, the current Rules Governing Neglect Proceedings shall be rescinded; and it is

FURTHER ORDERED that the Rules Governing Neglect and Abuse Proceedings shall take effect September 1, 2004 and govern all proceedings thereafter commenced and insofar as is just and practicable all proceedings then pending.

**Superior Court of the District of Columbia
Family Court**

Rules Governing Neglect and Abuse Proceedings

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Superior Court of the District of Columbia Family Court

Rules Governing Neglect and Abuse Proceedings

Rule 1. Scope of rules.

- (a) These Rules govern the procedures in the Family Court of the Superior Court of the District of Columbia (hereinafter referred to as the Family Court) in all proceedings in which a child is alleged to be neglected and/or abused as defined by D.C. Code §16-2301.
- (b) Except where inconsistent with the provisions of the rules governing neglect and abuse proceedings, the District of Columbia Family Court Act of 2001, the General Family Court Rules or the Prevention of Child Abuse and Neglect Act of 1977, Superior Court Rules of Civil Procedure 6, 11, 12-I, 26 through 37, 44, 44-I, 45, 61, 63, 63-I, and 80 are deemed applicable to neglect and/or abuse proceedings.

Rule 2. Purpose and construction.

These Rules are intended to provide for the just determination of every neglect and abuse proceeding. To the extent feasible, they shall be construed together with other Court Rules to facilitate the consolidated adjudication of related matters involving the same family or household.

Rule 3. Family Court proceedings.

- (a) *Consolidation of related family matters.* The judicial officer may, upon the motion of any party or upon his or her own motion, consolidate a neglect and abuse action with other cases before the Family Court relating to the child or members of the same family or household including juvenile, neglect, abuse, domestic violence, domestic relations, custody, visitation, support, adoption, termination of parental rights, paternity, mental health and mental retardation cases. Upon consolidation, copies of the order of consolidation shall be filed in each case so consolidated; however, all other papers filed in an adoption case shall be maintained only in the adoption case file.
- (b) *Effect of juvenile proceedings on neglect case.* The existence of a juvenile proceeding against a child who is the subject of a neglect proceeding need not affect the status of the child in the neglect case, nor shall it be the sole basis for the termination of the neglect proceeding.

Comment: The Child and Family Services Agency has responsibility for screening guidelines.

Rule 4. Taking into Custody – Prior to Shelter Care Hearing.

(a) *Taking into Custody Without Court Order.* When a child has been taken into custody pursuant to D.C. Code §§ 16-2309 (a)(3)-(6) or 16-2306(c), notice of the taking into custody and of the shelter care hearing shall be given to the parents and caretakers pursuant to Rule 6.

(b) *Ex Parte Order for Custody.*

(1) If, prior to or at the time of the filing of a petition alleging abuse or neglect, it appears to an investigating law enforcement officer or social worker that there are grounds for taking a child into custody under D.C. Code § 16-2309(a)(3)-(6), such officer or social worker may apply to a judicial officer for an order for custody.

(2) After approval by the Corporation Counsel or his or her designee, the law enforcement officer or social worker shall submit an application for an order for custody, supported by testimony or affidavit, to the judicial officer. The application shall be in writing and shall include:

(A) The name and title of the applicant with office address and telephone number;
(B) A statement of one or more following grounds for taking the child into custody:

(i) A law enforcement officer has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that removal of the child from his or her surroundings is necessary (D.C. Code § 16-2309(a)(3));

(ii) After consultation with the Chief of the Child Protective Services Division of the Department of Human Services, or his or designee, pursuant to D.C. Code § 4-1301.07(b), a law enforcement officer has reasonable grounds to believe that the child is suffering from an illness or injury or otherwise is endangered and that the child's removal from his or her surroundings is necessary (D.C. Code § 16-2309(a)(4));

(iii) A law enforcement officer has reasonable grounds to believe that the child has run away from his or her parent, guardian or other custodian (D.C. Code § 16-2309(a)(5));

(iv) The Chief of the Child Protective Services Division of the Department of Human Services or his or her designee has received written notification by the chief executive officer of a hospital located in the District of Columbia that the child has resided in the hospital for at least 10 calendar days following the birth of the child, despite a medical determination that the child is ready for discharge from the hospital, and the parent, guardian or custodian of the child, as established by the hospital admission records, has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child (D.C. Code § 16-2309(a)(6)); or

(v) The child may leave or be removed from the jurisdiction of the Court or will not be brought to the hearing notwithstanding service of the summons (D.C. Code § 16-2306(c)) (petition must be filed prior to asserting this ground).

- (C) Allegations of fact supporting the existence of such ground(s);
 - (D) Whether services are currently available that could protect the child without removal or whether no services can reasonably be provided at this time that would eliminate the necessity for removal; and
 - (E) The steps taken by the applicant to ascertain whether services are available that would eliminate the necessity for removal.
- (3) If the application is submitted after the initial appearance before the Court, the application shall state whether all attorneys of record were notified of the grounds for the application and state the reasons for any failure to notify.
- (4) The judicial officer may issue an order for custody authorizing the taking into custody of the child upon a finding of reasonable grounds to believe that the allegations in the application are true. The judicial officer may consider all reliable and credible evidence, including hearsay, in making a decision, without prior notice to the parent.
- (5) The order for custody shall be signed by the judicial officer, shall state the name, age (if known), and address of the child to be taken into custody, and shall specify a return date. In addition, the order shall provide the name of an agency official who can be contacted about the child, the official's telephone number, and a statement of where the child will be taken. The order for custody may be in the form of a separate document or may be endorsed upon the summons when the summons and petition have been submitted at the time of the application.
- (6) Execution and return.
- (A) *By whom.* An order for custody, whether endorsed upon a summons or issued as a separate document, shall be executed by a law enforcement officer or, where authorized by law, a social worker.
 - (B) *Territorial limits.* An order for custody may be executed at any place in the District of Columbia, but not more than one year after the date of issuance.
 - (C) *Manner.* The order for custody shall be executed by the taking into custody of the child named therein. The officer or social worker need not have the order in his or her possession at the time of the taking into custody, but upon request the officer or social worker shall show the order to the child and to the parent, guardian, or custodian within 24 hours or before the next hearing, whichever is sooner. The officer or social worker shall provide Notice of Taking into Custody and Shelter Care Hearing as required by Rule 6.
 - (D) *Return.* On or before the return day, the person to whom an order for custody was delivered for execution shall make a return thereof to the judicial officer. At the request of the Corporation Counsel or his or her designee, an order for custody returned unexecuted and not canceled may be delivered by the judicial officer to a law enforcement officer for execution. At the request of the Corporation Counsel or his or her designee, any unexecuted order for custody shall be returned and canceled by the judicial officer.

Rule 4A. Order for Custody – Following the Shelter Care Hearing.

- (a) *Issuance.* During the pendency of a case, a judicial officer, upon motion of a party, or *sua sponte*, may issue a custody order for a respondent who has run away or absconded from the legal custody of the person or agency with whom he or she has been placed by the Court. Upon application of a law enforcement officer, social worker, parent, guardian, or custodian, the judicial officer may issue a custody order for a respondent where there are reasonable grounds to believe that the child is in abscondence.
- (b) *Application.* A law enforcement officer or social worker shall submit an application for an order for custody to the assigned judicial officer or his or her designee. The application shall be supported by testimony or a concise written statement by the social worker assigned to the case or his or her supervisor which contains the specific circumstances surrounding the abscondence and the actions the assigned social worker wishes to be taken once the respondent is taken into custody. The application shall be in writing and shall include:
- (1) The name and title of the applicant with office address and telephone number;
 - (2) A statement of the grounds for taking the child into custody; and
 - (3) The circumstances surrounding the child's abscondence and the organization or person from whom the child has absconded.
- (c) *Form.* The order for custody shall be signed by a judicial officer. It shall be issued under the title of the Superior Court of the District of Columbia, Family Court, and shall contain the name of the judicial officer to whom the case is assigned, if known; the date of the issuance of the custody order; the name of the respondent; any description by which the respondent can be identified with reasonable certainty; the respondent's age and address; and the location at which the respondent last resided. Where it is likely that the respondent has returned to a parent, the parent's address shall also be included. The order shall command that the respondent be taken into custody and shall state whether the respondent should be brought before the Court pending the next regularly scheduled session of the Court or whether the respondent should be brought before a representative of the Child and Family Services Agency for a determination of placement pending appearance in Court.
- (d) *Execution and return.*
- (1) *By whom.* An order for custody shall be executed by a law enforcement officer or Child and Family Services Agency social worker.
 - (2) *Territorial limits.* An order for custody may be executed at any place in the District of Columbia, but not more than one year after the date of issuance or reissuance.
 - (3) *Manner.* The order for custody shall be executed by taking into custody the child named therein. The officer or social worker need not have the order in his or her possession at the time of the taking into custody, but upon request the officer or social worker shall show the order to the child and to the parent, guardian, or custodian within 24 hours or before the next hearing, whichever is sooner. The officer or social worker shall provide notice as required by Rule 6 below.

- (4) *Return.* On or before the return day, the person to whom an order for custody was delivered for execution shall make a return thereof to the judicial officer. At the request of the Corporation Counsel or his or her designee, an order for custody returned unexecuted and not canceled may be delivered by the judicial officer to a law enforcement officer for execution. At the request of the Corporation Counsel, or his or her designee, any unexecuted order for custody shall be returned and canceled by the judicial officer.

Rule 5. Notice in Non-removal Cases.

- (a) *Time of initial appearance.* When a child alleged to be neglected has not been taken into custody, an initial appearance shall be set within five days after the filing of a petition. Failure to hold the initial appearance within five days shall not be grounds for dismissal of the petition.
- (b) *Issuance of notice.* The Clerk shall give notice of the initial appearance to all parties by issuing a summons pursuant to Rule 11. The summons shall include the name of the child, the date, time and place of the hearing and a statement that the parent, guardian or custodian is entitled to be represented by counsel and to the appointment of counsel, if eligible, pursuant to D.C. Code § 16-2304(b) and Rule 42. A copy of the petition shall accompany the summons.

Rule 6. Notice of Taking into Custody and Notice of Shelter Care Hearing.

- (a) *Time of notice.* At the time the child is taken into custody, whether pursuant to Rule 4 or Rule 4A, or immediately thereafter (if not possible at the time of taking into custody), the law enforcement officer or agency shall diligently attempt to notify the parent, guardian or custodian named in the petition, orally and in writing, that the child has been taken into custody.
- (b) *Contents of notice.* The notice shall include:
- (1) The name of the child;
 - (2) The reasons the child was taken into custody;
 - (3) The location of the child unless disclosure of this information would endanger the child;
 - (4) The name, telephone number, and address of the responsible agency worker and a statement that the worker will provide further information on request;
 - (5) The time and place of the shelter care hearing;
 - (6) A statement that counsel will be appointed for the parent if he or she cannot afford counsel; and
 - (7) A statement of the issues to be addressed at the hearing and of the parent's right to be present.
- (c) *Delivery of Notice.* Notice shall be in writing, and the person delivering it shall orally summarize and explain the content of the notice. When adult residents are not present, notice

shall be left at the home from which the child is removed and, when possible, at the home of the child's parents or caretakers.

- (d) *Language of Notice.* When the parent or caretaker does not understand English, diligent efforts shall be made to provide both written and oral notice in the parent's or caretaker's native language.

Comment: Notice in cases in which the child is not taken into custody is addressed in Rule 5.

Rule 7. Court Report for First Hearing.

