

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**RULE PROMULGATION ORDER 07-05**

(New SCR-LT 12-I and amendment to SCR LT 14 and SCR MH 1 through 17)

**WHEREAS**, Pursuant to D.C. Code § 11-946 the Board of Judges of the Superior Court approved new SCR LT 12-I and an amendment to SCR LT 14 and amendments to SCR Mental health Rules 1 through 17; and

**WHEREAS**, these rules do not modify the Federal Rules of Civil or Criminal Procedure;

**NOW, THEREFORE**, it is hereby,

**ORDERED**, that SCR LT 12-I be and is hereby enacted, and SCR LT 14 and SCR MH 1 through 17 be and are hereby amended, as set forth below; and it is further

**ORDERED**, that the above enumerated rules and amendments shall take effect November 13, 2007 and govern all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

By the Court:

Date: 10/12/07

\_\_\_\_\_  
/s/  
Rufus G. King, III  
Chief Judge

Copies to:

Judges  
Magistrate Judges  
Executive Officer  
Clerk of the Court  
David Luria, Attorney Advisor  
Division Directors  
Library  
Daily Washington Law Reporter

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**SCR LT 12-I**

**PROTECTIVE ORDER**

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

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

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

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

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

(d) Continued cases. In any case that is continued from the initial return date for ascertainment of counsel, for a hearing on the amount of the protective order, or for any other reason, the Court may, for such time as is reasonable, defer ruling on a motion for a protective order until counsel, if any, has been retained, until a hearing has been held on the amount of the protective order, or until the other reason for the continuance has been addressed by the Court. At the time the continuance is ordered, the Court shall inform the parties that, unless otherwise ordered by the Court, a protective order, whenever entered, shall be retroactive to the date on which it was first requested in open court.

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

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

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

(2) Judgments for possession. (A) Nonpayment of rent cases. In a case based upon the defendant's alleged nonpayment of rent, the Court shall not enter a judgment for possession as a sanction for the defendant's failure to comply with a protective order without first requiring the plaintiff to present proof of liability and damages. The plaintiff may present proof of liability and damages on the same day that the motion for sanctions is scheduled for hearing or may ask the Court to schedule a hearing for a later date. If the hearing is scheduled for a later date, the Clerk shall send written notice to all parties. In its discretion, the Court may permit the plaintiff to present proof of liability and damages by sworn affidavits, provided that the plaintiff has attached to its motion seeking sanctions against the defendant the affidavits on which it seeks leave to rely. Affidavits shall

be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court shall not enter a judgment for possession unless the Court is satisfied with the proof presented. Any such judgment shall be subject to the defendant's right to redeem the tenancy and avoid eviction.

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

(C) Cases involving allegations of nonpayment of rent and other allegations. Where the defendant has failed to comply with a protective order in a case that involves allegations of nonpayment of rent and allegations upon which the plaintiff seeks the entry of a judgment for possession that is not subject to the defendant's right to redeem the tenancy and avoid eviction, the Court may, on the plaintiff's motion, and in accordance with section (g)(1), (i) dismiss the allegations that do not relate to nonpayment of rent and enter a judgment for possession under section (g)(2)(A), subject to the defendant's right to redeem the tenancy; (ii) allow the plaintiff to proceed under section (g)(2)(B) with respect to all of the allegations in the complaint; or (iii) enter a judgment for possession under section (g)(2)(A) on the claim of nonpayment of rent, subject to the defendant's right to redeem the tenancy, and, as to the plaintiff's allegations other than nonpayment of rent, consider any appropriate sanction other than the entry of a non-redeemable judgment for possession, including advancing the trial date and, in a case that has been certified to the Civil Actions Branch under SCR-LT 6 pursuant to the defendant's demand for a jury trial, striking the defendant's jury demand.

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

is unable to reach the assigned judge, then the Court, with notice to the defendant, shall set the case for a status conference before the assigned judge on the earliest available date; at the status conference, the assigned judge shall consider whether to advance the date for a jury trial or otherwise modify the scheduling order.

### **SCR LT 14**

#### ENTRY OF JUDGMENT

(a) A judgment for possession may be entered:

(1) by the Clerk in favor of the plaintiff if the defendant fails to appear at the 9:00 a.m. roll call and the plaintiff files an affidavit satisfying the Servicemembers Civil Relief Act (2003), 50 U.S.C.S. Appx. § 521, unless the presentation of ex parte proof is required.

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

(3) by the Court:

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

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

(C) upon the entry of summary judgment; or

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

(E) when ex parte proof is required, upon the presentation of ex parte proof and the filing of an affidavit satisfying the Servicemembers Civil Relief Act (2003), 50 U.S.C.S. Appx. § 521.

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

(c) A money judgment may be entered by the Court:

(1) in favor of the plaintiff, upon default by the defendant, when the plaintiff has prayed for such relief in the complaint, obtained personal service, and filed an affidavit satisfying the Servicemembers Civil Relief Act (2003), 50 U.S.C.S. Appx. § 521. A money judgment entered based upon the defendant's default shall be limited to the amount sued for in the complaint.

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

(3) by consent of the parties.

(d) Additional relief may be entered:

(1) by consent of the parties; or

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

**SUPERIOR COURT RULES OF PROCEDURE  
FOR  
MENTAL HEALTH**

**Rule**

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6. Disposition hearing and order; decision no to renew commitment.
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**Rule**

9. 10. Commitment of prisoners to mental institutions.
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- ~~12.~~ 13. Time
- ~~13.~~ 14. Form of court filings ~~pleadings~~; motions practice.
- ~~14.~~ 15. Signing of court filings ~~pleadings~~.
- ~~15.~~ 16. Trial by jury or by the Court.
- ~~16.~~ Outpatient commitment and revocation proceedings.  
[DELETED].
17. Limited discovery in a commitment trial pursuant to D.C. Code § 21-545 (2004 Supp.)

**Rule 1. Scope, purpose and construction.**

(a) These Rules govern the procedure before the Commission on Mental Health and the Superior Court of the District of Columbia pursuant to D.C. Code §§ 21-501 — 592 (2004 Supp.), procedures before the Court pursuant to D.C. Code §§ 24-531.07(b) and (c)(2) (2005 Supp.), and procedures to transfer prisoners to mental institutions pursuant to D.C. Code § ~~24-302~~ 24-502 (2001 Supp.).

(b) These Rules shall be construed to provide both for the protection of the rights of ~~the mentally ill~~ individuals with mental illness and the welfare of the community.

(c) The Rules may be known as the Superior Court Rules of Procedure for Mental Health, and may be cited as Superior Court Rules — Mental Health, or SCR MH.

