

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ORDER

By action of the Board of Judges of this Court and pursuant to D.C. Code § 11-946, it is this 18th day of October, 2005:

ORDERED that the Superior Court Rules for Mental Retardation Proceedings are promulgated as set forth below; and it is

FURTHER ORDERED that that upon the above entitled rules taking effect, the current Rules for Mental Retardation Proceedings shall be rescinded; and it is

FURTHER ORDERED that the Rules for Mental Retardation take effect January 2, 2006 and govern all proceedings thereafter commenced and insofar as is just and practicable all proceedings then pending.

SUPERIOR COURT RULES ~~OF~~ FOR MENTAL RETARDATION PROCEEDINGS ~~PROCEDURE~~

Rule

1. Scope, purpose, and construction.
 2. ~~Hearing Commissioner Magistrate Judges and filing of legal papers, location, address, and business hours of the Mental Retardation Branch.~~ 8C. Limited discovery in a commitment trial pursuant to D.C. Code § 7-1304.06a.
 3. Admission to a mental retardation facility.
 - 4A. Commitment of individuals who are not competent to refuse commitment.
 - 4B. Commitment of respondents found incompetent to participate in criminal proceedings.
 5. Transfer of committed resident.
 6. Discharge from residential placement.
 7. ~~Periodic review of orders for commitment and admission.~~
 - 8A. Incorporation of and Reference to Civil Rules.
 - 8B. Time.
 9. Service of legal papers; proof of service.
 10. Motions practice.
 11. Appointment and withdrawal of counsel. •
 12. Appointment, training and removal of mental retardation advocates.
 13. Continuances.
 14. ~~Contempt before a hearing commissioner Magistrate Judge.~~ [DELETED].
 15. Findings of fact and conclusions of law.
 16. Entry of Judgment.
 17. Closure of case due to death of resident.
- Index follows Rules.

~~SUPERIOR COURT OF THE DISTRICT OF COLUMBIA~~

~~ORDER~~

~~By action of the Board of Judges of this Court and pursuant to D.C. Code 1981, § 11-946, it is this 28th day of November, 1984,~~

~~ORDERED, that Superior Court Civil Rules 4, 301 and 302 are amended as set forth below, and it is FURTHER ORDERED, that Superior Court Criminal Rule 55 is amended as set forth below, and it is FURTHER ORDERED, that Superior Court General Family Rules G and I are amended as set forth below, and it is~~

~~FURTHER ORDERED, that the comment to Superior Court Landlord and Tenant Rule 4 is amended as set forth below, and it is~~

~~FURTHER ORDERED, that Superior Court Mental Retardation Rules 1 through 16, as set~~

forth below, are substituted for Mental Retardation Rule 1 through 12, and it is

~~FURTHER ORDERED, that these amendments and additions shall take effect on February 1, 1985 and shall govern all proceedings thereafter commenced:~~

~~*****~~

~~BY THE COURT~~

~~November 27, 1984 — H. Carl Moultrie I Chief Judge~~

~~†~~

Rule 1. Scope, purpose, and construction.

These Rules govern proceedings before the Family ~~Division Court~~ of the Superior Court of the District of Columbia pursuant to D.C. Code ~~1981, §§ 6-1901-1985 [§§ 7-1301.02 - 7-1306.05, (2003 Supp.) Ed.]~~ and any other applicable provisions of the District of Columbia Code pertaining to mental retardation proceedings before the Superior Court. The rules shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. These rules may be referred to as the Superior Court Rules of Mental Retardation ~~Proceedings Procedure~~, and may be cited as Superior Court Rules-Mental Retardation, or SCR- M.R. __.