- (a) *Filing.* The responsible agency shall file a written report in open court at the initial appearance or commencement of the shelter care hearing. Copies of the report shall be provided to counsel for all parties prior to the hearing. A complaint that meets the requirements set forth in paragraph (b) of this rule may be submitted in place of the written report.
- (b) *Contents.* In cases in which the child has been removed from home or in which removal is proposed, the report shall include each of the following elements: (In cases in which the child has not been removed from home and the agency does not recommend doing so pending the fact-finding hearing, the report shall include elements (4) - (9)):
- (1) A brief statement of the specific danger requiring immediate placement of the child prior to trial;
 - (2) The time, place, and manner in which the child was removed from the danger;
 - (3) If the child was removed prior to a court order, a brief statement why it was not possible to obtain the order prior to removal;
 - (4) To the extent known, the names and addresses of custodial and non-custodial parents, other legal guardians or legal custodians of the child, and any other person acting as a parent at the time of removal;
 - (5) Persons notified in compliance with Rule 6 and a brief statement of the steps taken to locate those not notified;
 - (6) A description of the services, if any, offered or provided to the family to prevent placement;
 - (7) The results of an investigation and assessment of the danger to the child of remaining in the home, using standardized and accepted risk management tools;
 - (8) Any additional medical screening which will be necessary for the child, together with planned dates for further testing and evaluation (this may be in the form of an attached medical screening form);
 - (9) If return home pending adjudication is recommended:

- (A) Recommended conditions of release to ensure the child's safety, well being and appearance in court;
- (B) Services which should be provided to the child or family prior to adjudication;

(10) If shelter care or placement with a relative is recommended:

- (A) A written statement indicating if reasonable efforts have been made to prevent removal or if no such efforts have been made, why no such efforts have been made.
- (B) The reasons why conditions of release together with services to the child and his or her family would not adequately protect the child in the home;
- (C) A statement of whether there exist any relatives or third parties who may be appropriate caretakers, and what efforts were made to identify such persons, if none are immediately available;
- (D) A brief description of the current and proposed shelter care placement including the type of placement and its distance from the child's home;
- (E) A statement of the child's current eligibility for services under Title IV-E of the Social Security Act and the basis for that determination;
- (F) A statement of the measures to be taken to minimize the disruption to the child and his or her family and social relationships during the shelter care period; and
- (G) Immediate measures that might be taken to expedite the reunification of the family;

(11) Alternatives to foster care considered, such as placement with relatives or others with whom the child is familiar; and

(12) Recommended sibling, parent, and other visitation pending adjudication.

(c) *Incomplete report.*

- (1) If a report is incomplete because information is solely within the possession of the parent, guardian or custodian, and the parent, guardian or custodian refuses to provide such information, the report shall state that the information was withheld.
- (2) If further investigation is necessary for the completion of the report, the agency with case responsibility may request additional time, pursuant to Rule 14(h), for the purposes of completing the investigation and preparing the recommendation as to the placement of the child pending trial and disposition. Additional placement options identified shall be investigated during this time.
- (3) If a required report is missing, the Court shall direct that it be filed within 72 hours, but may make findings necessary to protect the child based on oral representations.

Rule 8. Time of Shelter Care Hearing.

The shelter care hearing shall take place the following day (excluding Sundays) after the child is taken into custody. If completion of the probable cause portion of the shelter care hearing is

continued pursuant to Rule 14(h), it shall be completed within five additional days (excluding Sundays) or such additional time as consented to by all parties present.

Rule 9. Petition.

- (a) *Time for filing.* A petition shall be filed by the time of the shelter care hearing or within any additional time, not to exceed five days, permitted by the Court. In cases in which there is no shelter care hearing, the petition shall be filed within seven days after the referral of the complaint to the Court.
- (b) *Contents.* The petition shall contain a plain and concise statement of the facts that would give the Family Court jurisdiction. The petition also shall contain the following information or shall specify that such information is unknown:
 - (1) A description of the child, including the name, birth date, and residence address of the child and the current location of the child, unless stating the location would endanger the child or seriously risk disruption of the current placement;
 - (2) The names and residence addresses of the child's parents and the child's legal guardian or other custodian;
 - (3) The specific allegations of neglect or abuse by the parents or other persons responsible for the child's care;
 - (4) Whether the child is hospitalized or has been placed in custody, and, if so, the type of placement or hospitalization and the date the child was placed there;
 - (5) Whether the child or other members of the child's family have been or are the subject of Family Court proceedings; and
 - (6) The date of removal of the child.
- (c) *Amendment.* A petition may be amended pursuant to D.C. Code § 16-2305(e) on motion of the District of Columbia or guardian ad litem at any time prior to the conclusion of the fact-finding hearing. The judicial officer shall grant the District of Columbia, the child, and his or her parent, guardian or custodian notice of the amendment and, where necessary, additional time to prepare.
- (d) *Bill of particulars.* A motion for a bill of particulars may be made before the initial appearance or shelter care hearing, within seven days after the initial appearance or shelter care hearing, or at such later time as the judicial officer may permit. If the judicial officer finds that a bill of particulars is necessary to inform the moving party of the precise nature of the allegations of neglect, the judicial officer may order the Corporation Counsel to file a bill of particulars within seven days of the judicial officer's order or within such longer or shorter time as justice may require. A copy of the bill of particulars shall be served on all parties. A bill of particulars shall be amended as changes in circumstances require.

Rule 10. Parties; Other Persons Entitled to Notice and Opportunity to be Heard.

- (a) *Parties.* The parties to a neglect proceeding shall include the District of Columbia, the child alleged to be neglected, and the parents, guardian or custodian.

- (b) *Additional parties.* Pursuant to D.C. Code § 16-2304(b), a foster parent or other person with whom the child has been living for at least 12 months shall, upon request, be granted party status. A foster parent or other person with whom the child has been living for less than 12 months may be granted party status if the judicial officer finds that the interests of the child would be furthered by the participation of such person in the proceeding. A motion for party status may be made orally in open court or may be submitted to the judicial officer in writing. Any such written motion shall include the name of the child, the case number, the name, address and telephone number of the person seeking party status, the relationship between the child and the moving party, and a brief statement of the grounds for the request, including the length of time the child has been living with the moving party.
- (c) *Additional persons entitled to notice and opportunity to be heard.* Upon notification to the Court by the parties or others, the following individuals and their attorneys shall be provided notice of, and an opportunity to be heard in, the neglect or termination proceedings:
- (1) The child's current foster parent;
 - (2) The child's current preadoptive parent;
 - (3) The child's current legal guardian or kinship caregiver;
 - (4) The child's therapist; and
 - (5) A relative or other individual with whom the child is currently placed pursuant to D.C. Code § 16-2320(a)(3)(C).

Rule 11. Service of Process.

- (a) *Generally.* The summons together with a copy of the petition shall be served on every parent, guardian or custodian named in the petition. The judicial officer may proceed with an initial appearance or shelter care hearing upon a showing that diligent efforts have been made to notify the child's parent, guardian or custodian pursuant to Rule 6. A fact-finding hearing shall be commenced only after the child's parent, guardian or custodian who is alleged to have neglected or abused the child has been served pursuant to this Rule.
- (b) *Issuance.* When a petition is filed, the Clerk shall issue summonses as directed by the judicial officer pursuant to D.C. Code § 16-2306. A summons may not be served more than one year after the date of issuance.
- (c) *Form.* The summons shall be signed by the Clerk, be under the seal of the Court, be directed to the summonsed person, state the name of each child alleged or adjudicated neglected, and specify a return date. It shall direct the party summonsed to appear before the judicial officer at a stated date, time and place. It shall also state that the summonsed party is entitled to be represented by counsel at all hearings, and that if the summonsed individual is financially unable to retain counsel, such counsel may be appointed by the judicial officer pursuant to D.C. Code § 16-2304 and Rule 42. If an attorney has been appointed, the summons shall contain the name and telephone number of the attorney. The Permanency Planning Notice described in Rule 12(f) shall be imprinted on the reverse side of the summons. In addition, the summons shall include a notice that in cases in which a child is found to be an abandoned

child, the District of Columbia may seek termination of parental rights at the time of disposition of the case.

- (d) *Endorsement.* Upon request of the Corporation Counsel, the judicial officer may endorse upon the summons an order directing a parent, guardian or custodian to appear personally at the hearing and directing the person having physical custody or control of the child to bring the child to the hearing. If it should appear to the satisfaction of the judicial officer, by testimony or written request of the Corporation Counsel or other means, that there are grounds to take the child into custody pursuant to D.C. Code § 16-2306(c), the judicial officer may endorse upon the summons an order that the officer serving the summons shall at once take the child into custody.
- (e) *By whom.* A summons shall be served by a United States Marshal or by any person empowered to serve a summons in a civil action, but an order for custody shall be executed only by a law enforcement officer.
- (f) *Return.* A return of service shall be made on or before the date of hearing.
- (g) *Service on a person within the District of Columbia.*
 - (1) *Personal service.* Service shall be effected by delivering a copy of the summons and the petition to the parent, guardian or other custodian of the child named in the petition personally, or by such substitute or constructive service as is provided by statute or these Rules.
 - (2) *Substitute service.* If the person to whom a summons and petition are delivered for service is unable to deliver a copy of the summons and petition personally to the party named therein, the person attempting service may make substitute service by delivering the summons and petition to a person of suitable age and discretion then residing at the dwelling house or usual place of abode of the summoned party.
 - (3) *Constructive service.* If the person to whom a summons and petition are delivered for service is unable to effect personal or substitute service in accordance with either subparagraphs (g)(1) or (g)(2) of this Rule, the person shall return the summons and petition to the Clerk of the Family Court noting in the summons the reasons why he or she was unable to serve them. Upon a finding that the requirements of paragraph (i) have been met, the judicial officer may authorize service to be effected upon the party by registered or certified mail, return receipt requested, to the party's last known address or by such other notice as the judicial officer deems appropriate. Proof of service under this paragraph shall be filed prior to the fact-finding hearing.
- (h) *Service on a person outside of the District of Columbia.* Service on a person outside the District of Columbia shall be effected in accordance with D.C. Code § 16-4601.07.
- (i) *Missing parent.* If a parent, guardian or custodian cannot be served because his or her current dwelling or usual place of abode are unknown to the petitioner or moving party, and he or she cannot be located, the Corporation Counsel, or, in an action for termination of the parent and child relationship, the guardian ad litem for the child, may move the Court for an order for constructive service upon the party. Such motion must be accompanied by a

statement or affidavit setting forth the efforts that have been made to locate the missing party. Such efforts shall include, but not be limited to:

- (1) Contacting known relatives, friends or employers;
 - (2) Checking telephone directories for the District of Columbia, and the Maryland and Virginia suburbs;
 - (3) Attempting to locate the parent, guardian or custodian at his or her last known address or addresses;
 - (4) Examining other sources of information as indicated by the facts or allegations in the case, e.g., hospitals, jails, public assistance records, and Court records where available.
- (j) *Notification in lieu of service.* Oral notification given by a judicial officer during a hearing to any person present or written notification given in person by an authorized representative of the Court shall constitute legal notice in lieu of service. A copy of any written notification given pursuant to this paragraph shall be placed promptly in the appropriate court file.

Rule 12. Shelter Care Hearing or Initial Appearance; Matters Addressed in All Cases.