**COMMENT**

~~No provision has been included in these Rules concerning the issuance of and hearings on orders to show cause provided for in Section 21-586 (D.C. Code 1967 Ed.)~~

**Rule 2. Emergency detention proceedings.**

(a) *Right to counsel.* A person detained ~~under~~ pursuant to D.C. Code § 21-521 (2004 Supp.) shall ~~upon admission to the hospital~~ be informed of his or her right to counsel upon admission to a hospital, a facility certified by the Department of Mental Health (Department) for emergency detention, or the Department.

(b) *Detention without hearing.* ~~The~~ A petition for emergency detention pursuant to D.C. Code § 21-524 (2004 Supp.) may be granted in the absence of respondent and his or her counsel. In considering such a petitions the Court shall consider the application for emergency admission; the certificate of the examining psychiatrist, qualified physician or qualified psychologist; and any other relevant information. If it appears to the Court that there is reason to believe that the respondent is mentally ill and because of the illness is likely to injure him or herself or others if not immediately detained, the Court shall order detention at a hospital, at a facility certified by the Department for emergency detention, or by the Department for not more than 7 seven days; otherwise the Court shall order the respondent's immediate release from involuntary detention. If the Court denies the petition for emergency detention, counsel for the petitioner and the Public Defender Service Mental Health Division shall be notified immediately by the Mental Health and Mental Retardation Branch via telephone, facsimile or email.

(c) *Notice to respondent.* If the Court orders detention for a period of 7 seven days, the Court shall also appoint counsel. If detention for a period of 7 seven days is ordered, the ~~Commission on Mental Health~~ Mental Health and Mental Retardation Branch shall immediately notify the respondent and his or her counsel of (1) the Court's order<sub>;</sub> and (2) the respondent's right under D.C. Code § 21-525 (2004 Supp.) to request a hearing within 24 hours to review the order.

(d) *Request for Court hearing.* A respondent or respondent's counsel may request a probable cause hearing pursuant to D.C. Code § 21-525 (2004 Supp.) within seven days from the time the order

required by D.C. Code § 21-524 (2004 Supp.) is entered. A respondent or respondent's counsel may request a probable cause hearing pursuant to D.C. Code § 21-525 (2004 Supp.) within seven days from the entry of a remand order pursuant to D.C. Code § 24-531.07(b) or (c) (2005 Supp.). A request for a hearing pursuant to D.C. Code § 21-525 (2004 Supp.) may be made either in writing, in person, or by telephone to the Mental Health and Mental Retardation Branch during normal business hours (Monday through Friday, 8:30 a.m. until 5:00 p.m.) or by filing a written request with the Family Court after normal business hours.

(e) *Scheduling of Court hearing.* The Family Court shall schedule a hearing pursuant to D.C. Code § 21-525 (2004 Supp.) and D.C. Code § 24-531.07(b) (2005 Supp.) within 24 hours of receipt of a request for a hearing from the respondent or respondent's counsel. A request shall be deemed to have been received when: 1) the request is communicated in person or by telephone to the Mental Health and Mental Retardation Branch during normal business hours (Monday through Friday, 8:30 a.m. until 5:00 p.m.); 2) a written request is received by and time stamped in the Mental Health and Mental Retardation Branch during normal business hours (Monday through Friday, 8:30 a.m. until 5:00 p.m.); or 3) a written request is filed with the Family Court after normal business hours. In the event of an after- hours filing, respondent's counsel shall also notify the Mental Health and Mental Retardation Branch of the hearing request by telephone no later than 9:30 a.m. on the day following the after hours filing.

~~(d)~~ (f) *Court hearing upon request.* A respondent who requests a ~~C~~ourt hearing shall have the right to appear in person, to be represented by counsel, to testify, to present evidence, and to examine witnesses. If it appears to the Court that there is probable cause to believe that the respondent is mentally ill, and, because of the illness, is likely to injure him or herself or others if not immediately detained, the Court shall affirm the original order for detention. Otherwise, the Court shall order the



respondent's immediate release.

~~(e)(g)~~ *Release.* A respondent detained under a ~~7~~ seven-day order pursuant to D.C. Code § 21-524 (2004 Supp.) must be released at the expiration of the ~~7~~ seven-day period by the ~~administrator~~ chief of service of the hospital or the chief clinical officer of the Department, or their respective designees, in which a person is detained unless a petition for judicial ~~hospitalization~~ commitment has been filed pursuant to D.C. Code § 21-541 (2004 Supp.) and accompanied by a statement of the examining psychiatrist or qualified psychologist that the person being detained remains mentally ill and is likely to injure him or herself or others as a result of the illness unless the emergency detention is continued.

~~(h)~~ *Extension of Emergency Detention.* Emergency detention of a person detained may be extended pursuant to D.C. Code § 21-526 or § 21-543 (2004 Supp.).

~~Upon failure of the administrator to effectuate such release the Court shall, upon application and after service of written notice upon the administrator, order such release forthwith.~~

#### **COMMENT**

~~This Rule is designed to clarify the procedure in emergency detention proceedings pursuant to D.C. Code § 21-521.~~

~~Nothing in this Rule should be construed to apply to voluntary admission or to limit the power of the administrator to detain a person where independent grounds for the detention exists, (e.g. detainer).~~

### **Rule 3. Proceedings before the Commission on Mental Health.**

~~(a) Hearing by the Commission.~~ (1) Persons admitted to hearings. The general public shall be excluded from proceedings before the ~~Commission on Mental Health~~. Those persons having an interest in the work of the ~~e~~ Commission, or in a particular case, may upon application be admitted to

a Commission hearing provided that: a) ~~that counsel~~ for respondent consents, and b) ~~that~~ the applicant agrees to refrain from divulging information that would identify the respondent or the respondent's family members ~~of his family~~ or any other persons involved in the proceedings without the respondent's prior consent ~~of the respondent's counsel~~. An applicant for permission to attend a hearing or hearings shall state in writing his or her name, address and telephone number, business or professional affiliation and reason for wishing to attend. Authorized representatives of the news media are presumed to have an interest in the work of the Commission.

(2) Hearing procedure. Hearings before the Commission shall be recorded ~~and the records shall be kept with the Commission~~.

(A) The ~~Chairman~~ Chairperson of the Commission ~~on Mental Health will~~ shall explain the purpose of the hearing to the respondent and introduce the members of the Commission.

(B) Counsel for the petitioner and the respondent shall have a right to make opening and closing statements to the Commission.

(C) The Commission shall receive all relevant evidence as provided for in D.C. Code § 21-542 (2004 Supp.) and shall consider dispositional alternatives less restrictive than inpatient treatment hospital commitment.