Rule 2. ~~Hearing Commissioners; location, address, and business hours of the Mental Retardation Branch. Magistrate judges and filing of legal papers.~~

~~(a) *Hearing Commissioners.* The Office of the Hearing Commissioners of the Family Division is located on the John Marshall Level of the District of Columbia Superior Court, 500 Indiana Avenue, N.W., Washington, D.C. 20001.~~

~~(a) (1) *Duties and powers. Magistrate Judges.* The Hearing Commissioners Magistrate judges may hear in the first instance all matters which come before the Court involving mental retardation proceedings. The Hearing Commissioners Magistrate judges may designate attorneys who are eligible to represent mentally retarded or allegedly mentally retarded persons who come~~

before the Mental Health and Mental Retardation Branch, ~~issue and approve~~
~~submitted~~ Criminal Justice Act vouchers, ~~to these attorneys, and review~~
~~submitted vouchers before submission to the Mental Retardation Judge for~~
~~approval.~~ With the exception of jury trials held pursuant to D.C. Code § 7-
1301.02 et seq. (2003 Supp.), magistrate judges ~~The Hearing Commissioners~~
may preside over all hearings held pursuant to D.C. Code ~~1981, § 6-1901 et~~
~~seq.~~ § 7-1301.02 et seq. (20012003 Supp.). Ed

~~.] and may make findings of fact and recommendations to the Court~~
~~concerning conclusions of law and orders.~~

(b) (2) Filings of legal papers. All pleadings, motions, and other legal papers
involving mental retardation proceedings shall be filed with the ~~Deputy Clerk of~~
~~the Retardation Branch~~ Family Court Central Intake Center.

~~(b) Office of the Deputy Clerk. The Office of the Deputy Clerk of the~~
~~Mental Retardation Branch is located on the John Marshall Level of the District~~
~~of Columbia Superior Court, 500 Indiana Avenue, N.W., Washington, D.C.~~
~~20001. Except on legal holidays, the office shall be open for business, including~~
~~filing of documents, each Monday through Friday, from 9:00 a.m. to 4:00 p.m.~~

(c) Provision of papers by the Court. The Court may send or provide a
paper as stated in these rules by: delivering the paper; mailing it; or transmitting
it by facsimile or other electronic means.

Rule 3. Admission to a mental retardation facility.

(a) *Filing of director's certification of admission.* If an individual has been

admitted to a mental retardation facility pursuant to D.C. Code ~~1981, § 6-1922~~ [§ 7-1303.02 (2001-2003 Supp.) Ed.], within ~~3-10~~ days after such admission, the director of the facility shall file with the Court, on a Court-approved form, notice of the name, date of birth, age, and address of the individual and the date of the individual's admission. In addition, the director shall certify on the form that a comprehensive evaluation report shall be completed and an individual habilitation plan developed within ~~10-30~~ days after the admission. The date of filing shall be indicated on the certification. Promptly thereafter, the Court shall send a completed copy of the notification and certification form to the individual seeking admission and, if admission to a government facility is sought, the Office of the Attorney General Corporation Counsel, ~~if admission to a government facility is sought, and the individual seeking admission.~~

(b) *Appointment of officer.* Upon receipt of the notification and certification form, the Court shall appoint an advocate and send the advocate and the Office of the Attorney General Corporation Counsel, if admission to a government facility is sought, a copy of the notification and certification. The Court shall thereafter appoint an officer, ~~who may be a hearing commissioner,~~ to determine whether, pursuant to D.C. Code ~~1981, § 6-1922(e)~~ [§ 7-1303.02(c) (2001-2003 Supp.) Ed.], the individual is competent to admit himself or herself to the facility and whether the admission is voluntary. This determination may be made after an interview with the individual seeking admission, which, upon request of the officer, shall be arranged by the director. If the officer determines

that there is no substantial question regarding either the voluntariness of the admission or the competence of the individual to seek admission, the officer shall so inform the Court in writing. The Court shall thereafter send notice of the officer's determination to the admittee, the Department of Human Services Mental Retardation and Developmental Disabilities Administration, the director of the facility, and when appropriate, the Office of the Attorney General Corporation Counsel.

(c) *Scheduling of hearing by the Court.* If the officer determines that there is a substantial question as to the voluntariness of the admission or the competence of the individual to seek admission, the officer shall promptly inform the Court in writing. The officer shall provide a factual basis for this determination. The Court shall thereafter appoint counsel for the individual (unless counsel has been retained previously), and schedule a hearing to take place promptly after receipt of the officer's determination, and shall send notice thereof to the director of the facility, the individual seeking admission, the individual's attorney and advocate, and, if admission to a government facility is sought, to the Department of Human Services Mental Retardation and Developmental Disabilities Administration and to the Office of the Attorney General Corporation Counsel.