- (a) *Inspection of Reports.* Prior to the shelter care hearing or initial appearance, the parties shall be permitted to inspect any reports or other written information that will be provided to the Court at the hearing or initial appearance.
- (b) *Inquiry as to notice and paternity status.* At the beginning of the shelter care hearing or initial appearance the judicial officer shall determine the individuals and parties entitled to notice under Rule 10, and shall determine whether notice of the hearing has been provided to each in compliance with Rule 11 and what further efforts must be taken to notify all parties and individuals entitled to notice as rapidly as possible. At this or any subsequent hearing, an inquiry shall also be made as to the identity of the putative father and the status of efforts to establish paternity of the child.
- (c) *Absence of a party.* The hearing shall not be postponed because of the absence of the parent, guardian or custodian, but if the child is ordered to be held in shelter care, the parent, guardian or custodian shall be notified by counsel of his or her right to apply for reconsideration of the order.
- (d) *Appointment of Counsel.* The judicial officer shall advise the parties of the right to counsel, and of the right to have counsel appointed if the party is eligible because of financial inability to retain counsel, as provided in D.C. Code § 16-2304 and Rule 42, and shall appoint counsel and a guardian ad litem in accordance with Rule 42.
- (e) *Informing parties of rights, contents of petition.* At the beginning of the hearing, the Court shall advise the parties of their legal rights, including their rights to present evidence and cross-examine witnesses who are present. Unless reading is waived, the judicial officer shall read the petition to the parent, guardian or custodian. Each party may then admit or deny the allegations of neglect. The Court shall also explain the purpose and scope of the hearing and

the possible consequences of the Court proceedings, including the possibility of termination of parental rights if children are removed from and not timely returned home.

- (f) *Permanency Planning Notice.* The judicial officer shall provide parents with and explain to them a Permanency Planning Notice that advises them that if their child is removed from home and they are unable to safely assume care of their child within 12 months of an adjudication of neglect or within 14 months of the child's removal from the home, the Court must and will promptly consider permanent alternatives to returning the child home, including termination of parental rights.

Rule 13. Criteria for Shelter Care.

- (a) *Generally.* When the Corporation Counsel moves the Court to place a child in shelter care, the government shall have the burden of showing that shelter care is required under the criteria set forth in D.C. Code § 16-2310.

- (b) *Protection of the person of the child.* In determining whether shelter care is necessary under D.C. Code § 16-2310(b)(1), among the factors deemed relevant are:

- (1) The nature and seriousness of any alleged abusive or threatening conduct toward the child, and the potential for further harm to the child prior to the fact-finding hearing;
- (2) The existence of illness or injuries to the body of the child who was in the custody of the parent, guardian or custodian for which no satisfactory explanation is given;
- (3) The nature and seriousness of abusive or threatening conduct toward a sibling as it reflects on the possibility of future harm to the child;
- (4) Suicidal actions or tendencies or other seriously self-destructive behavior of the child or any other person creating an imminent danger to the child's life or health; and
- (5) Chronic mental or physical conditions of the parent, guardian or custodian which bear directly on the safety of the child.

- (c) *Lack of care or supervision.* In determining whether shelter care is necessary under D.C. Code § 16-2310(b)(2), among the factors deemed relevant are:

- (1) The child's age and maturity;
- (2) The child's existing living arrangements;
- (3) The duration of existing living arrangements and the child's adjustment to them; and
- (4) Evidence or likelihood of serious harm to the child's physical or mental health resulting from existing living arrangements.

- (d) *Alternatives to shelter care.* Before a child is placed in shelter care, the judicial officer must determine, pursuant to D.C. Code § 16-2310(b)(3), that:

- (1) No alternative resources or arrangements are available to the family that would adequately safeguard the child without requiring removal; and
- (2) No relative or other third-party custodian is available who can protect the child and provide for his or her welfare.

(e) *Evaluating harm from removal.* In making a shelter care determination, the judicial officer shall evaluate the harm to the child that may result from removal. In making such evaluation, the judicial officer shall consider such factors as:

- (1) The child's attitude toward removal and ties to the parent, guardian or custodian, as well as the child's relationships with other members of the household;
- (2) The disruption to the child's schooling and social relationships which may result from placement out of the neighborhood; and
- (3) Any measures which can be taken to alleviate such disruption.

Rule 14. Conduct of Shelter Care Hearing.

(a) *Presentation of Report.* The agency with case responsibility shall submit to the judicial officer orally and in writing the report of the initial investigation prepared pursuant to Rule 7. If removal of the child from the home is recommended, the judicial officer shall hear from the parties on the issue of shelter care in accordance with the criteria set forth in Rule 13 and D.C. Code § 16-2310(b). Placement with a relative shall also be considered if requested by the agency or a party.

(b) *Probable cause.* If the judicial officer determines that removal from the home appears necessary under the criteria set forth in Rule 13 and D.C. Code § 16-2310(b) and the parent, guardian or custodian objects to removal, a probable cause hearing shall be held. If the judicial officer finds that there is probable cause to believe that the allegations contained in the petition are true, the judicial officer shall hear any additional evidence concerning the placement of the child, visitation, and services required for the parents or child. The judicial officer may admit any relevant testimony or other evidence concerning the placement of the child, visitation and services, whether or not such evidence would be admissible at the fact-finding hearing, provided that any written reports, social records or other documents made available to the judicial officer at the hearing also have been made available to the parties in accordance with Rule 7.

(c) *Reasonable efforts.* The judicial officer shall determine whether the responsible agency made reasonable efforts to prevent or eliminate the need for the removal of the child from the home or, alternatively, that the child's removal from the home is necessary regardless of any services that could be provided to the child or the child's family. In determining whether the agency has made reasonable efforts to prevent removal, the judicial officer shall consider:

- (1) Dangers to the child and the family and problems precipitating those dangers;
- (2) Whether the agency has selected services specifically relevant to the family's problems and needs;
- (3) Whether caseworkers have diligently arranged those services;
- (4) Whether appropriate services have been available to the family on a timely basis;
- (5) The availability and accessibility of the services provided; and
- (6) The result of the interventions made by the agency.

- (d) *Determination that reasonable efforts are not required.* The judicial officer shall determine whether reasonable efforts are not required in the future to effectuate reunification, pursuant to D.C. Code § 4-1301.09a, because of the existence of one of the following circumstances:
- (1) A court of competent jurisdiction has determined that the parent:
 - (A) Subjected a sibling or another child to cruelty, abandonment, torture, chronic abuse, or sexual abuse;
 - (B) Committed the murder or voluntary manslaughter of a sibling or another child;
 - (C) Aided, abetted, attempted, conspired, or solicited to commit the murder or voluntary manslaughter of a sibling or another child; or
 - (D) Committed an assault that constitutes a felony against the child who is the subject of a petition before the Family Court, a sibling of such a child, or another child; or
 - (2) The parent's parental rights have been terminated involuntarily with respect to a sibling.
- (e) *Determination of whether continuation in the home is contrary to the welfare of the child and the date of removal from home.* The judicial officer shall determine whether continuation in the child's home would be contrary to the welfare of the child and, where the child is or has been removed from the home, shall determine the date of the child's removal from home.
- (f) *Discovery and related matters.* Parties may request orders with respect to discovery, investigation, examinations (e.g., drug, physical, mental), release of records (e.g., educational, medical), paternity testing and other matters needed to ensure speedy resolution of the case. The judicial officer also may make a determination with respect to requests for special advocates or guardians ad litem for parents or other parties. Orders relating to mediation or case conferencing may be requested at this time.
- (g) *Additional matters.* The judicial officer shall address the following additional matters:
- (1) *Inquiry as to Potential Relative Placements.* When the child has been removed from home or where removal from home is recommended, the judicial officer shall determine the names, nature of the familial relationship, place of residence and status of investigation of relative resources for placement of the child.
 - (2) *Child Support Worksheet.* A child support worksheet shall be presented to each parent to complete and submit to the judicial officer at the next hearing.
 - (3) *Scheduling.* The judicial officer shall set the dates for the mediation or pretrial conference.
- (h) *Five-day continuance.* For good cause shown, any party may request that the judicial officer continue any part of the initial hearing (including the probable cause hearing) other than the shelter care determination for a period not to exceed five days or for such additional time as is consented to by all parties present. If additional time for preparing a more complete report is granted, the report shall be filed in the court jacket and provided to counsel for all parties not later than 24 hours prior to the continued hearing.

Rule 15. Findings and Order at Initial Hearing.

- (a) *Matters addressed in all cases.* At the close of the initial hearing in all cases, the judicial officer shall enter an order in writing which shall include:
- (1) *Paternity testing.* When the paternity of the child has not been established, appropriate orders for genetic testing to determine paternity.
 - (2) *Discovery and related matters.* Orders with respect to discovery, investigation, examinations (e.g., drug, physical, mental), release of records (e.g., educational, medical), appointment of special advocates or guardians ad litem, and other matters needed to ensure speedy resolution of the case.
 - (3) *Calendar for further proceedings.* Orders specifying dates and times for mediation, the pre-trial conference and the fact-finding hearing.
- (b) At the close of a shelter care hearing the judicial officer shall determine whether the child should be returned home or placed in shelter care or with a relative and shall include in the written findings and order the following:
- (1) *Harm necessitating placement.* A brief statement of the harm necessitating placement, if placement is ordered;
 - (2) *Placement.* Placement with a specified relative, a specified private placement, or placement in shelter care, as well as any conditions related to such placement;
 - (3) *Findings on reasonable efforts, whether continuation in the home is contrary to the welfare of the child, and the date of removal from home.* A finding whether or not reasonable efforts were made to prevent or eliminate the need for removal or, alternatively, a determination that the child's removal from the home is necessary regardless of any services that could be provided to the child or child's family or that no reasonable efforts are required pursuant to Rule 14(d). A finding shall also be made as to whether continuation in the child's home would be contrary to the welfare of the child. In addition, the judicial officer shall make a finding on the date of the child's removal from home;
 - (4) *Visitation.* When the child is placed outside the home, a written provision permitting at least weekly visitation of the child with the parent, guardian or custodian, unless it appears to the judicial officer that at least weekly visitation would create imminent danger or be detrimental to the well-being of the child. In that case, the judicial officer may include in the order an alternative schedule of visits, or may order that visitation be supervised or prohibited. If the judicial officer determines that visitation is to be prohibited or supervised, the reasons for such determination shall be specified in the findings and order. The agency with case responsibility shall provide a copy of the visitation order to the shelter care provider or custodian.
 - (5) *Services and efforts to minimize disruption to the child.* The services that must be provided to the child or family and any steps that must be taken to minimize disruption to the child.
 - (6) *Case plan.* An order requiring the responsible agency to file a case plan with the Court within 60 days of the date of removal from home.
 - (7) *Paternity testing.* Where the paternity of the child has not been established, appropriate orders for genetic testing to determine paternity.

(8) *Calendar for further proceedings.* Dates and times for mediation, the pre-trial conference, and the fact-finding hearing. If the judicial officer determines that reasonable efforts are not required pursuant to Rule 14(d), the order shall specify the date for a permanency planning hearing pursuant to D.C. Code § 16-2323 and Rule 32, to be held no later than 30 days after the date of that finding.

(c) *Discovery and related matters.* At the close of the initial hearing, orders may be entered with respect to discovery, investigation, examinations (drug, physical, mental), release of records (e.g., educational, medical), appointment of special advocates or guardians ad litem, and other matters needed to ensure speedy resolution of the case.

Rule 16. Revocation of Conditional Release or Modification of the Terms of Conditional Release.

(a) The District of Columbia or guardian ad litem/counsel for the child may file a Motion to Revoke Conditional Release or a Motion to Modify the Terms of Conditional Release in any case in which a child is the subject of a petition pending within the Family Court, the child has been conditionally released to his or her parents following a shelter care hearing or initial appearance, and one of the following occurs:

- (1) The child or a sibling is subsequently taken into custody by a law enforcement officer pursuant to D.C. Code §§ 16-2309(a)(3), (4) or (6) or 16-2306(c) and Rule 4(a);
- (2) It appears that there are grounds for taking the child into custody as a neglected child;
- (3) New evidence is presented that the child is neglected and that revocation or modification of the terms of conditional release is necessary to protect the child pending the fact-finding hearing;
- (4) The parent, guardian, or custodian has violated the terms of conditional release and as a result it appears that revocation or modification of the terms of conditional release is necessary to protect the child pending the fact-finding hearing.