(D) Upon request of counsel, or on its own initiative, the Commission may impose the Rule on witnesses. The Commission may excuse a respondent from attendance at the Commission hearing. A respondent may not be excluded from the hearing over his or her objection, unless that respondent has conducted him or herself in a manner so disorderly and disruptive of the ~~Commission proceedings~~ that the hearing cannot be carried on in his or her presence.

(E) At the conclusion of the testimony and argument the Commission shall determine by majority vote whether the respondent is mentally ill, and if so, whether because of the illness is likely to

injure him or herself or other persons if ~~allowed to remain at liberty~~ not committed. The Commission may, in its discretion, continue the hearing or orally announce the decision to the respondent and his or her attorney immediately after the hearing.

(F) Whenever the Commission determines that the respondent should be committed, the Commission shall immediately notify the respondent and his or her counsel of its determination and of the respondent's right to a jury trial pursuant to D.C. Code § 21-544 (2004 Supp.) in an original commitment proceeding, and of his or her right to a review pursuant to D.C. Code § 21-545.01(h)(1) (2004 Supp.) in a renewal of commitment proceeding. A copy of the transcript shall be furnished to respondent's counsel upon request. Counsel for indigent patients shall be furnished a transcript without charge.

(G) Whenever the Commission determines that the respondent should not be committed, the Commission shall order the immediate release of the person and notify the Family Court in writing of its determination.

(b) *Report by the Commission.* (1) Time for filing. Within ~~5~~ five days ~~after~~ of a Commission hearing, the Commission shall file with the Family Court all reports required ~~under~~ pursuant to D.C. Code § 21-544 (2004 Supp.). Within five days of a Commission hearing held pursuant to D.C. Code § 21-545.01(c) (2004 Supp.), the Commission shall file with the Family Court a written order and report required pursuant to D.C. Code § 21-545.01(d) and (e) (2004 Supp.).

(2) Contents of report. When ~~re~~ the Commission determines that a respondent should be committed, the Commission's report shall contain:

- (A) Findings of fact;
- (B) Conclusions of law;
- (C) Recommendations for disposition; and

(D) The name of any member of the Commission who has dissented from the conclusion.

Findings of fact shall be based on the record and the examination by the ~~Mental Health Commission~~ doctors. Findings shall describe the kind and degree of mental illness found, the nature of the injury threatened, and the likelihood of the occurrence of the threatened injury, and shall summarize the evidence upon which ~~these~~ the findings are based. The report shall specifically set forth what less restrictive alternatives to hospitalization the Commission has considered, and why these alternatives will or will not be appropriate. The report shall also include a description of the individualized treatment the respondent has received while in the hospital or in the community, and a description of any individualized treatment plan to be implemented in the future. In addition, the report shall include recommendations relative to payment of costs of respondent's care.

(3) Service of report. In an original commitment case, Copies of the report recommending commitment ~~along with~~ and written notice of the right to demand a jury trial, shall be served personally on the respondent and his attorney and on any relative who may be required to pay for the cost of respondent's care. In a recommitment case, copies of the report recommending recommitment and written notice of the right to a review by an Associate Judge shall be sent by registered mail to the respondent and by regular mail to his or her attorney.

**Rule 4. Court hearing on Commission on Mental Health Commission report for hospitalization or less restrictive treatment.**

(a) *Procedure.* ~~(1) Proceedings before the Court shall be conducted in accordance with the following Superior Court Rules of Civil Procedure in so far as practicable except to the extent inconsistent with these Rules or the District of Columbia Code 1981, Title 21, Chapter 5:~~

~~SCR Civ 7 I, 43, 43 I, 44, 44 I, 45, 46, 47, 47 I, 50, 51, 52, 53, 53 I, 53 II, 60, 63, 63 I, 102, and 103.~~

(2) If a court or jury trial is requested, the Court shall at a time prior to trial, consider any motion by either party raising any objection, defense, or other matter capable of determination without trial of the issues of mental illness and dangerousness.

~~(3) All motions raised pursuant to this Rule shall be filed and served in accordance with Rule 12-1(e) of the Superior Court Rules of Civil Procedure.~~

(b) *Time of final hearing.* ~~The Court~~ hearings on ~~a reports of the Mental Health~~ Commission report recommending commitment to inpatient hospitalization or a less restrictive form of commitment treatment modality shall be held as soon as practicable after the Commission hearing.

(c) *Final hearing on Commission report.* Where the findings of the ~~Mental Health~~ Commission with respect to mental illness and dangerousness are not contested, the Court may at the hearing on the report, upon motion of either party or on its own initiative, consider any relevant matter.

(d) *Trial by jury or trial by the Court.* If the respondent has requested, within ~~5-~~ five days ~~after~~ of notice of the final hearing served pursuant to D.C. Code § 21-545 (2004 Supp.), a trial by jury or a trial by the Court on the issues of mental illness and dangerousness, the Court shall set trial at the earliest practicable date.

(e) Trial waiver. The Court shall not enter an order of commitment without finding that the respondent is waiving his or her right to a trial.

#### **COMMENT**

Subsection (e) does not specify the means by which the Court should ascertain the appropriateness of any waiver of trial rights. The Court will make that determination upon consideration of the totality of the circumstances presented by the particular case.

**Rule 5. Trial on issues of mental illness and dangerousness.**

(a) *Burden of proof.* In any hearing held pursuant to D.C. Code 1981, § 21-545 (2004 Supp.) the ~~government~~ petitioner shall have the burden of proving by clear and convincing evidence that the respondent is mentally ill and because of that illness, is likely to injure him or herself or other persons if ~~allowed to remain at liberty.~~ not committed.

(b) *Jury verdict.* The jury shall deliver a separate verdict on each of the following questions:

(1) Whether the respondent is mentally ill,

(2) If the respondent is mentally ill, whether because of that illness he or she is likely to injure him or herself or other persons if ~~allowed to remain at liberty.~~ not committed.

(c) *Findings by the Court.* If trial is by the Court, the Court shall make a general finding as to whether the respondent is mentally ill ~~or~~ and, if so, whether because of that illness he or she is likely to injure him or herself or other persons if ~~allowed to remain at liberty.~~ not committed. Upon request of a party, the Court shall in addition find the facts specially, except that findings of fact with respect to disposition and future treatment shall be made at the disposition hearing. If an opinion or memorandum of decision is filed, it ~~will be~~ is sufficient if the findings of fact appear therein.

