

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 08-03

(New SCR Probate 6.1, amendment to SCR Probate 308 and amendments to SCR LT Rules 11-I and 12-I)

WHEREAS, Pursuant to D.C. Code § 11-946 the Board of Judges of the Superior Court approved new SCR Probate 6.1 and an amendment to SCR Probate 308 and amendments to SCR LT 11-I and 12-I; and,

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

NOW, THEREFORE, it is hereby,

ORDERED that SCR Probate 6.1 be and is hereby enacted and SCR Probate 308 and SCR LT Rules 11-I and 12-I are hereby amended as set forth below; and it is further

ORDERED that the above enumerated rules and amendments shall take effect on April 18, 2008 and govern all proceedings thereafter commenced and insofar as is just and practicable all pending proceeding.

NEW PROBATE RULE 6.1

DISCLAIMERS REQUIRED TO BE FILED WITH THE COURT

- (a) Any disclaimer required to be filed with the Court pursuant to D.C. Code § 19-1512 must be filed with the Register of Wills and shall:
- (1) declare the disclaimer;
 - (2) describe the specific interest or the power disclaimed;
 - (3) be signed by the person making the disclaimer; and
 - (4) include the telephone number and street address of the disclaimant.
- (b) The following information, though not required, may be included within or along with the disclaimer:

- (1) for an interest created under the law of intestate succession or an interest created by will, the name of the decedent whose death created the interest, the date and place of the decedent's death, and the court having jurisdiction to appoint the personal representative of the decedent's estate;
- (2) for an interest in a testamentary trust, the name of the decedent whose will created the trust, the date and place of the decedent's death, the date the trust was created, and the court having jurisdiction to enforce the trust;
- (3) for an interest in an inter vivos trust, the name of the trust, the name of the settlor of the trust, the date the trust was created, and the court having jurisdiction to enforce the trust;
- (4) for an object of a power of appointment or by a taker in default of exercise of a power of appointment, the name of the person who created the power of appointment, the current holder of the power, and the name and date of the governing instrument under which the power was created;
- (5) for an appointee of a nonfiduciary power of appointment, the name of the person who created the power of appointment, the name and date of the governing instrument which created the power, the current holder of the power or the personal representative of the holder's estate, and the court having jurisdiction to appoint the fiduciary;
- (6) for a fiduciary of a power over a trust or estate, the name of the governing instrument which created the power and if the governing instrument is:
 - (A) a will, the name of the decedent whose will created the power, the date and place of the decedent's death, and the court having jurisdiction to appoint the personal representative of the decedent's estate;
 - (B) a testamentary trust, the name of the decedent whose will created the trust, the date and place of the decedent's death, the date the trust was created and the court having jurisdiction to enforce the trust;
 - (C) an inter vivos trust, the name of the settlor of the trust, the date the trust was created, and the court having jurisdiction to enforce the trust.

COMMENT

The requirements of this rule are not intended to address the jurisdictional basis for filing a disclaimer in the District of Columbia Superior Court. Any person filing a disclaimer should assure himself or herself of the jurisdictional basis for filing the disclaimer in the District of Columbia Superior Court. Paragraph (b) is intended to encourage those filing disclaimers to include information that will assist the Register of Wills in processing disclaimers.

AMENDMENTS TO SCR-PROBATE 308

COMPENSATION OF GUARDIANS, CONSERVATORS, ATTORNEYS,
GUARDIANS AD LITEM, EXAMINERS AND VISITORS

(a) *Compensation by order of the Court.* Any visitor, attorney, examiner, conservator, special conservator, guardian *ad litem*, or guardian is entitled to reasonable compensation for services rendered in an intervention proceeding. Compensation paid from the assets of the subject of the proceeding, protected individual or ward, or from the Guardianship Fund (D.C. Code §21-2060(b)), must be approved by Order of the Court before being paid.