(b) In the event of a motion based upon factors (1), (2), or (3), above, the Corporation Counsel or counsel for the child also may file a motion for leave to amend the petition.

(c) If the conditional release is revoked, the Court may place the child in shelter care pursuant to Rule 13 or modify the conditions of release pursuant to provisions of this rule.

(d) The standard of proof on a motion pursuant to subsection (a) of this rule shall be probable cause to believe that the facts alleged in the motion or amended petition are true.

Rule 17. Pretrial Conference.

(a) *Requirement.* There shall be a pretrial conference in each contested case. The time for the pretrial conference shall be set by the judicial officer during the shelter care hearing or initial hearing or at the conclusion of the mediation hearing. Attorneys who enter the case after that time shall be notified of the time of the pretrial conference at the time of their first contact with the court.

- (b) *Meeting prior to the pretrial conference.* Prior to the filing of the pretrial statement, the attorneys who will conduct the trial for each of the parties and any unrepresented parties shall meet in person. A meeting held immediately after the mediation hearing may satisfy this requirement. The participants in the meeting shall spend sufficient time together to thoroughly discuss the case and shall make a good faith effort to reach agreement on the following matters:
- (1) The formulation and simplification of issues, including the elimination of unsupportable claims or defenses;
 - (2) The necessity or desirability of amendments to the petition;
 - (3) The admission or stipulation of facts and the authenticity of documents;
 - (4) The identification of witnesses and documents;
 - (5) The settlement of the case;
 - (6) The resolution of pending motions;
 - (7) The resolution of outstanding discovery issues;
 - (8) The need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions or unusual proof problems; and
 - (9) Such other matters as may aid in the disposition of the action.
- (c) *Pretrial statement.* Not later than two days prior to the pretrial conference, the parties shall file with the Court and deliver to the assigned judicial officer a joint pretrial statement which shall include a certification of the date and place of the meeting held pursuant to paragraph (b) of this Rule, shall be in the form prescribed by the Court, and shall also include the following items:
- (1) A list of parties and attorneys;
 - (2) Whether service of process has been completed on all parties;
 - (3) The statutory basis for a finding of neglect;
 - (4) Any dispute over paternity;
 - (5) Whether a stipulation has been discussed and rejected;
 - (6) Issues not in dispute;
 - (7) Issues in dispute;
 - (8) Discovery problems that have not been resolved;
 - (9) Outstanding motions;
 - (10) Names of witnesses, including whether a witness is a fact or expert witness, and the party calling the witness;
 - (11) Exhibits and any objections to the admission of specific exhibits as evidence;
 - (12) Other evidentiary and legal issues which must be resolved at trial;
 - (13) Identification of special accommodations that may be required by parties or witnesses such as sign language interpreters, translators, or wheelchair access;
 - (14) Whether any party is incarcerated and, if so, the location and the party's police department identification number, if known;
 - (15) Any requests for recusal pursuant to D.C. Code § 16-2312(j);
 - (16) Anticipated length of the trial; and
 - (17) The signatures of all counsel.

- (d) *Pretrial order.* After the pretrial conference, the Court shall enter an order reciting the action taken. Insofar as possible, the Court shall resolve all pending disputes in the pretrial order. The pretrial order may set limits with respect to the time for opening statement, examination of witnesses, and closing argument, the number of lay and expert witnesses each party may call, and the total amount of time each party may have for presentation of the party's case.
- (e) *Additional matters.* The Court should address additional matters relating to the placement of the child, visitation, services, and matters covered in Rules 7, 10, 12, 14 and 15 if not previously resolved at the shelter care or initial hearing.
- (f) *Obligation to update.* Parties shall have a continuing obligation to update information set forth in the joint pretrial statement and/or provided during the pretrial conference.

Rule 18. Stipulations.

- (a) *Generally.* A stipulation may be used in lieu of the fact-finding hearing when the parties agree upon a set of facts that are sufficient to support a finding of neglect as defined in D.C. Code § 16-2301(9).
- (b) *Contents of stipulation.* A stipulation in lieu of a fact-finding hearing may be made by either a written recitation of specific facts or an admission on the record of enumerated allegations of the petition, including a precise description of conduct or conditions of the parent(s), guardian or custodian that are sufficient to support a finding of neglect and/or abuse as defined in D.C. Code § 16-2301. A written stipulation shall be signed by all counsel, by the parent(s), guardian or custodian who is party to the agreement, and by the representative of the agency providing supervision and services. The guardian ad litem for the child is not required to sign a written stipulation unless it includes a disposition plan.
- (c) *Procedure prior to Court approval of a stipulation.* Before accepting a stipulation, the judicial officer shall address the parent(s), guardian or custodian personally and shall determine whether the admissions contained in the stipulation were made voluntarily and knowingly. At a minimum, the judicial officer shall inform the parent(s), guardian or custodian of the following:
 - (1) That by stipulating to the factual information in the stipulation, he or she waives the right to trial and agrees to a finding of neglect and/or abuse;
 - (2) That the consequences of a stipulated finding of neglect and/or abuse may include removal of the child from the home and the prompt consideration by the Court of options other than reunification – including termination of parental rights – in the event that the child is not able to return home safely within 12 months of the child's removal from the home or entry into foster care or other out-of-home placement;
 - (3) That he or she will be required to comply with the terms of the stipulation and to cooperate with all reasonable requirements to improve his or her ability to provide for the welfare of the child;
 - (4) That by stipulating to a finding of neglect and/or abuse, he or she waives the right to appeal the Court's finding of neglect and/or abuse; and

- (5) That any facts to which he or she stipulates can be used against him or her in a subsequent criminal prosecution.

If the judicial officer does not find that the stipulation was entered into voluntarily and knowingly, the judicial officer shall permit the parent(s), guardian or custodian to withdraw from the stipulation and shall set a date for a fact-finding hearing. If the judicial officer is satisfied that the stipulation was entered into voluntarily and knowingly, and that the stipulated facts are sufficient to support a finding of neglect and/or abuse, the judicial officer shall enter written findings of fact and a conclusion of law that the stipulated facts are sufficient to constitute neglect and/or abuse.

(d) *Disposition following stipulation.* After its acceptance of the stipulation, the Court may proceed immediately to disposition if:

- (1) All parties agree;
- (2) At least 10 days prior to disposition a disposition report meeting the requirements of Rules 21 and 22 and D.C. Code § 16-2319(c) was filed in the Family Court Clerk's Office and placed with the official court record of the case, copies were mailed or faxed to all attorneys of record, and a copy was delivered to the chambers of the responsible judicial officer; and
- (3) Notice of the disposition hearing was sent to all parties and others entitled to be heard.

The Court may accept a stipulated disposition pursuant to Rules 23 and 25 if agreed to by all parties.

Rule 19. Fact-Finding Hearing.

(a) *Time of hearing.* When a child is in shelter care, the fact-finding hearing shall be held within 105 days following the date of removal from the child's home or within such shorter period of time as may be specified by Administrative Order. When a child has not been removed from his or her home, the fact-finding hearing shall be held no later than 45 days after the filing of the petition.

(b) *Preliminary inquiries.*

(1) The judicial officer shall begin the fact-finding hearing by determining whether notice of the fact-finding hearing has been given to all parties.

(A) If service pursuant to Rule 11 has not been effected on a party and that party fails to appear, the judicial officer shall order that an appropriate means of service be directed to the absent party.

(B) If such service has not been effected, but the party is present, the judicial officer may proceed with the hearing if the judicial officer finds that the party

received actual notice of the date of the hearing sufficiently in advance of the hearing to prepare for it.

(C) If the judicial officer finds that service has been effected upon a party, but that the party is not present, the judicial officer may proceed with the hearing only if counsel for the party is present.

(2) If a party entitled to counsel pursuant to D.C. Code § 16-2304 and Rule 42 is present but is not represented by counsel and has not waived his or her right to counsel, the judicial officer may continue the hearing to a date certain in order that counsel may be retained or appointed as appropriate.

(c) *Standard of Proof.* The standard of proof required to support a finding of neglect and/or abuse shall be proof by a preponderance of the evidence.

(d) *Evidence.* The law of evidence governing civil proceedings in the Superior Court shall apply.

(e) *Findings of fact and conclusions of law.* The judicial officer shall issue written findings of fact and conclusions of law following the conclusion of the fact-finding hearing.

(f) *Additional orders.* When a finding of neglect has been made, the judicial officer shall enter orders on the following matters if disposition will not be held on the day of the fact-finding hearing, pursuant to Rules 20 through 25:

- (1) Date and time of disposition hearing;
- (2) Date and time for filing of the disposition report and case plan pursuant to Rule 21;
- (3) Placement of the child pending the disposition hearing. If placement outside the home is ordered pending the disposition hearing, the judicial officer shall order placement with a specified relative, a specified private placement, or placement in shelter care, as well as any conditions related to placement. If the child is returned home pending the disposition hearing, conditions of release shall be imposed if required to protect the child;
- (4) Visitation. The terms of visitation, including visitation with siblings and other relatives, shall be specified when the child is placed in shelter care or in a private placement. A copy of the visitation order shall be provided to the shelter care provider or custodian. If visitation is prohibited or suspended, the reasons shall be specified in the findings and order;
- (5) Stay-away orders or no-contact orders required to protect the child or a caretaker or parent from the perpetrator of neglect and/or abuse;
- (6) Further actions to be completed prior to the disposition hearing, including further testing or evaluation of the child or parents, and additional efforts to investigate additional relatives as potential caretakers for the child;
- (7) Child support.

Rule 20. Time for Disposition; Notice.

A disposition hearing shall be held in accordance with D.C. Code §§16-2316.01 and 16-2317 (c)(2). However, a disposition hearing may be held immediately following adjudication if:

- (1) All parties agree;
- (2) At least 5 days prior to adjudication a disposition report meeting the requirements of Rules 21 and 22 was filed in the Family Court Clerk's Office and placed in the official court record of the case and copies were mailed or faxed to all attorneys of record, and a copy was delivered to the chambers of the responsible judicial officer; and
- (3) Notice of the disposition was sent to all parties and others entitled to be heard.

Rule 21. Filing of Disposition Report(s).

- (a) *Time for filing.* At least 5 days prior to a scheduled disposition hearing, the agency with case responsibility shall file in the official court record in the Family Court Clerk's Office a report in accordance with Rule 22. At the time the report is filed with the Court, the agency with case responsibility shall mail, fax or deliver copies to all attorneys of record and shall deliver a copy to the chambers of the responsible judicial officer.
- (b) *Guardian ad litem and other attorney reports.* At disposition the child's guardian ad litem or counsel for the child may submit a written report setting forth the factual results of the guardian's or counsel's independent investigation and conclusions as to what action should be taken in the child's best interests. Other counsel may submit reports as they deem necessary. These reports shall be filed in the Family Court Clerk's Office and placed in the official court record of the case at least five days prior to the hearing. At the time the report is filed with the Court, the report writer shall mail, fax or deliver copies to all attorneys of record and shall deliver a copy to the chambers of the responsible judicial officer.
- (c) *Advance submission of reports from professionals.* Any written reports that any agency other than that with case responsibility or any other party may wish to be considered must be filed in the Family Court Clerk's Office and placed in the official court record of the case and mailed, faxed or delivered to all parties at least five days prior to the disposition hearing. Such reports shall include the name, address and telephone number of the author/preparer.
- (d) *Findings and Conclusions.* The judicial officer who conducts the fact-finding hearing shall not consider any reports submitted in accordance with subsections (a), (b) and (c) until after he or she has made findings of fact and conclusions of law at the conclusion of the fact-finding hearing.