(d) *Hearing before the Court.* At the hearing, the Court shall determine whether the individual seeking admission is competent to admit himself or herself and, if so, whether the admission is voluntary. At the conclusion of the hearing, the Court shall enter one of the following orders, to be supported by findings of

fact:

(1) That the individual be discharged from the facility if the Court has determined that the individual is not competent to seek admission and discharge is in the individual's best interest; or

(2) That a guardian ad litem be appointed, ~~who may be the individual's attorney,~~ to represent the individual in a subsequent hearing to determine the appropriate placement, if any, of the individual, if the Court has determined that the individual is not competent to admit himself or herself; or

(3) That the individual be discharged from the facility if the Court has determined that the admission is not voluntary; or

(4) That the individual's admission be approved, if the Court has determined that the individual is competent and that the admission is voluntary.

(e) *Transmittal of order.* A copy of the Court's order shall be sent to the director of the facility, the individual seeking admission, the individual's attorney and advocate, and, if admission to a government facility is sought, to the Department of Human Services Mental Retardation and Developmental Disabilities Administration and to the Office of the Attorney General Corporation Counsel.

COMMENT

The provision of subsection (b) of this rule that the officer appointed by the Court "may be a hearing commissioner" has been deleted. It is no longer necessary in light of the statutory authority accorded to magistrate judges,

previously hearing commissioners, pursuant to D.C. Code § 11-1732 and § 11-1732A (2003 Supp.). In practice, for many years, hearing commissioners, now magistrate judges, have typically performed the functions of both the “officer” and the “Court.” The rule preserves the option for the Court to appoint another officer, such as a guardian ad litem to carry out the duties set forth in the rule.

Whether an individual’s attorney can also serve as the guardian ad litem pursuant to paragraph (d)(2) should be determined on a case by case basis.

Rule 4A. Commitment of individuals who are not competent to refuse commitment.

(a) *Petition for commitment.* In order to place an individual in a facility without the individual's consent, that individual's parent or guardian (the "petitioner") may initiate Court proceedings for the commitment of the individual pursuant to D.C. Code ~~1981, §§ 6-1924 or 6-1926~~ §§ 7-1303.04 or 7-1303.06 (2001-2003 Supp.) ~~Ed.~~. The petitioner shall file a petition with the Court, with a copy served upon the allegedly mentally retarded individual (the "respondent"), containing the following information:

- (1) The name, age, date of birth, and home address of the respondent;
- (2) The name and address of the petitioner and the petitioner's relationship to the respondent;
- (3) The name, address and telephone number of the petitioner's attorney, if

any, and the name, address and telephone number of the respondent's attorney, if any;

(4) A statement that the respondent is or is believed to be at least moderately mentally retarded and in need of habilitation and commitment;

(5) A statement of facts demonstrating the respondent's need for commitment rather than voluntary admission or non-residential habilitation;

(6) A statement of whether or not the petitioner believes the respondent is competent to refuse commitment;

(7) The current placement or legal status, if any, of the respondent, including any prior or current commitments or admissions involving the respondent; ~~and~~

(8) The financial statement of respondent and any responsible parties, in accordance with D.C. Code ~~1981~~, §§ 21-1110 and 1111 (2003 Supp.) and

(9) Any additional identifying information required by administrative orders regarding the Court's case management system.

The date and method of service shall be certified on the petition in the manner prescribed by SCR- M.R. Rule 9(b).

(b) *Appointment of guardian ad litem to file petition.* A person who is not a parent or guardian of an individual whose commitment is sought may petition the Court to be appointed as guardian ad litem for the sole purpose of filing a petition underpursuant to this rule. If this appointment is approved by the Court, the individual-guardian ad litem may proceed as if he or she were a parent or guardian, and the provisions of this rule shall apply.