**Rule 6. Disposition hearing and order; decision not to renew commitment.**

(a) *Disposition.* The disposition hearing ~~will~~ shall be held immediately after the final hearing or trial provided for by Rule 4 of these Rules unless continued for good cause shown. The Court may receive evidence and, ~~concerning alternative dispositions less restrictive than commitment.~~ If the Court ~~finds that a less restrictive disposition is appropriate and feasible,~~ consistent with its determination of the least restrictive alternative and the best interests of the person and the public, ~~the Court shall~~ may order the ~~release of the patient subject to appropriate conditions~~ respondent committed for a period of one year to the Department, a hospital, or any other facility or mental health provider.

(b) *Copy of disposition order.* Upon entry of the dispositional order, a copy of the order shall be furnished to the respondent, a member of his or her family, his or her attorney, the Commission on Mental Health, any relatives of the respondent who have been ordered to pay any portion of the cost of the respondent's care, and the person or agency in whose custody or under whose supervision the respondent has been placed, if any.

(c) *Notification of right to appeal.* After entry of a final order in a case which has gone to trial, the Court shall advise the respondent of his or her right to appeal within 30 days ~~and of the right of a person who is unable to pay the cost of an appeal to pursue an appeal~~ in accordance with Rule 23 of the Rules of the D.C. Court of Appeals.

(d) Notification of decision not to seek renewal of commitment. The Department or the mental health provider to which a respondent has been committed, pursuant to D.C. Code § 21-545 or § 21-545.01 (2004 Supp.), shall notify the Court of a decision not to seek renewal of the respondent's commitment. Notice of a decision not to seek renewal of commitment shall be in writing and filed with the Court within the last 30 days of the period of commitment. A copy of the notice shall be mailed by the Department or the mental health provider to the person who was committed and to the person's attorney.

**Rule 7. Judicial review of the renewal of commitment.**

If the Commission orders the renewal of a respondent's commitment, pursuant to D.C. Code § 21-545.01(e) (2004 Supp.), a party may seek review of the Commission order by the Associate Judge of the Family Court assigned to handle mental health cases. The Associate Judge shall review the Commission order of renewal of commitment pursuant to Rule D of the General Rules of the Family Court.

**Rule 7 8. Periodic review of patient committed person on convalescent leave.**

If the disposition order provides for release of the respondent upon specified conditions, to be implemented or monitored by some other person or agency, the Court may order ~~the released person,~~ or any appropriate person or agency to file a report concerning implementation of the conditions within a specified period of time and periodically thereafter. If the report does not reflect satisfactory implementation of the original dispositional order, any party may request, or the Court may on its own initiative schedule a prompt hearing. Notice shall be sent to all parties and to the person or agency responsible for implementation or monitoring of the specific conditions.

**Rule 8. 9. Release proceedings.**

(a) *Conduct of hearing.* Upon receipt of a petition for release filed by a ~~patient~~ committed person pursuant to D.C. Code § 21-546 (2004 Supp.), the Court shall promptly set the matter down for hearing. The ~~patient~~ committed person has the right to ~~may~~ be present at the hearing, ~~and shall have the right~~ to present evidence, and to cross-examine witnesses. The ~~patient~~ committed person shall have the burden of establishing by a preponderance of the evidence that he or she is no longer mentally ill to the extent that he or she is likely to injure him or herself or others if not ~~hospitalized~~ committed, or that he or she should be released to a less restrictive form of commitment.

(b) *Findings by the Court.* In ruling upon a petition for release, the Court shall make appropriate findings of fact and conclusions of law.

**Rule 9. 10. Commitment of prisoners to mental institutions.**

(a) *Petition.* In the case of a prisoner under sentence who is believed to have become mentally ill and whose transfer to St. Elizabeth's Hospital is sought under D.C. Code § 24-302 [~~§ 24-502, 2001 Ed.~~] 502 (2001 Supp.), the proceeding shall be initiated by the filing by the ~~Corporation Counsel~~ Office of the Attorney General of a petition signed by the Director, D.C. Department of Corrections. The petition shall state the prisoner's name and his or her present place of confinement. It shall set



forth the ~~name of the sentencing court,~~ case number, and date and duration of sentence. It shall also state the earliest date on which he or she is entitled to be released, and may state the date on which he or she is eligible for parole and any other matters thought relevant. The petition shall state that the prisoner has been examined by a psychiatrist or qualified psychologist ~~on the staff of the Forensic Psychiatric Office~~ and that in the opinion of the examining psychiatrist or qualified psychologist the prisoner is mentally ill and, because of his or her illness, is likely to injure him or herself or cause a substantial disruption of prison routine.

(b) *Certificate.* The petition shall be accompanied by a certificate of a the examining psychiatrist or qualified psychologist ~~on the staff of the Forensic Psychiatric Office~~ stating that he or she has examined the prisoner and giving the date or dates of the examination. The certificate shall state that in the opinion of the examining psychiatrist or qualified psychologist the prisoner is mentally ill and, because of his such illness, is likely to injure him or herself or cause a substantial disruption of prison routine. It shall also set forth the diagnosis of the prisoner and shall summarize the medical, psychiatric, social or other evidence upon which the examining psychiatrist's or qualified psychologist's findings of mental illness and dangerousness or disruptiveness ~~is~~ are based.

(c) *Date of hearing.* Upon the filing of the petition and certificate, or as soon as practicable thereafter the Court shall set ~~an early~~ a hearing date.

(d) *Appointment of counsel.* Unless it appears affirmatively from the petition or elsewhere that the ~~allegedly ill~~ prisoner has counsel presently acting on his or her behalf, the order shall also appoint counsel to represent him or her at all Court proceedings.

(e) *Notice of petition and hearing.* The ~~Clerk of the Division~~ Mental Health and Mental Retardation Branch shall mail to the prisoner and his or her attorney copies of the petition, the certificate and the order of the Court.

(f) *Court hearing on the petition.* A hearing on a petition for transfer of a prisoner may include consideration of the following:

(1) Defenses or objections raised in accordance with the procedure set forth in Rule 4 of these Rules, including but not limited to challenges to the procedural sufficiency of the ~~Forensic Psychiatric Office's~~ doctor's examination and report;

(2) Determination of the prisoner's mental condition on the basis of the petition and certificate of the ~~Forensic Psychiatric Office~~ psychiatrist or qualified psychologist, and entry of an order transferring the prisoner to St. Elizabeth's Hospital, if counsel for the prisoner has not requested a court or jury trial;

(3) On request of counsel or on its own initiative, the Court may order further evidence to be presented, and may hear the case forthwith if the parties are prepared, or may set a date for a court or jury trial, if requested, on the issues of mental illness and dangerousness or disruptiveness (~~unless a jury trial is requested~~);

~~(4) If a jury trial is requested, the Court shall set a date for a jury trial on the issues of mental illness and dangerousness or disruptiveness.~~

(g) *Court or jury trial.* A court or jury trial on the issues of prisoner's mental illness and dangerousness or disruptiveness shall be conducted in accordance with Rule 5 of these Rules, except that the verdict or findings shall state (1) whether the prisoner is mentally ill, and (2) if so, whether because of his or her illness he is likely to injure him or herself, or cause a substantial disruption of prison routine.