Rule 22. Contents of Agency Report for Disposition.

The responsible child welfare agency shall prepare a disposition report that must include but need not be limited to the following:

- (a) A statement of the harms to be alleviated, together with a statement of the changes that are needed to correct those problems with timetables for accomplishing them;
- (b) A plan for alleviating these harms. Specific services and service providers shall be identified. A description of services that would assist the family in remedying the identified problems shall be included together with an explanation of the availability of suggested services and of alternative services that were considered and rejected;
- (c) A description of actions that should be taken by the parent, guardian or custodian to correct the identified problems;
- (d) The case plan or proposed case plan, including case goals, tasks, and timetables for parents (if applicable) and agencies' responsibilities. The case plan shall be attached to the report and may substitute for the items in subparagraphs (b) and (c) above to the extent they are addressed in the case plan;
- (e) If the child has been in shelter care or third party custody during the proceedings or the agency's recommendation includes placement of the child away from home, an affidavit regarding reasonable efforts to prevent removal or to reunify the family. Unless a finding has been made earlier that efforts to prevent removal or to reunify the family are not required, this affidavit shall:
 - (1) Provide a description of the efforts, if any, made by the agency to prevent the need for placement;
 - (2) Provide a description of the efforts since placement to reunify the family, including services that have been offered or provided;
 - (3) When the agency's recommendation includes placement of the child away from home, provide an explanation why the child cannot be protected from the identified problems in the home even with the provision of services; and
 - (4) State whether the agency recommends that no reasonable efforts to reunify the family be made because the conditions of D.C. Code § 4-1301.09a(d) have been met or because, despite the lack of a conviction, a reasonable person would conclude the effort would be futile;
- (f) The agency's recommendation of a permanency plan for the child, including a concurrent permanency plan if the primary plan is for reunification;
- (g) A recommended time for achieving the permanency goal or determining that the goal will not be met;
- (h) If return home is recommended, proposed conditions to be met by the parent(s), the agency and other parties and criminal background information on the parent or parents obtained pursuant to D.C. Code § 4-1305.02;
- (i) If out-of-home placement is recommended:
 - (1) An explanation why the child cannot be protected from the identified problems in the home even with the provision of services;
 - (2) Identification of relatives or friends who have been contacted about providing a placement for the child;
 - (3) A description of the recommended placement or type of placement, including its distance from the child's home and whether or not it is the least restrictive (most family-like) placement available;
 - (4) The location of any siblings and, if siblings are separated, a statement of the reasons for the separation and the steps required to unite them as quickly as possible and to maintain regular contact during the separation, unless inappropriate;

- (5) The terms of visitation, including visitation with siblings and other relatives. If the recommendation is that visitation is to be supervised, suspended or prohibited, the reasons shall be specified in the report;
 - (6) A statement of the child's special needs and how they will be met while in placement;
 - (7) The ability of the parents to contribute financially to the placement and recommendations regarding child support; and
 - (8) The current addresses and telephone numbers of the parties or a statement why such information is not provided.
- (j) Recommendations for stay-away orders or no-contact orders required to protect the child, custodian or parent(s);
 - (k) The criteria recommended for a future determination that continued jurisdiction of the court is no longer necessary.

Rule 23. Stipulated Disposition.

- (a) *Generally.* A stipulated disposition may be used to determine the disposition of the case following a fact-finding hearing or a stipulation in lieu of fact-finding pursuant to Rule 18, provided the requirements of Rules 18-20 regarding notice and the filing of reports have been met. Written stipulations shall be signed by all counsel including the guardian ad litem or counsel for the child; by the parent, guardian or custodian who is party to the agreement; and by the representative of the agency providing supervision and services.
- (b) *Contents.* The parties shall address at least the following issues in any proposed stipulated disposition:
 - (1) The legal custody and placement of the child;
 - (2) The changes that are needed to end the Court's involvement;
 - (3) Services to be provided to the child and family; and
 - (4) If a child is to be placed away from home:
 - (A) The type of placement;
 - (B) Terms of visitation with parents, siblings and other relatives and other parental involvement, including information about the child to be provided to the parents; and
 - (C) Any aspect of the case plan that the parties agree should be included in the Court's order.
- (5) If a child has been in shelter care or third party custody during the proceedings or the agency's recommendation includes placement of the child away from home, the proposed stipulated disposition shall also address reasonable efforts to prevent removal or reunify the family. Unless a finding has been made earlier that efforts to prevent removal or to reunify the family are not required, the proposed stipulated disposition shall:
 - (A) Provide a description of the efforts, if any, made by the agency to prevent the need for placement;

- (B) Provide a description of the efforts since placement to reunify the family, including services that have been offered or provided;
- (C) When the agency's recommendation includes placement of the child away from home, include an explanation why the child cannot be protected from the identified problems in the home even with the provision of services; and
- (D) State whether the agency recommends that no reasonable efforts to reunify the family be made because the conditions of D.C. Code § 4-1301.09a (d) have been met.

(c) *Ensuring consent to stipulation is voluntary and intelligent.* Before accepting a stipulation of disposition, the Court shall determine that the parties understand the contents of the stipulation and its consequences and that they voluntarily consent to its terms. Written copies of the stipulation shall be provided to the parties and their counsel.

(d) *Reasonable efforts and contrary to welfare determination.* Findings shall be made as required by Rule 14 (c)-(e) regarding reasonable efforts, whether continuation in the home is contrary to the welfare of the child and the date of removal of the child from the home.

Rule 24. (Vacant)

Rule 25. Findings and Order of Disposition.

The Court shall enter findings and an order of disposition within 5 days following the disposition hearing. The findings and order may be based upon the stipulated disposition pursuant to Rule 23, or the stipulated disposition may be incorporated by reference. The findings and order shall address the following where required by law or otherwise appropriate:

- (a) The harms to be alleviated, together with a statement of the changes that are needed to correct those problems, with timetables for accomplishing them;
- (b) Whether the agency's plan, as described in its report pursuant to Rule 22 paragraphs (b) and (d) is accepted, modified or rejected. Modifications, if any, shall be specified. The order shall require that the agency responsible for provision of services promptly report to the Family Court and all parties if it is unable for any reason to provide the services delineated in the plan or if events occur that would require a change in the plan;
- (c) Actions to be taken by the parent to correct the identified problems;
- (d) Legal status and placement of the child, including, if out-of-home placement is ordered, either the specific placement or the type of placement for the child, including distance from the child's home and whether it is the least restrictive (most family-like) placement available;
- (e) The permanency plan for the child, including a concurrent permanency plan if the primary plan is for reunification;
- (f) The time frame for achieving the permanency goal or determining that the goal will not be met;
- (g) If return home is ordered, conditions to be met by parents, the agency and other parties;
- (h) If out-of-home placement is ordered, a determination that reasonable efforts were made to prevent or eliminate the need for removal or, in the alternative, that the child's removal from the home is necessary regardless of any services that can be provided to the child or the child's family. The finding shall include:

- (1) a description of the efforts, if any, made by the agency to prevent the need for placement;
 - (2) a description of the efforts since placement to reunify the family, including services that have been offered or provided; and
 - (3) an explanation as to why the child cannot be protected from the identified problems in the home even with the provision of services;
- (i) A finding, if appropriate, that no efforts to reunify the family are required because the conditions of D.C. Code § 4-1301.09a(d) have been met;
 - (j) A finding whether continuation of the child in the home would be contrary to the welfare of the child;
 - (k) A finding, if appropriate, as to the date of removal of the child from the home;
 - (l) A finding whether relatives or friends have been contacted about providing a placement for the child, the steps taken to involve extended family members when appropriate to plan for a safe and permanent home for the child, and further efforts that are required;
 - (m) The location of any siblings, and, if siblings are separated, an order specifying steps to unite them as quickly as possible and to maintain regular contact during the separation, unless inappropriate;
 - (n) Visitation, including visitation with siblings and other relatives, unless inappropriate. Conditions placed on visits shall be specified. If visitation is inappropriate, findings as to the reasons shall be included;
 - (o) The child's special needs and orders with respect to how these needs shall be met while the child is in placement;
 - (p) If appropriate, an order directing the payment of child support by parents if they are financially able to do so;
 - (q) Restraining orders, stay away orders, civil protection orders and other injunctive relief;
 - (r) The criteria for a future determination that continued jurisdiction of the Court will no longer be necessary; and
 - (s) The date and time of the next hearing.

Rule 26. Revocation of protective supervision or modification of the terms of protective supervision and finding of violation of terms of protective supervision.

- (a) *Filing of Motion.* The District of Columbia or guardian ad litem/counsel for the child may file a Motion for Finding of Violation of Terms of Protective Supervision and for Revocation of Protective Supervision or a Motion for Finding of Violation of Terms of Protective Supervision and for Modification of the Terms of Protective Supervision, or a judicial officer may initiate revocation proceedings sua sponte, in any case in which a child is under the jurisdiction of the court pursuant to an order of disposition entered in accordance with Rule 25 and has been released under protective supervision in accordance with that order, and one of the following occurs:
 - (1) The child or a sibling is subsequently taken into custody by a law enforcement officer pursuant to D.C. Code § 16-2309(a)(3), (4) or (6) or 16-2306(c) and Rule 4(a);

- (2) It appears to an investigating law enforcement officer or social worker or to the guardian ad litem/counsel for the child that there are grounds for taking the child into custody under D.C. Code §§ 16-2309(a)(3), (4) or (6) or 16-2306(c) and Rule 4(b);
- (3) Facts and circumstances occurring or newly discovered subsequent to the fact-finding hearing or disposition hearing would cause the child to be a neglected child within the meaning of D.C. Code § 16-2301 and as a result of the occurrence or discovery of these facts and circumstances it appears that the removal of the child is now necessary or that modification of the terms of protective supervision is necessary to protect the child pending further proceedings;
- (4) the parent, guardian, or custodian has violated the terms of protective supervision and as a result it appears that removal of the child is now necessary or that modification of the terms of protective supervision is necessary to protect the child.

(b) *Motion to consolidate.* In the event that a new petition has been filed based upon any of the factors set forth in sections (a)(1) – (3), the District of Columbia shall file a motion to consolidate the new case with the existing case.

(c) *Custody.* If the child has been taken into custody or if the District of Columbia or the child's guardian ad litem or counsel seeks the removal of the child, Rule 4(b) shall apply. The Court may order the child taken into custody pending the shelter care hearing or the hearing on the motion to revoke or modify protective supervision.

(d) *Hearing.* If the child is not in custody and shelter care is not sought, the District of Columbia, the guardian ad litem or counsel for the child may request a hearing upon the filing of the Motion for Finding of Violation of Terms of Protective Supervision and for Revocation of Protective Supervision or a Motion for Finding of Violation of Terms of Protective Supervision and for Modification of the Terms of Protective Supervision.

(e) *Standard of proof.* The standard of proof at the hearing on a motion filed pursuant to this rule shall be preponderance of the evidence.

(f) *Findings and order.* The judicial officer shall enter written findings with respect to each of the factual allegations of the motion within 10 days following a hearing on the motion and shall either reaffirm the previous Order of Disposition or modify it, based upon the findings made. A modified Order shall be in writing and shall include the findings required by Rule 25. Findings previously made may be incorporated by reference in the modified Order and findings.

Rule 27. (Vacant)

Rule 28. Review of Disposition and Placement.