(c) *Commencement of commitment proceedings.* Upon the filing of the petition, the Court shall:

(1) Prepare a case jacket for the action, marked with a mental retardation case number;

(2) Schedule a date for the commitment hearing, pursuant to D.C. Code ~~1981, § 6-1945~~ [§ 7-1304.05 (2001-2003 Supp.) Ed.];

(3) Send a copy of the petition (and any material accompanying the petition), notice of the hearing date, and the names, addresses, and telephone numbers of the attorneys for the parties and of the ~~mental retardation~~ advocate to the petitioner, the director of the facility to which commitment is sought, the attorneys, the advocate, and the Office of the ~~Attorney General Corporation Counsel~~. The Court shall send, when they are filed, copies of the comprehensive evaluation report and the individual habilitation plan to the respondent's counsel, his or her advocate, and the Office of the ~~Attorney General Corporation Counsel~~; and

(4) Inform the respondent and his or her counsel of the right to have an independent comprehensive evaluation and individual habilitation plan developed, pursuant to D.C. Code ~~1981, § 6-1944~~ [§ 7-1304.04 (2001-2003 Supp.) Ed.];

(d) *Time limits for preparation and filing of comprehensive evaluation report and individual habilitation plan.* (1) Comprehensive evaluation report. Unless the petition is accompanied by a comprehensive evaluation report that

was prepared no earlier than 6 months before the date of the hearing, the Court shall order the director of the facility to prepare and file this report no later than 10 days before the hearing. If the petitioner has not requested that the respondent be placed in a particular facility, the Court, if it is satisfied that the petitioner, ~~or~~ the respondent, or their ~~respective~~ families are unable to afford the costs, may order the District of Columbia to prepare and file the report within the same time period. If the petition is accompanied by a timely comprehensive evaluation report, the Court shall send to the parties a copy of the report within ~~3~~ three days after the report has been filed.

(2) Individual habilitation plan. Unless the petition is accompanied by an individual habilitation plan that was prepared no earlier than ~~1 month~~ 30 days before the date the petition was filed, the Court shall order the director of the facility to prepare and file the plan no later than 10 days before the hearing. If the petitioner has not requested that the respondent be placed in a particular facility, the Court, if it is satisfied that the petitioner, ~~or~~ the respondent, or their ~~respective~~ families are unable to afford the costs, may order the District of Columbia to prepare and file the plan within the same time period. If the petition is accompanied by a timely plan, the Court shall send to the parties a copy of the plan within ~~3~~ three days after the plan has been filed.

(e) *Commitment hearing.* (1) Hearings for the commitment of a respondent shall be conducted in as informal a manner as may be consistent with orderly procedure. All testimony shall be under oath.

(2) The respondent has the right to be present during the hearing and to testify, but shall not be compelled to testify, and shall be so advised by the Court. The presence of the respondent may be waived only if the Court determines that the respondent has knowingly and voluntarily waived the right to be present, or if the Court determines that the respondent is unable to be present by virtue of a physically handicapping condition.

(3) The parties shall have the right to call witnesses and present evidence, and to cross-examine opposing witnesses. ~~The petitioner shall go forward first.~~

(4) The hearings shall be closed to the public unless the respondent requests that the hearing be open to the public.

(5) Determination of respondent's competence to refuse commitment. If the respondent is 14 years of age or older, the Court shall determine, pursuant to D.C. Code ~~1981, § 6-1924~~ [§ 7-1303.04 (2001-2003 Supp.) Ed.], whether the individual is competent to refuse commitment. The petitioner or the petitioner's counsel shall have the burden of presenting evidence which shows beyond a reasonable doubt that the respondent is not competent to refuse commitment. A respondent 14 years of age or older is presumed competent to refuse commitment, pursuant to D.C. Code ~~1981, § 6-1921~~ [§ 7-1303.01 (2001-2003 Supp.) Ed.]. If the Court determines that the respondent is competent to refuse commitment and the respondent so refuses, the Court shall dismiss the petition and order that the individual not be committed to a facility. However, the Court may also order, pursuant to D.C. Code ~~1981, § 6-1949~~ [§

7-1304.09 (2001-2003 Supp.)-Ed.], that the respondent undergo such non-residential habilitation and care as may be appropriate and necessary, or the Court may order that no habilitation and care be provided. If the Court determines that the respondent is not competent to refuse commitment, or if the respondent is under 14 years of age, the Court shall determine whether to order the commitment of the respondent, pursuant to paragraph (f) of this rule.