(h) *Disposition order.* If a prisoner is found by a ~~the~~ court or jury not to be mentally ill, or to be mentally ill but not likely to injure him or herself or to cause a substantial disruption of prison routine, he or she shall be ~~remanded~~ returned to the correctional institution ~~from which he came~~. If a

prisoner waives trial and consents to hospitalization, or if he or she is found by a court or jury to be mentally ill and because of such illness, likely to injure him or herself or to cause a substantial disruption of prison routine, the Court shall order the prisoner transferred to St. Elizabeth's Hospital to receive treatment for his or her illness. If the prisoner recovers prior to the expiration of his or her term, ~~he the prisoner~~ shall be returned to the custody of the Department of Corrections and the ~~Clerk of the Court~~ Mental Health and Mental Retardation Branch shall be furnished a copy of the certification by the ~~Superintendent~~ administrator of the Hospital. Confinement pursuant to the order shall not exceed the duration of the prisoner's sentence unless proceedings to commit him pursuant to ~~Title 21, Chapter 5 of the D.C. Code~~ D.C. Code § 21-501 et seq. (2004 Supp.) are initiated.

(i) *Notification of right to appeal.* After entry of an order transferring a mentally ill prisoner to St. Elizabeth's Hospital in a case ~~which~~ that has gone to trial, the Court shall advise the prisoner of his or her right to appeal within 30 days ~~and of the right of a person who is unable to pay the cost of an appeal to pursue an appeal~~ in accordance with ~~Rule 23~~ of the Rules of the D.C. Court of Appeals.

(j) *Emergency transfer before hearing.* Nothing in these Rules shall prevent the transfer by the Director of the Department of Corrections of a prisoner to St. Elizabeth's Hospital prior to hearing if, in addition to the matters set forth in subsection (b) of this Rule, the psychiatrist or qualified psychologist also certifies that the prisoner is in immediate need of treatment, and provided the petition and certificate for his or her transfer are filed ~~in the Court~~ not more than 48 hours after the transfer of the prisoner. In such cases the hearing order provided for in subsection (c) of this Rule shall set a hearing date not more than ~~7~~ seven days thereafter.

#### COMMENT

This Rule ~~has been~~ was drafted to conform to the holding in *Matthews v. Hardy*, 137 U.S. App. D.C. 39, 420 F.2d 607 (1969), requiring that prisoners transferred to mental hospitals be afforded

substantially the same due process protections as ~~patients who are~~ civily committed persons.

**Rule 10. 11. Return to hospital of escapee ~~escaped patient.~~**

(a) *Petition.* The administrator of a hospital or other institution to which a person has been ~~committed~~ ordered confined or the chief clinical officer of the Department by which a person has been detained, pursuant to ~~D.C. Code § 21-545 or § 24-302 [§ 24-502, 2001 Ed.],~~ may file, pursuant to ~~Title 21-§ 592~~ D.C. Code § 21-592 (2004 Supp.) and SCR MH Rule 14(b), with the ~~Clerk of the Family Division~~ Mental Health and Mental Retardation Branch a motion for an order requiring the return of a person who has left the hospital, institution or facility without authorization or has failed to return as directed. Such a motion shall be supported by a report by the movant ~~hospital~~ setting forth the pertinent facts.

(b) *Order.* The Court shall issue an order for custody directing a law enforcement ~~officer~~ authorities to return the respondent to the hospital, institution or facility.

**COMMENT**

The changes to the Rule have been drafted to reflect the language of D.C. Code § 21-592 (2004 Supp.), which refers to a person “confined in a hospital or institution” and not a “committed” person as referenced in the earlier Rule.

**Rule ~~11.~~ 12. General provisions.**

(a) *Appointment of counsel.* (1) Right to counsel. Any person who is involuntarily hospitalized or the subject to ~~of~~ any petition filed ~~under~~ pursuant to D.C. Code §§ 21-501 - 592 (2004 Supp.) or § ~~24-302~~ 24-502 (2001 Supp.) shall have a right to consult with counsel promptly upon admission to the hospital or detention by the Department and shall be represented by counsel at all hearings in any proceeding before the Commission ~~on Mental Health~~ and the Court. ~~, which hearings shall include, but not be limited to, emergency detention hearings under D.C. Code § 21-525, hearings~~

~~before the Commission on Mental Health under D.C. Code § 21-542, Court hearings under D.C. Code §§ 21-545 and 21-545.01, hearing on petitions for release under D.C. Code § 21-547 (D.C. Code, and hearings on petitions for commitment of prisoners under § 21-302. If counsel is not retained by a respondent ~~an alleged mentally ill person~~, or if it does not appear that counsel will be retained, counsel shall be appointed by the Court.~~

(2) *Assignment of counsel.* (A) Any person detained under the emergency procedures of D.C. Code §§ 21-521 - 528 (2004 Supp.) shall be appointed counsel by the Court ~~notified by the Commission on Mental Health of his right to counsel, and to Court-appointed counsel if unable to obtain counsel,~~ at the same time the Court issues an order granting or denying detention pursuant to D.C. Code § 21-524 (2004 Supp.). ~~of the sending of notice of a the detention order under Rule 2(e) of these Rules.~~ The ~~notification~~ order shall include the name and telephone number of the appointed attorney, ~~and shall advise the respondent alleged mentally ill person that he or she may telephone the attorney for immediate assistance or advice. Reasonable access to a telephone shall be assured. Alleged mentally ill persons~~

(B) A respondent who ~~hasve~~ not been detained for emergency observation and diagnosis but who is the subject of a ~~have been~~ petitioned for judicial ~~hospitalization~~ commitment pursuant to ~~under~~ D.C. Code § 21-541 (2004 Supp.) shall be appointed counsel by the Commission at the time the case is set for a hearing pursuant to D.C. Code § 21-542 (2004 Supp.) ~~notified of their right to counsel. and to Court-appointed counsel if unable to pay for an attorney, when they are notified of the filing of a petition for judicial hospitalization.~~ Notice of appointment of counsel shall be mailed to the respondent with a copy of the petition and the order scheduling a hearing before the Commission.