(a) *Notice and hearing.* A review hearing shall be held to review case progress at least once every six months following disposition for as long as the child remains in an out-of-home placement unless the child has received a permanency hearing within the past six months. At

least 15 days prior to the hearing, the Clerk shall mail, fax or deliver copies of the notice to all parties and attorneys of record stating the time and place of the hearing.

- (b) *Review reports.* At least 10 days prior to a scheduled review hearing, the agency with case responsibility shall file in the official court record in the Family Court Clerk's Office a report in accordance with Rule 29. At the time the report is filed with the Court, the agency with case responsibility shall mail, fax or deliver copies of the report to all attorneys of record and shall deliver a copy to the chambers of the responsible judicial officer.
- (c) *Guardian ad litem and other attorney reports.* The child's guardian ad litem or counsel for the child may submit a written report setting forth the factual results of the guardian's or counsel's independent investigation and conclusions as to what action should be taken in the child's best interests. Other counsel may submit reports as they deem necessary. These reports shall be filed in the Family Court Clerk's Office and placed in the official court record of the case at least five days prior to the hearing. At the time the report is filed with the Court, the report writer shall mail, fax or deliver copies to all attorneys of record and shall deliver a copy to the chambers of the responsible judicial officer.
- (d) *Advance submission of reports from professionals.* Any written reports that any agency other than that with case responsibility or any other party may wish to have admitted into evidence without calling the author/preparer of the report as a witness must be mailed, faxed or delivered to all parties at least five days prior to the review hearing. Information on the name, address and telephone number of the author/preparer of a report to be submitted into evidence must be provided so that he or she may be subpoenaed and cross-examined if a party wishes to do so.

Rule 29. Contents of Agency Report for Review Hearing.

The review report shall include the following information:

- (a) Recommendations for the current custody and placement of the child;
- (b) Factual information and evaluation regarding:
 - (1) The current addresses and telephone numbers of the parties or a statement of why such information is not provided;
 - (2) When parents still have not received actual notice of the litigation or are not currently communicating with the agency, the agency's efforts to locate them, provide them with notice of the proceedings, and involve them in the planning for the child;
 - (3) Progress in ameliorating the condition(s) that resulted in the finding of neglect and placement of the child, and, if returning the child home continues to be the case objective, the actions that should be taken by the parents to permit the return of the child;
 - (4) Any evidence of new problems that would adversely affect the child;
 - (5) The record of visitation, including sibling visitation, dates and duration of visits, the person with whom the visit took place, and any reasons why visitation has not occurred or been less frequent than ordered;

- (6) The identity, status and placement of any siblings, and if any siblings are separated, a statement of the reasons for the separation and the steps that have been and will be taken to unite them as quickly as possible and to maintain regular contact during the separation;
- (7) The record of compliance by parents and agency with the case plan and previous orders and recommendations of the Court, including:
 - (A) The participation of the parties in developing the plan;
 - (B) The cooperation of the parent, guardian, or custodian with the applicable department, agency, or institution;
 - (C) The contacts between the social worker(s) responsible for services and the parent, guardian or custodian, and the child;
 - (D) The services and assistance that have been provided to the family, the services and assistance that were specified in the plan but not provided, and services to the family that will be needed. For those services that were not provided, an explanation of the reasons for not providing them should be included; and
 - (E) The implementation of the case plan during the review period, and the progress made towards meeting both the short-term and long-term goals of the plan, with the source of the information indicated.
- (8) A description of the environment in which the child is placed and an assessment of whether that environment is the most family-like and appropriate setting for the child, taking into account the child's physical, emotional and educational needs, and whether the child is in close proximity to the parents' home or homes.
- (9) Whether services to meet the child's special needs – physical, emotional, and educational – have been provided to the child while in placement and what further services are necessary to meet those needs;
- (10) Whether there is a continued necessity for out-of-home placement;
- (11) The likely date by which the child may be returned to the home or placed for adoption, guardianship, or custody;
- (12) Whether the agency has requested or intends to request the filing by the Corporation Counsel of a motion to terminate the parent and child relationship and, if not, its reasons for determining that such a motion is not appropriate;
- (13) If return home is recommended, an explanation of why the child will be safe at home and of any proposed conditions to be required of the agency, parents, and other parties;
- (14) If applicable, recommended revisions in the terms of visitation and child support orders and the reasons for the recommendations;
- (15) If removal or continued out-of-home placement is recommended, a recommendation concerning whether and for how long services should be continued to reunify the family and the estimated time within which the child can be returned home or whether some alternative permanent placement plan for the child should be adopted;
- (16) If out-of-home placement with a goal of reunification is recommended, an assessment of whether it is appropriate and advisable to place the child with a foster family willing to provide a permanent home for the child in case reunification is

unsuccessful. If such a placement is appropriate, the agency must indicate what steps are needed to secure and stabilize such a placement;

- (17) Current recommendations, if appropriate, for restraining orders, orders to stay away from the child or residence, domestic violence orders of protection, or other injunctive relief;
 - (18) Any recommended revision of the case plan, such as revised permanency or service goals, additional services to be provided, revised visitation arrangements, or revised time schedules; and
 - (19) Any recommended modifications to existing court orders.
- (c) The report writer shall make every reasonable effort to attach to the review report copies of all available written reports upon which the writer is relying for the writer's recommendations.

Rule 30. Procedures and Orders at Review Hearings and Permanency Hearings.

- (a) The preparer(s) of the review report(s) shall appear at the review hearing unless excused by the judicial officer.
- (b) The judicial officer shall inform any parent who appears at the hearing of the maximum time allowed to make improvements or risk losing all rights to the child.
- (c) The judicial officer shall set the time and date of the next hearing and specify the type of hearing to be held.
- (d) The judicial officer shall enter an appropriate order following the hearing. The order shall be consistent with D.C. Code §16-2323.

Comment: The issues to be addressed at the review hearing may include, but need not be limited, to the following:

- (1) Whether the agency's efforts to locate, notify, and work with all parties not currently active in the litigation have been sufficient, and what further actions are necessary;
- (2) The extent of progress that has been made toward alleviating or mitigating the causes necessitating placement outside the home;
- (3) Whether out-of-home placement continues to be necessary and appropriate;
- (4) The safety of the child;
- (5) If returning the child home continues to be the case objective, the actions that should be taken by the parents to permit the return of the child;
- (6) The extent of compliance with the case plan, previous orders and recommendations of the Court;
- (7) The services and assistance that have been offered or provided to the family since the most recent hearing;
- (8) Whether the parents are able to contribute or have contributed financially to the child's support;

- (9) Whether the environment in which the child is placed is the most family-like and appropriate setting for the child, taking into account the child's physical, emotional and educational needs and the distance of the placement from the child's home;
- (10) A summary of parental visitation that has occurred since the most recent hearing;
- (11) Whether services, including sibling visitation, have been provided to meet the child's special needs – including physical, emotional and educational needs – while in placement;
- (12) Whether appropriate services designed to achieve the case plan goals have been provided to the child's family; and
- (13) A proposed timetable for achieving the permanency goal including a date by which the child may be returned to and safely maintained in the home or placed for adoption or other permanent placement and the services necessary to achieve the permanency goal for the child within the proposed timetable.

Rule 31. Vacant.

Rule 32. Permanency Hearing.

- (a) *Notice and hearing.* A permanency hearing shall be held to determine the permanency plan for the child within 12 months after the child's entry into foster care or, if there has been a judicial determination that reasonable efforts to reunify the child and family are not required pursuant to D.C. Code § 4-1301.09a, within ~~45~~ 30 days following that determination. Subsequent permanency hearings shall be held at least every six months thereafter, for as long as the child remains in an out-of-home placement. At least 30 days prior to the hearing, the Clerk shall mail, fax or otherwise deliver written notice to all parties and attorneys of record stating the time and place of the hearing.
- (b) *Reasonable Efforts Determination.* At the first permanency hearing and at a permanency hearing at least once every 12 months thereafter, there shall be a determination of whether reasonable efforts have been made to reunite the family or to carry out the other permanency plan established for the child.
- (c) *Permanency reports.* At least 10 days prior to a scheduled permanency hearing, the agency with case responsibility shall file in the official court record in the Family Court Clerk's Office a report in accordance with Rule 33. At the time the report is filed with the Court, the agency with case responsibility shall mail, fax, or otherwise deliver copies of the report to all attorneys of record and shall deliver a copy to the chambers of the responsible judicial officer.
- (d) *Guardian ad litem and other attorney reports.* The child's guardian ad litem or counsel for the child may submit a written report setting forth the factual results of the guardian's or counsel's independent investigation and conclusions as to what action should be taken in the child's best interests. Other counsel may submit reports as they deem necessary. These reports shall be filed in the official court record in the Family Court Clerk's Office at least

five days prior to the hearing. At the time the report is filed with the Court, the report writer shall deliver, mail or fax copies to all attorneys of record and shall deliver a copy to the chambers of the responsible judicial officer.

- (e) *Advance submission of reports from professionals.* Any written reports that any agency other than that with case responsibility or any other party may wish to be considered must be filed in the official court record in the Family Court Clerk's Office. The party or agency filing such a report shall mail, fax or deliver copies to all parties at least five days prior to the permanency hearing. Such reports shall include the name, address, and telephone number of the writer.

Rule 33. Contents of Agency Report for Permanency Hearing.

The report for the permanency hearing shall do the following:

- (a) Address those matters specified in Rule 29(b)(1) - (19);
- (b) Make a recommendation as to the permanency plan for the child;
- (c) When the report recommends that a child be returned home on a date certain, set forth:
 - (1) How the conditions or circumstances leading to the removal of the child have been corrected;
 - (2) The frequency of recent visitation and its impact on the child; and
 - (3) A plan for the child's safe return home and follow-up supervision after family reunification;
- (d) When an extension of foster care for a time certain is proposed with a goal of reunification, set forth:
 - (1) Facts and circumstances showing that the parents and child have a strong and positive relationship, that the parents have made substantial progress toward the child's return home, and that return home is likely within the next six months; and
 - (2) A plan to achieve reunification within six months;
- (e) When the report recommends termination of parental rights, set forth:
 - (1) Facts and circumstances supporting the grounds for termination; and
 - (2) A plan to place the child for adoption;
- (f) When an award of guardianship or legal custody to an individual or couple is recommended, set forth:
 - (1) Facts and circumstances establishing a compelling reason why termination of parental rights is unwarranted (demonstrating the fitness of the parents), or showing that although the child cannot be placed with the parents, termination is not in the best interest of the child; and
 - (2) Facts and circumstances demonstrating the appropriateness of the individual or couple to serve as permanent caretaker of the child; and

- (3) A plan to ensure the stability of the placement;
- (g) When placement in an alternative planned permanent living arrangement is recommended, including placement with a kinship caregiver, another relative placement or other family setting, set forth:
- (1) Facts and circumstances establishing a compelling reason why termination of parental rights is unwarranted (demonstrating the fitness of the parents), or showing that although the child cannot be placed with parents, termination is not in the best interest of the child;
 - (2) Facts and circumstances providing compelling reasons why an award of guardianship or legal custody is not practical or appropriate;
 - (3) Facts and circumstances demonstrating the appropriateness of the individual or couple and their commitment to permanently caring for the child; and
 - (4) A plan to ensure the stability of the placement;
- (h) When placement in an institutional setting, including a group home, is recommended because the child cannot function in the family setting, set forth:
- (1) Facts and circumstances leading to that recommendation; and
 - (2) A plan to prepare the child to live in a family setting at the earliest possible time and for visitation with parents and siblings.
- (i) When long term foster care in connection with independent living arrangements is recommended, set forth:
- (1) Facts and circumstances establishing a compelling reason why termination of parental rights is unwarranted (demonstrating the fitness of the parents), or showing that although the child cannot be placed with parents, termination is not in the best interest of the child;
 - (2) Facts and circumstances explaining why continued custody or foster care is not appropriate at the same time that independent living services are being provided; and
 - (3) A plan to prepare the child for independent living and recommendations regarding visitation between the child and his or her parents and siblings.
- (j) Address the reasonable efforts that have been made to reunify the family (unless there has been a determination that reunification efforts are not required) or to carry out the permanency plan established for the child and whether the agency has provided the services specified in the case plan that are necessary to permit the child's safe return home or to accomplish the permanency plan.