(b) *Petition for Compensation.*

(1) A guardian, conservator, guardian *ad litem* or attorney shall file a verified petition for compensation which shall set forth the following in reasonable detail:

- (A) the character and summary of the services rendered;
- (B) the amount of time spent;
- (C) the basis of any hourly rate(s) of compensation;
- (D) the size of the estate administered;
- (E) the benefits that accrued to the estate of the subject of the proceeding as a result of the services;
- (F) the nature, extent and costs of services performed by others that are fiduciary obligations, such as accounting and tax preparation services;
- (G) the amount and source of compensation previously allowed to all persons;
- (H) a certificate of service, attesting that the petition and the Notice required by subsection (f) of this Rule were served at least twenty (20) calendar days prior to the filing of the petition; and
- (I) Whether the petitioner has been or has an agreement to be compensated from a source other than the estate or the Guardianship Fund.

A conservator may include in a petition for compensation filed after the death of the ward an estimate of the number of hours that will be required to complete the administration of the ward's estate.

(2) *Requests for Payment from the Guardianship Fund.* In addition to the requirements set forth in subsection (b)(1) above, when payment is sought from the Guardianship Fund, a guardian, conservator, guardian *ad litem* or attorney shall set forth the following information in the petition:

- (A) The nature and extent of the subject's assets, including contingent assets and noting which assets are liquid;
- (B) The nature and extent of the subject's income;
- (C) The character and extent of the subject's debts;

(D) Whether the subject owns a residence, and if so, whether the subject or the subject's dependent(s) reside therein, but if not, whether the subject or the subject's dependent(s) expect to return to that residence;

(E) Whether the subject has a burial fund or has prepaid funeral or burial expenses, and if so, the value of such fund or amount of prepayment; and

(F) A description of the subject's expenditures. Where any information called for herein is not supplied, the petitioner shall state what efforts have been made to obtain the same.

(3) An examiner or visitor shall file a verified petition for compensation which shall set for the following in reasonable detail:

(A) the character and summary of the services rendered;

(B) the amount of time spent;

(C) the basis of any hourly rate(s) of compensation.

(4) A Petition which does not conform to the requirements of this subparagraph 2 or 3 shall be deemed incomplete (as defined in the D.C. Court Standards for Submission of Petitions for Compensation Under the Guardianship Fund) and, within seven calendar days from the submission of the petition, shall be returned to the petitioner without being filed.

(c) Petitions: when filed.

~~(1) Petitions for Compensation shall be filed either with the annual accounting or at any time prior to approval of the annual accounting. An interim petition for compensation for establishing a guardianship, conservatorship or entry of a protective order shall be filed promptly upon conclusion of the hearing but not later than 90 days after the conclusion of the hearing.~~

(1) Guardian's Petition for Compensation

A guardian's petition for compensation shall be filed no later than 30 days from the anniversary date of the guardian's appointment, except that a guardian's final petition for compensation shall be filed no later than 60 days after termination of the guardianship.

(2) Conservator's Petition for Compensation

A conservator's petition for compensation shall be filed either with the annual accounting or at any time prior to the approval of the annual accounting, except that a conservator's final petition for compensation shall be filed no later than 30 days after the filing of the final account.

(3) Interim Petition for Compensation

An interim petition for compensation for establishing a guardianship, conservatorship or entry of a protective order shall be filed promptly upon conclusion of the hearing establishing the guardianship, conservatorship, or protective arrangement but not later than 90 days after conclusion of the hearing.

(2) (4) Service and Filing of the Petition

A petition for compensation may not be filed unless it has been served at least twenty (20) calendar days prior to the filing of the petition. The certificate of service shall include a provision showing compliance with this requirement.

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PROPOSED AMENDMENTS TO LANDLORD AND TENANT RULE 11-I

**ENTRY OF CONSENT JUDGMENT BY THE INTERVIEW AND JUDGMENT
CLERK OFFICER**

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

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

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

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

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

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

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

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

AMENDMENTS TO LANDLORD AND TENANT RULE 12-I

PROTECTIVE ORDER

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

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

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

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

(c) *Protective orders by consent.* Parties, whether pro se or represented by counsel, may enter into, vacate, or otherwise modify protective orders by consent,

with the approval of either the Court or the Interview and Judgment ~~Clerk~~ Officer in accordance with SCR-LT 11-I.

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

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

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

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

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

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

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

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

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

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

By the Court:

Date: March 18, 2008

_____/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