(b) *Expert witnesses.* The Court may appoint an expert witness when requested by counsel for an indigent respondent. ~~Such an expert witness shall by written report advise the respondent's counsel~~

and the Commission of his findings.

(c) *Confidentiality of transcripts.* Transcripts of ~~hearings~~ all proceedings before the Commission on Mental Health shall be kept in a confidential file apart from the mental health case files, and shall not be open to inspection by the general public. The ~~Clerk~~ Director of the ~~Division~~ Family Court shall grant access to the transcript only to the ~~alleged mentally ill person~~ respondent involved, his or her attorney, his or her guardian, members of his or her immediate family, the United States Attorney or the ~~Corporation Counsel~~ Office of the Attorney General or their authorized assistants, and judges and professional staff of the Family ~~Division~~ Court. Any other person seeking access to the transcripts of a hearing before the ~~Mental Health~~ Commission shall apply for a special order from the Family Court. The application for a special order shall state in writing the name, address and telephone number of the person or agency desiring to inspect the transcript, the professional or business affiliation of the person or agency, and the person for which the special order is sought. The application for special order shall be approved or denied by the ~~Division~~ Family Court in writing and filed by the ~~Clerk~~ Director of the ~~Division~~ Family Court in the ~~alleged mentally ill person's~~ respondent's case record docket.

(d) *Applicability of Superior Court Rules of Civil Procedure.* Proceedings before the Commission and the Court shall be conducted in accordance with the following Superior Court Rules of Civil Procedure insofar as practicable, except to the extent inconsistent with these Rules or D.C. Code § 21-501 *et seq.* (2004 Supp.):

SCR Civ 5, 11(b), (c) and (d), 12-I (d) and (e), 43, 43-I, 44, 44-I, 45, 46, 47, 47-I, 50, 51, 52, 59, 60, 62 (b) and (c), 63-I, 77(a), 101(a), 102, and 103.

#### **COMMENT**

Subsection (d) of this Rule includes a reference to SCR Civ 62(c), which authorizes the granting of

an injunction pending appeal. The intent of including the reference to SCR Civ 62(c) is to authorize the granting of a stay pending appeal of an order of civil commitment.

**Rule ~~12~~ 13. Time.**

(a) *Computation.* In computing any period of time prescribed or allowed by statute, by these Rules or by order of Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included, except as otherwise provided by statute. The last day of the period of time prescribed or allowed by statute, these Rules or court order so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday, unless otherwise provided by the statute. When the period of time prescribed or allowed is ~~less than 7~~ 11 (eleven) days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Rule, "legal holiday" includes New Year's Day, Martin Luther King, ~~Junior's Jr.'s~~ Birthday, Washington's Birthday, D.C. Emancipation Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the District of Columbia.

(b) *Enlargement.* When these Rules or by a notice given there under or by order of Court an act is required or allowed to be done at or within a specified time, the Court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of ~~excuseable [excusable]~~ excusable neglect.

(c) *Time for serving affidavits.* When a motion or opposition is supported by affidavit, the affidavit shall be served with the motion or opposition unless the Court permits them to be served at some

other time.

(d) *Additional time after service by mail.* Whenever, under these Rules or by order of Court, a party has the right to or is required to do some act ~~or take some proceedings~~ within a prescribed time period after the service of a notice or other paper upon him or her and the notice or paper is served upon him or her by mail, ~~3~~ three days shall be added to the prescribed period.

#### COMMENT

~~This Rule is substantially identical to SCR Civ 6.~~

#### **Rule 13. 14. Form of court filings pleadings; motions practice.**

(a) *Caption: Name of respondent.* Every court filing pleading, ~~which for purposes of this Rule shall include motions~~, shall contain a ~~caption setting forth the name of the Court~~ the following heading: Superior Court of the District of Columbia, Family Court, Mental Health and Mental Retardation Branch, and a designation as to the nature of the court filing pleading. The caption shall include the name of the respondent and shall be in the following format: "In the Matter of [name of respondent]."

(b) *Motions.* With each motion there shall be filed and served a proposed order for the Court's signature which shall contain a list of all persons with their current addresses to whom copies of the Court's order shall be sent. Each motion shall be accompanied by the specific points and authorities to support the motion, including, where appropriate, a concise statement of material facts. ~~Such statement of points and authorities shall be a part of the record.~~ The points and authorities shall be captioned as such and placed either on a separate paper or below all other material, including signatures, on the last page of the motion. A statement of opposing points and authorities, with a proposed order, shall be filed and served within ~~10~~ ten days or such further time as the Court may grant. If a statement of opposing points and authorities is not filed within the prescribed time, the Court may treat the motion as conceded.



(c) *Adoption by reference; exhibits.* Statements in a court filing pleading may be adopted by reference in a different part of the same court filing pleading or in another court filing pleading. A copy of any written instrument which is an exhibit to a court filing pleading is a part thereof for all purposes.

(d) *Stationery; title; relief prayed.* ~~Pleadings and like papers~~ Other filings shall be on opaque white paper, without back or cover, fastened at the top and stating under the caption the nature of the court filing pleading and the relief, if any, prayed.

(e) *Locational information.* Every court filing pleading signed by an attorney shall show the name, an office address meeting the requirements of SCR Civ 101 (a), ~~and~~ telephone number, email address and Bar number of the attorney. The names, addresses, ~~and~~ telephone numbers and email addresses shall be conclusively deemed to be correct and current except as modified by praecipe filed with the Court and served upon the parties pursuant to SCR Civ 5.

(f) *Nonconformance with above.* A court filing pleading not conforming to the requirements of this Rule shall not be accepted for filing.

(g) Filing electronically. (A) Electronic Filing. As permitted or required by statute, rule or administrative order, pleadings and filings may be filed by electronic means. Filing by electronic means is complete upon transmission, unless the party making the transmission learns that the attempted transmission was undelivered or undeliverable.

(B) Forms of Documents Electronically Filed.

(i) Format of Electronically Filed Documents. All filings submitted electronically shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper filings, and in such other and further format as the Court may require from time to time.

(ii) Representations by Using a Typographical Signature. Every document filed electronically shall

be deemed to have been signed by the attorney or declarant and shall bear a facsimile or typographical signature of such person, along with the typed name, address, telephone number, e-mail address and Bar number of a signing attorney. Typographical signatures shall be treated as personal signatures for all purposes under these rules. Typographical signature means the typed or imaged signature of each lawyer or party who is responsible for the filing under SCR MH Rule 15.

(C) Maintenance of Original Document. Unless otherwise ordered by the Court, an original of all documents filed electronically, including original signatures, shall be maintained by the party filing the document during the pendency of the case and through exhaustion of any appeals or appeal times, and shall be made available, upon reasonable notice, for inspection by other counsel or the Court.