Rule 34. Findings and Orders at Permanency Hearing.

The judicial officer shall promptly make findings and enter an order following the permanency hearing. In its findings and order:

- (a) *Permanency plan.* The Court shall make a determination of one permanency goal, either reunification, adoption, guardianship or custody, and the steps to be taken to achieve the goal

and to ensure the safety and stability of the permanent placement, including the services to be provided to the child, parents or caretakers. When there are compelling reason(s) why one of these goals is not in the child's best interest, the Court may determine that an alternative planned permanent living arrangement is the permanency plan and shall set forth in writing the compelling reason(s) for this plan.

- (b) *Timetable*. When a permanency goal is determined, the Court shall set forth the date for the achievement of that goal.
- (c) *Reasonable efforts*. At the first permanency hearing, the Court shall make a finding of whether reasonable efforts have been made to reunify the child with the parent from whose home the child has been removed, unless there has been a determination that reasonable efforts are not required. At each subsequent permanency hearing the Court shall make a finding of whether reasonable efforts have been made to carry out the permanency goal established for the child.
- (d) *Termination of parental rights status*. If the child has been in foster care for 15 of the most recent 22 months, the Court shall make a finding of whether there is a compelling reason(s) why termination of parental rights is not in the child's best interest and, if so, shall set forth in writing the compelling reason(s).
- (e) *Return home not possible – guardianship or legal custody*. If it is not appropriate that the child either return home or be adopted, the Court shall determine whether the child should be placed pursuant to an award of guardianship or legal custody. If the Court determines that the child should be placed pursuant to an award of guardianship or legal custody, its Order shall include a statement of:

- (1) The rights and responsibilities that should remain with the parents;
- (2) Reasons why the alternative selected will best meet the needs of the child; and
- (3) Steps that the parties must take to initiate further legal proceedings.

- (f) *Alternative planned permanent living arrangements*. The Court shall determine whether the child should be placed in an alternative planned permanent living arrangement. This may include placement with a kinship caregiver, in another relative placement or in an independent living program.

- (1) The Court's findings shall specify the compelling reason(s) why reunification, adoption, legal custody, and guardianship were not practical, appropriate, or in the child's best interests;
- (2) If the Court determines that the child should remain or be placed in an institution or group home, the Court's findings shall include a statement of:

- (A) Reasons why continued treatment outside a family environment is necessary, including why parents or specially trained foster parents or relatives cannot care for the child;
- (B) Reasons why a less restrictive group home or institutional placement are not possible; and
- (C) The steps to be taken by the agency to prepare the child to be placed with a family.

(3) If the Court determines that the child should be emancipated or placed in an independent living program, the Court's findings shall include a statement of:

(A) Reasons why foster family care is no longer appropriate;

(B) What services, supervision, and support for the child should be provided or arranged by the agency.

(g) *Additional matters.* In addition, the order shall specify, as appropriate, and if not previously addressed:

- (1) The legal status and placement of the child;
- (2) If the child is returned home without dismissing the case, any conditions that will be required of the agency, parents and other parties;
- (3) If the child will be removed from home or remain outside the home, whether reunification services will continue to be provided to the family, what those services will be, and the time frame for continuation of services;
- (4) Actions to be taken by the parents to correct the identified problems;
- (5) If the child will be placed or remain in foster care with a goal of reunification, whether the agency will place the child with a foster family willing to provide a permanent home for the child in the event that reunification is unsuccessful;
- (6) Changes in the terms of visitation and other parental involvement, including information about the child to be provided to the parents;
- (7) Services to be provided to the child and family;
- (8) If the child is separated from siblings, steps to reunite them or maintain regular contact during the separation;
- (9) Protective orders controlling the conduct of any party subject to the Court's jurisdiction;
- (10) Conditions regarding the child's placement, including the type, location and degree of restrictiveness of the placement;
- (11) Steps to meet the child's special needs while in placement;
- (12) Any aspect of the case plan, including modification of the case plan, that should be included in the Court's order; and
- (13) Any other matter within the Court's dispositional powers.

Rule 35. Termination of the Parent and Child Relationship; Filing of Motion.

(a) *Filing.* A motion for termination of the parent and child relationship may be filed by the District of Columbia or the child's guardian ad litem/counsel. Such a motion may be filed:

- (1) When at least six months have passed since a child was adjudicated neglected and the child is in the court-ordered custody of a department, agency, institution, or person other than the parent, or,
- (2) Immediately upon adjudication when, despite reasonable efforts to do so, the parent could not be located for the fact-finding hearing and during the period from the removal from the home and the fact-finding hearing.

(b) *Mandatory filing.* Unless a motion has already been filed by the child's guardian ad litem, a motion for termination of the parent and child relationship shall be filed by the District of Columbia upon the occurrence of any one of the following conditions, unless a notice is filed with the Court pursuant to subsection (c), specifying the reason(s) for the decision of the District of Columbia not to do so:

- (1) The child has been in court-ordered custody under the responsibility of the District of Columbia for 15 of the most recent 22 months;
- (2) The Family Court has determined the child to be abandoned;
- (3) A court of competent jurisdiction has determined that the child's parent has:
 - (A) Committed murder of the child's sibling or another child;
 - (B) Committed voluntary manslaughter of the child's sibling or another child;
 - (C) Aided or abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter; or
 - (D) Committed a felony assault that has resulted in serious bodily injury to the child, the child's sibling, or another child; or
- (4) A judicial officer of the Family Court has determined that the child's parent has subjected the child to intentional and severe mental abuse.

(c) *Exemptions from mandatory filing.* The District of Columbia need not file a motion for termination of the parent and child relationship upon the occurrence of one or more conditions specified in subsection (b), if:

- (1) A motion for termination of the parent and child relationship and/or a petition for adoption has been filed by the child's guardian ad litem. In this case the District shall seek to be joined as a party to the pending motion; or
- (2) The Child and Family Services Agency has documented in the case plan, and the Court has determined, that:
 - (A) The child is being cared for by an approved kinship caregiver and adoption is not the child's permanency plan;
 - (B) There is a compelling reason why termination of the parent and child relationship would not be in the best interest of the child; or
 - (C) The District has not offered or provided to the family of the child, consistent with the time period in the case plan, such services as the District deems necessary for the safe return of the child to the child's home, if reasonable efforts are required to be made with respect to the child pursuant to D.C. Code § 4-1301.09a.

Rule 36. Contents and Service of Motion for Termination of the Parent and Child Relationship.

(a) *Contents.* A memorandum of points and authorities shall accompany a motion for termination of the parent and child relationship. The memorandum shall include (but not be limited to) the following:

- (1) The name, sex, date, place of birth, and current placement of the child;
- (2) The name and title of the petitioner;
- (3) The name and address of the child's parent(s);

- (4) A plain and concise statement of the facts upon which the termination of the parent and child relationship is sought pursuant to D.C. Code § 16-2353;
 - (5) A detailed description of the physical, mental and emotional health of the child;
 - (6) A statement as to the general prospects for or the barriers, if any, to the adoption of the child; and
 - (7) A statement as to the efforts made by the moving party to locate the parents of the child.
- (b) *Required attachments.* The moving party shall attach to the motion the Order Adjudicating Neglect or the Findings of Fact and Stipulation of Neglect, all Orders of Disposition, all Findings and Orders at Case Review Hearings, and all Findings and Orders at Permanency Hearings.
- (c) *New case record.* Upon filing of the motion, the Clerk shall establish a new case record for proceedings on the motion.
- (d) *Summons and Service.* Upon filing of the motion, the Clerk shall issue a summons, pursuant to Rule 11, and the movant shall cause the summons and a copy of the motion to be served on the parents. Copies of the motion and notice of hearing shall be provided to all other parties.

Rule 37. Status Conference Prior to Hearing on Motion for Termination of Parent and Child Relationship.

- (a) *Schedule for conference.* There shall be a pre-hearing conference on each motion for termination of the parent and child relationship within 30 days following the effectuation of service. The Clerk shall schedule the conference upon completion of service. However, failure to hold a pre-hearing conference within the time specified shall not be grounds for dismissal of the motion.
- (b) *Purpose.* Depending upon the circumstances of the case, the purposes of the pre-hearing conference shall be to:
- (1) Review efforts to locate and serve all parties, including the entry of an order with respect to diligent search where needed to locate parties prior to adjudication;
 - (2) Address any unresolved paternity issue, including the entry of appropriate orders relating to genetic testing;
 - (3) Address any unresolved discovery matters and any outstanding motions;
 - (4) Set a date and time for mediation in the case prior to the scheduled hearing date if the parties and the judicial officer agree that mediation of the case is appropriate;
 - (5) Set a date and time for case conferencing with the judicial officer, parties, counsel and social worker if the parties agree that such a case conference would be useful in streamlining issues for hearing or in reaching a disposition of the case without hearing;
 - (6) Enter stipulations, including voluntary relinquishments of parental rights, which may be agreed to by the parties;
 - (7) Identify issues of law and fact for trial;

- (8) Develop a list of possible witnesses and a brief summary of their testimony – with designation of those who will testify as experts based upon statements filed by counsel pursuant to SCR-Civil 26(b)(4);
 - (9) Identify special accommodations that may be required by parties or witnesses, such as interpreters, or wheelchair access; and
 - (10) Confirm the date of the hearing on the motion and estimate its length.
- (c) *Continuing obligation to update.* Parties shall have a continuing obligation to update information provided during the pre-hearing conference.

Rule 38. Adjudicatory Hearing on Motion for Termination of Parent and Child Relationship.

- (a) *Preliminary inquiries.* The judicial officer shall begin the hearing by determining whether service has been effected on all parties, whether all parties are present, and whether all parties are represented by counsel, and shall have these facts recorded. If the judicial officer finds that service has been effected but a party is not present, the judicial officer may proceed with the hearing if counsel for the party is present.
- (b) *Evidence.* The rules of evidence governing civil proceedings in the Superior Court shall apply to hearings on motions to terminate the parent and child relationship.
- (c) *Proposed findings of fact.* The judicial officer may require counsel to submit proposed findings of fact and conclusions of law.
- (d) *Burden of proof.* An order of termination shall be entered only upon a finding by clear and convincing evidence that grounds exist for termination of the parent and child relationship under D.C. Code § 16-2353 and that termination of the parent and child relationship is in the best interest of the child.

Rule 39. Order Terminating the Parent and Child Relationship.

- (a) *Order of termination.* The judicial officer shall make findings and enter an order within 45 days (or within 60 days if the judicial officer certifies that the case is complex) of the adjudicatory hearing on the motion for termination of the parent and child relationship. The order shall be in writing and shall state the findings of fact and conclusions of law upon which it is based. Copies of the order shall be provided to all counsel.
- (b) *Right to appeal.* At the conclusion of the hearing or upon issuance of the order, the judicial officer shall advise all parties, orally or in writing, of the right to appeal the order.
- (c) *Review hearing.* The order shall set the date for a review hearing to be held within 60 days following entry of the order.

Rule 40. Vacant.

Rule 41. Vacant.

Rule 42. Appointment of Counsel; Attorney's Fees.

- (a) *Appointment of counsel.* The judicial officer shall appoint counsel from a list of attorneys prepared and maintained by the Family Court. An attorney shall be appointed to serve as guardian ad litem for a child or children alleged to be neglected and the Court may, in addition, appoint an attorney to represent such child or children. The judicial officer shall determine whether each parent, guardian, or custodian is eligible for appointment of counsel and shall appoint counsel for those found eligible. The judicial officer also shall determine whether the parent or other party is financially able to make a contribution to the payment of counsel if unable to pay the entire cost. If the party is able to make a contribution, the judicial officer shall determine the amount of the contribution to be made by the party and shall order the party to make such payment. In cases in which a parent, guardian or custodian is financially able to obtain adequate representation but has not retained counsel, the judicial officer may appoint counsel and order the payment of reasonable attorneys' fees or may advise the party to retain counsel within a specified period of time. In making appointments the judicial officer shall whenever possible appoint the same attorneys, if any, who represented the parties in previous appearances before the Family Court.
- (b) *Additional parties.* When the judicial officer confers party status upon any person pursuant to Rule 10 (b), the judicial officer shall also appoint counsel for that party according to the requirements for assignment of counsel to parents, guardians or custodians in paragraph (a).
- (c) *Appearance and withdrawal.* Attorneys shall note their appearance by praecipe. Once an attorney has entered an appearance, the attorney shall receive copies of all notices required by these Rules to be given to the parties and shall be entitled to inspect all legal and social records relating to the client as provided by statute and these Rules. Where a case has been assigned to or retained by a judicial officer, withdrawal of appearance shall be by motion for leave to withdraw directed to that judicial officer. All other motions for leave to withdraw shall be directed to the Presiding Judge of the Family Court. All motions to withdraw shall be served upon the client and opposing counsel.
- (d) *Attorney's fees.* Reasonable compensation for services and related expenses of counsel shall be allowed pursuant to D.C. Code § 16-2326.01. Counsel shall be required to submit a statement of time expended and allowable expenses incurred on the forms provided, which must be signed by a judicial officer before payment can be ordered. A party who has been ordered to pay all or part of his or her attorney's fees pursuant to paragraph (a) shall pay the monies directly to the District of Columbia Courts. Counsel for the party so ordered shall be compensated by the District of Columbia Courts.

Rule 43. Motions.

- (a) *Form.* An application to the judicial officer for an order shall be by motion. A motion other than one made during a fact-finding or other hearing shall be in writing unless the judicial officer permits it to be made orally. Each motion shall be accompanied by a statement of the specific points and authorities that support the motion, and by a proposed order. All citations to cases decided by the United States Court of Appeals for the District of Columbia Circuit shall include the volume number and page of both U.S. App. D.C. and the Federal Reporter. If the movant wishes a hearing on the motion, the request shall be included in the motion. Except as required by law or these Rules, the judicial officer may in his or her discretion decide the motion without a hearing.
- (b) *Service and filing.* Except as otherwise provided by these Rules, all motions may be served by mailing a copy thereof to all counsel of record and to any unrepresented party, together with a notice giving the date, time and place of hearing, if any. The motion, including a certificate of service, shall be filed with the Clerk of the Family Court. A statement of opposing points and authorities shall be similarly filed and served. A courtesy copy of any motion or opposition to any motion shall be delivered, mailed or faxed to the chambers of the judicial officer assigned to the case.
- (c) *Time for filing.* All pretrial motions shall be filed no later than 15 days prior to the pretrial conference unless leave of the Court is obtained for later filing. A statement of opposing points and authorities shall be filed and served within 10 days of the filing of the motion. If a statement of opposing points and authorities is not filed within the prescribed time, the judicial officer may treat the motion as conceded. Motions filed after a fact-finding hearing, except for emergency motions, shall be filed at least 15 days prior to the next scheduled hearing, and oppositions within 10 days of the filing of the motion unless the judicial officer retaining the case sets an alternate schedule.
- (d) *Notice of orders.* Immediately upon the entry of an order made on a written motion, the Clerk shall mail to each party a notice thereof and shall make a note in the docket of the mailing.
- (e) *Matters taken under advisement.* When a judicial officer takes any motion or other matter under advisement, the Clerk shall note on the docket the date on which the matter was taken under advisement. If within 30 days of such date a decision has not been rendered by the judicial officer, the Clerk shall send notice of that fact to the judicial officer and shall repeat such notice every 30 days thereafter until a decision is rendered. If no decision has been rendered within 60 days of the issuance of the first notice, the Clerk thereafter shall so advise the judicial officer and the Chief Judge. The Chief Judge may take any action he or she deems appropriate in order to cause the matter to be decided promptly.

Rule 44. Vacant.

Rule 45. Admission to neglect proceedings.

(a) *Limitation on admission to hearings.* The general public shall be excluded from judicial hearings concerning children alleged to be neglected. Persons having a proper interest in a particular case or in the work of the Family Court may be admitted as provided by paragraphs (b) and (c) of this Rule. Persons admitted to hearings pursuant to this Rule shall not divulge information identifying the child, members of the child's family or any other party to the proceedings.

(b) *Persons admitted without application.* The following persons shall be deemed to have a proper interest in the work of the Family Court and need not apply for admission under paragraph (d) of this Rule in order to be admitted to Family Court hearings:

- (1) Any member of the Bar of the District of Columbia;
- (2) Authorized personnel of the Family Court;
- (3) Authorized personnel of the Division of Social Services; and
- (4) Authorized representatives of the Child and Family Services Agency, including representatives of private agencies providing foster care case planning and supervision under contract with the Agency.

(c) *Persons admitted by permission.* Other persons having a proper interest in a particular case or in the work of the Family Court may be admitted upon approval of the presiding judge of the Family Court or his or her designee, provided that the judicial officer before whom the hearing is scheduled shall retain the discretion to exclude such persons from the hearing. The following persons shall be deemed to have a proper interest in the work of the Family Court, and shall be admitted to Family Court hearings after filling out an application pursuant to paragraph (d) of this Rule:

- (1) Any authorized representative of the news media;
- (2) Any attorney not a member of the Bar of the District of Columbia; and
- (3) Superior Court personnel other than those working in the Family Court.

Other persons may be admitted at the discretion of the judicial officer, upon completing an application for admission pursuant to paragraph (d) of this Rule.

(d) *Application for admission.* A person seeking permission to attend a hearing or series of hearings shall file an application, stating in writing his or her name, address and telephone number, business or professional affiliation and reasons for wishing to attend. The applicant shall also certify that he or she will not divulge information identifying the child, members of the child's family, or any other party to the proceeding. The applicant shall be informed of the criminal penalties that attach to the unauthorized use of the confidential information obtained as a result of attendance at a closed hearing. The application shall be completed in duplicate on a form supplied by the Family Court, and shall be personally signed by the applicant. When approved by the presiding judge or his or her designee, the original application shall be kept on file by the Family Court, and the copy shall be carried with the applicant at all times during attendance at hearings.

(e) *Taking photographs and radio and television broadcasting.*

- (1) The taking of photographs, or radio or television broadcasting will not be permitted in any of the courtrooms of the Family Court during the progress of judicial proceedings, or in any of the anterooms adjacent thereto, in the detention rooms, in the lobby, or in the corridors of the courthouse occupied by the Family Court.
- (2) The taking of photographs in any office or other room of the Family Court shall be only with the knowledge and consent of the official or person in charge of such office and of the person or persons photographed.

Rule 46. Inspection and Disclosure of Neglect Records.

(a) *Who may inspect.* Pursuant to the provisions of D.C. Code §§ 16-2331(b)(7) and 16-2332(b)(5), the following persons or agencies are also authorized to inspect the records of any child who was previously or is now within the jurisdiction of the Family Court, unless such records have been sealed pursuant to D.C. Code § 16-2335:

- (1) Any person, hospital, institution or agency engaged in mental or physical evaluation or diagnosis pursuant to an order under D.C. Code § 16-2315;
- (2) Any hospital, institution or agency to which the child could be committed under D.C. Code § 16-2320, provided the allegations of the petition have been adjudicated, and such hospital, institution or agency is being investigated as a dispositional possibility by the agency with case responsibility or the attorneys for the parties.

(b) *Application for special order.* Any person or agency not named in D.C. Code §§ 16-2331 or 16-2332 or in paragraph (a) of this Rule may apply, or the party's attorney may apply on the party's behalf, to the presiding judge of the Family Court or his or her designee for a special order to inspect case records or social records pursuant to D.C. Code §§ 16-2331 or 16-2332. The application for a special order shall contain the name, address and telephone number of the person or agency desiring to inspect the child's records, the professional affiliation of the person or agency, and the reasons for which the special order is sought. After consulting with the judicial officer assigned to the case, the presiding judge or his or her designee shall approve or deny in writing the application for a special order. The order approving or denying the application for a special order shall be filed by the Family Court Clerk in the child's case record. In considering an application for a special order, the judicial officer shall consider the following factors:

- (1) The potential importance to the justice system of the proposed research;
- (2) The demonstrated legitimate purpose of the research;
- (3) The likelihood that the person seeking access will be able to protect the anonymity of the parties and the confidentiality of information contained within the files;
- (4) The likelihood that the proposed research will disrupt or impede the necessary business of the Clerk's office;
- (5) Whether the number of records sought will permit notification of counsel in the requested cases;
- (6) The type of records sought;
- (7) Whether the request is of such a nature that notice should be given to counsel; and

- (8) Whether it is intended that personal contact is to be made of persons listed in the case records.
- (c) *Orders.* All orders issued pursuant to this Rule shall specify the particular purpose of the inspection or copying authorized by the order and shall set any conditions or limitations upon the methods or scope of inspection or copying and on the use of the information or records obtained. Persons authorized to inspect or copy records by special order shall be informed of the criminal penalties that attach to the unauthorized use of the information.
- (d) *Procedure for inspection and copying.* The Family Court shall maintain a suitable room for the inspection of records. Any person or agency authorized to inspect or copy records under paragraph (a) or (b) of this Rule shall file with the Clerk a form indicating the person's name, address, the record inspected or copied and the date when inspected or copied. Such form shall be filed by the Clerk in the child's case record. Copies shall be provided upon payment of the authorized fee pursuant to SCR-General Family C.

Rule 47. Payment of Court Costs and Expenses; Expert Witnesses.

- (a) *In general.* The Family Court shall establish standards of financial eligibility for parties in a neglect case to receive attorney, expert and other services at the Court's expense, and shall determine the eligibility of each party in every case. Persons found able to pay Court costs and expenses pursuant to D.C. Code § 16-2326 may be ordered to do so in designated monthly payments according to their financial condition. Payments shall be made by cash or money order to the Fiscal Officer of the District of Columbia Courts. The Fiscal Officer shall keep records of all payments made and submit a statement to the parties on request.
- (b) *Expert witnesses and other services.* Pursuant to D.C. Code § 16-2326.01(g), counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request compensation for such services in an ex parte application. A request shall state the type of service sought, its purpose, the qualifications of the named provider to render those services, and the estimated cost of the services. Upon a finding that the requested services are necessary but are not available through existing court resources, and that the person is financially unable to obtain them, the judicial officer may authorize counsel to obtain the services.

By the Court:

Date: June 21, 2004

/s/ Rufus G. King, III

Rufus G. King, III
Chief Judge

Copies to:

All Judges

All Magistrate Judges

Director of the Family Court

Branch Chief, Neglect Branch, Family Court

David Luria, Attorney Advisor