(D) Conventional Filing of Documents. Notwithstanding the foregoing, the following types of documents may be filed conventionally and need not be filed electronically, unless expressly required by the Court:

(i) Documents filed under seal. A motion to file documents under seal shall be filed and served electronically. The documents to be filed under seal shall be filed in paper form, unless a different procedure is required by statute, rule, or administrative order. Documents filed under seal should be clearly marked as such by the filer.

(ii) Exhibits and real objects. Exhibits to declarations or other documents that are real objects (e.g. x-ray film or vehicle bumper) or which otherwise may not be comprehensibly viewed in an electronic format shall be filed and served conventionally in paper form.

(iii) Courtesy Copies. Unless specifically requested by the Court, paper courtesy copies of documents filed electronically need not be delivered to the Court.

(E) Electronic Filing and Service of Orders and Other Papers. The Court may issue, file, and serve notices, orders, and other documents electronically, subject to the provisions of these rules, statute or

administrative order.

(F) Who Shall File Electronically. By statute, rule or administrative order, all attorneys representing parties may be required to submit filings electronically. By statute, rule or administrative order, any person appearing pro se may file and serve documents electronically and may be served electronically, if they have consented in writing thereto, and if such activities are provided for by the Court's e-filing program.

(G) Failure to process transmission. If the electronic filing is not filed because of a failure to process it through no fault of the sending party, the Court shall enter an order permitting the document to be filed nunc pro tunc to the date it was sent electronically, as long as the document is filed within ten (10) days of the attempted transmission.

#### COMMENT

This Rule has been derived substantially from corresponding provisions of SCR Civ 10, 10-I, and 12-I(e). ~~However, certain modifications have made to conform to the form of pleadings in Mental Health actions.~~

#### **Rule 14. 15. Signing of court filings ~~pleadings~~.**

(a) *Signature by attorney.* With the exception of petitions filed pursuant to D.C. Code ~~1981~~, §§ 21-523 ~~and~~, 21-541 ~~–~~ and 21-545.01 (2004 Supp.), every court filing ~~pleading~~ of a party represented by an attorney shall be signed by at least ~~4~~ one attorney of record in his or her individual name, and shall include locational information required by Rule 14(e) ~~whose address and telephone number shall be stated~~. The signature of an attorney constitutes a certificate by him or her that he or she has read the court filing ~~pleading~~; that to the best of his or her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a court filing ~~pleading~~ is not signed or is signed with intent to defeat the purpose of this Rule, it may be stricken as sham and false

and the action may proceed as though the court filing pleading had not been served. For a willful violation of this Rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

(b) *Signature of party appearing pro se.* A party who is not represented by an attorney shall sign his or her court filing pleading and state his or her address, ~~and~~ telephone number, and email address, if any. The signature of a party constitutes a certificate by him or her that he or she has read the court filing; that to the best of his or her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a court filing is not signed or is signed with intent to defeat the purpose of this Rule, it may be stricken as sham and false and the action may proceed as though the court filing had not been served.

(c) Representations to court. The provisions set forth in Rule 11 (b), (c) and (d) of the Superior Court Rules of Civil Procedure are incorporated by reference into this Rule.

(~~e~~) *Signature by rubber stamp not permitted.* A name affixed by a rubber stamp shall not be deemed a signature.

#### COMMENT

This rule is substantially identical to SCR Civ 11 except that paragraph (a) has been amended to make it clear that the signature of an attorney is not needed to file petitions for emergency hospitalization, pursuant to D.C. Code ~~2001~~, § 21-523; ~~and (2004 Supp.)~~, petitions for commitment, pursuant to D.C. Code § 21-541 (2004 Supp.), and petitions for renewal of commitment, pursuant to D.C. Code § 21-545.01 (2004 Supp.).

#### **Rule ~~15~~. 16. Trial by jury or by the Court.**

(a) *By jury.* When trial by jury has been demanded as provided in Rule 4 (d), the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury,

unless (1) the parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open court and entered in the record, consent to trial by the Court sitting without a jury, or (2) the Court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or applicable law.

(b) *By the Court.* Issues not demanded for trial by jury as provided in Rule 4 (d) shall be tried by the Court; but notwithstanding the failure of a party to demand a jury in an action in which such demand might have been made as of right, the Court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) *Number of jurors.* Any jury demand made under ~~Mental Health~~ Rule 4 (d) is conclusively presumed to constitute a demand that the trial shall be to a jury of 12 persons. The parties may stipulate that the jury shall consist of any number less than 12.

(d) *Pretrial hearing.* The Court may set pretrial hearings as necessary to resolve any pretrial issues.

#### COMMENT

Paragraphs (a) and (b) are substantially identical to paragraphs (a) and (b) of SCR Civ 39. Paragraph (c) is similar to SCR Civ 48 except that there is a conclusive presumption of a jury demand for twelve persons in the mental health rule.

#### **Rule 17. Limited discovery in a commitment trial pursuant to D.C. Code § 21-545 (2004 Supp.).**

(a) *Discovery generally.* These rules are intended to provide for the exchange of information between the parties to effectuate an efficient, fair, and complete commitment trial. The parties shall engage in informal exchange of information to obtain information in addition to that which is required to be disclosed pursuant to statutes or these rules. Upon a showing of exceptional circumstances, the Court may allow interrogatories, requests for production, requests for admission,

and depositions.

(b) *Expert witnesses.* Each party shall make available the following regarding any expert witness whom the party intends to call at trial:

(i) The name and qualifications of the witness;

(ii) A written summary of the witness's opinions and the bases for those opinions for any witness whose opinion is not set forth in the records that have been or are being produced;

(iii) Any report, record, or other document upon which the expert relied in forming the opinions about which he or she will testify for inspection and copying to the extent not produced informally; and

(iv) Upon request, the test data and test materials created, used, or relied on by the other party's expert in forming the opinions about which he or she will testify at trial. This information shall be disclosed only to the requesting party's expert witness, if any, and attorney, and the disclosure shall be limited to use in these proceedings absent further order of the Court. Upon conclusion of these proceedings, all test data and test material, and any copies thereof, shall be returned to the party who produced it.

(c) *Notification of incidents by petitioner.* The petitioner shall provide written notification to the respondent of the incidents on which the petitioner intends to rely at trial to establish a likelihood that the respondent will cause injury to himself or others as a result of mental illness if not committed. The notification shall be limited to a description of the incident, including the date, time, and place, to the extent that this information is known to the petitioner. The Court may, for good cause shown, allow the petitioner to rely at trial on an incident not previously identified in the petitioner's

notification.

(d) Response to notification of incidents. Upon receipt of petitioner’s notification of incidents, the respondent shall provide written notification to the petitioner of whether the incidents or any part of them will be disputed at trial. In the event of any dispute, respondent’s counsel shall specify what point is disputed. The Court may, for good cause shown, allow the respondent to dispute a matter at trial not previously noted in respondent’s notification.

(e) Timing and supplementation of discovery. Time limitations for completion of discovery will be set by order of the Court. A party who has made a disclosure pursuant to this rule is under a duty to supplement or correct the disclosure to include information thereafter acquired consistent with Rule 26 of the Superior Court Rules of Civil Procedure.

#### **COMMENT**

The reference to “statute” in subsection (a) includes D.C. Code § 21-562 (2004 Supp.) and D.C. Code § 7-1201 et seq. (2003 Supp.), which regulate disclosure of mental health records.

In general, formal discovery as to all medical and mental health records is not needed. The rule is written with the expectation that parties will continue the informal discovery practice that is already in place. In this practice, petitioners make available to the respondent for inspection and copying the records relating to respondent.

#### **Rule 16. ~~Outpatient commitment and revocation proceedings.~~ [DELETED]**

~~(a) Outpatient commitment; summary return provision. The Court may order a respondent to receive outpatient treatment at a facility such as a hospital or a community mental health center or from a private mental health professional in accordance with SCR MH Rule 6. An order of outpatient commitment may include a provision authorizing the respondent's summary return to inpatient status for a temporary period, when such a provision is warranted by the respondent's condition and medical~~

history.

~~(b) *Return procedures.* (1) Notice of rehospitalization. Within 24 hours of a committed outpatient's return to inpatient status, the hospital shall provide the Court with an affidavit reciting the circumstances of the respondent's return to inpatient status, including whether it was an involuntary return or one effected at the respondent's request or with the respondent's concurrence, the recent actions of the respondent that brought about the return, and, if known, whether the hospital has determined to seek a permanent revocation of the respondent's outpatient status. If the 24 hour period expires on a Saturday, Sunday, or legal holiday, the period shall be extended until the close of business of the next day which is not a Saturday, Sunday, or legal holiday.~~

~~To support hospitalization, the affidavit must be sufficiently detailed for the Court to make a prompt, ex parte determination either that the respondent has been returned involuntarily because the respondent has failed to abide by the treatment regimen or has suffered a deterioration in his or her condition and consequently requires hospitalization, or that the respondent has requested or consented to hospitalization and that hospitalization is appropriate under the circumstances.~~

~~(2) Notice to rehospitalized respondent. Within 24 hours of a committed outpatient's return to inpatient status, the hospital shall give the respondent a copy of the affidavit as well as written notice of the respondent's rights to release or to an adversarial judicial hearing, and the hospital shall notify the attorney of record of the respondent's return and shall make available the same documentation to that attorney.~~

~~(3) Appointment of and notice to counsel. Within 24 hours of its receipt of the notice of rehospitalization, the Court shall appoint or reappoint an attorney to represent the respondent for the duration of the rehospitalization and shall forthwith provide counsel with a copy of the notice of rehospitalization and accompanying affidavit. If the 24 hour period expires on a Saturday, Sunday, or~~



~~legal holiday, the period shall be extended until the close of business of the next day which is not a Saturday, Sunday, or legal holiday.~~

~~(4) Court review. The respondent may not be detained in the hospital for a period greater than 5 days unless, after reviewing the notice of rehospitalization and accompanying affidavit, the Court finds probable cause to support the respondent's return to inpatient status. If the Court makes a finding that there is no probable cause to support the respondent's return to inpatient status, the respondent shall be released immediately.~~

~~(e) Continued hospitalization. (1) Involuntary hospitalization. If the affidavit indicates that the respondent was involuntarily rehospitalized, the hospital must either release the respondent after the fifth day of inpatient care and observation, or thereafter promptly move, but no later than ten (10) calendar days from the date of rehospitalization, for a judicial hearing seeking permanent revocation of the respondent's outpatient commitment. The designated period of time shall begin to run from the date of rehospitalization and the last day shall be included unless it is a Saturday, Sunday or legal holiday in which event the period runs until close of business of the next day which is not a Saturday, Sunday or legal holiday.~~

~~(2) Voluntary hospitalization. (A) If the affidavit indicates that the respondent was rehospitalized at the respondent's own request or concurrence, the respondent's counsel shall file with the Court a memorandum, within 5 days of counsel's appointment, stating:~~

~~(i) Whether the respondent remains hospitalized;~~

~~(ii) If so, whether counsel has been advised that the hospital plans promptly to seek permanent revocation of the outpatient commitment; and~~

~~(iii) If counsel has not been so advised, whether the respondent requests a judicial hearing or is waiving a judicial hearing for the time being.~~

~~A copy of counsel's memorandum shall be provided to the respondent and to the hospital.~~

~~(B) If the respondent requests a judicial hearing, such a hearing shall be scheduled promptly. At least 5 days prior to the hearing date, the hospital must either certify to the Court that the respondent has been released or file for permanent revocation of the respondent's outpatient commitment, failing which, the Court shall order the respondent's release forthwith.~~

~~(C) If the hospital has not sought permanent revocation and the respondent has not requested a judicial hearing, the respondent's counsel shall file with the Court, with a copy to respondent and to the hospital, a memorandum meeting the requirements of subparagraph (e)(2)(A) of this rule every 30 days during the respondent's continued hospitalization. After 60 days, the Court shall schedule a status hearing.~~

~~(3) Revocation hearing. The Court shall conduct a prompt adversarial hearing on the petition for revocation. Permanent revocation of outpatient commitment is appropriate only where inpatient hospitalization is found by the Court to be the least restrictive treatment alternative meeting the respondent's needs.~~

#### **COMMENT**

~~The procedures for summary rehospitalization and revocation of outpatient commitment contained in this rule are in response to the District of Columbia Court of Appeals' decisions in *In re Richardson*, 481 A.2d 473 (D.C. 1984) and *In re James*, 507 A.2d 155 (D.C. 1986). See also *In re Mills*, 467 A.2d 971 (D.C. 1983). The current case law clearly requires protections for committed outpatients involuntarily returned to the hospital; however, until the issue is further clarified by the Court of Appeals, the rule also makes provisions for outpatients whose return to the hospital is voluntary. It is the intent of this Rule that hearings will be scheduled by the Court within one week of the petition of revocation.~~

Rule 16 has been deleted because the procedures for summary rehospitalization and revocation of outpatient commitment are now set forth in D.C. Code § 21-548 (2004 Supp.).