(f) *Court order of commitment.* If the Court determines beyond a reasonable doubt that the standards for commitment set out in D.C. Code 1981, §§ 6-1924 or 6-1926 [§§ 7-1303.04 or 7-1303.06 (2001-2003 Supp.)-Ed.] have been met, the Court shall order that the respondent be committed. The Court's order shall contain written findings of fact. If the Court determines that the standards for commitment set out in D.C. Code §§ 6-1924 or 6-1926 7-1303.04 or 7-1303.06 (2003 Supp.) have not been met, the Court shall dismiss the petition and may order such other relief as may be provided by law and these rules.

~~(g) *Appeal.* Any order committing or denying commitment may be appealed in a like manner as other civil actions, in accordance with D.C.App. Rule 4.~~

~~(h) (g) *Periodic review of commitment order.* A decision of the Court which orders the commitment~~ Any court order directing the commitment of a mentally retarded individual shall be reviewed in a Court hearing annually, at least once every six months for two years and once a year thereafter. These Such hearings shall be conducted in the manner prescribed by SCR-M_{ental}

R. etardation_ Rule-7 and D.C. Code 1981, § 6-1951-§ 7-1304.11 (2001-2003 Supp.)-Ed.].

(h) *Substitution of petitioner caused by his or her death or incapacity.*

If a petitioner shall die or become incapacitated during the pendency of the proceedings, the Court may ~~automatically~~ substitute as petitioner the surviving parent or the Court may appoint a guardian ad litem for the sole purpose of proceeding as the representing the interests of the petitioner in the commitment proceedings.

Rule 4B. Commitment of respondents found incompetent to participate in criminal proceedings.

(a) Petition for commitment. A petition for commitment to a facility may be filed by the District of Columbia pursuant to D.C. Code §7-1303.04(b-1) (2003 Supp.) for an individual charged with a crime of violence or sex offense, as these terms are defined in D.C. Code § 7-1301.03 (2003 Supp.), and found incompetent based on mental retardation and not likely to regain competence to stand trial or participate in sentencing or transfer proceedings. The petition shall be filed within 30 days of said finding. The 30 day time period may be extended by the Court upon a showing of extraordinary cause.

The District of Columbia shall file the petition and serve a copy upon the respondent, respondent's counsel in his or her criminal case, respondent's counsel in his or her mental retardation case, respondent's advocate, if appointed, respondent's guardian ad litem, if appointed, respondent's parent or

guardian, the Office of the United States Attorney, and the assigned judicial officer in the criminal case. The petition shall contain the following information:

(1) The name, date of birth, and home address of the respondent;

(2) The criminal charges on which the respondent has been found to be mentally incompetent;

(3) A statement that the respondent is or is believed to be mentally retarded and in need of commitment, including facts demonstrating why respondent is likely to cause injury to others by reason of mental retardation;

(4) The date respondent was found incompetent and not likely to regain competence in the criminal case; and

(5) The current placement and legal status of the respondent, including prior or current commitments or admissions involving the respondent.

(b) Commencement of commitment proceedings. Upon the filing of the petition, the Court shall:

(1) Prepare a case jacket for the action, marked with a mental retardation case number;

(2) Assign counsel to represent respondent, appoint an advocate, and, upon consulting with counsel for the parties, schedule a prompt initial status hearing pursuant to D.C. Code § 7-1304.05 (2003 Supp.). The Court shall also inform the respondent and his or her counsel in the mental retardation case of the right to request a trial by jury or by the Court and that such request must be

made no later than the initial status hearing;

(3) Send a copy of the petition, any material accompanying the petition, an order containing notice of the status hearing date, and notice of the assignment of counsel to: the respondent; respondent's counsel in his or her criminal case; respondent's counsel in his or her mental retardation case; respondent's advocate, if appointed; respondent's parent or guardian; respondent's guardian ad litem, if appointed; the director of the facility in which the respondent resides; the Office of the Attorney General; the Office of the United States Attorney; and the assigned judicial officer in the criminal case. The Court shall also send, when they are filed, copies of the comprehensive evaluation report and the respondent's habilitation plan to the respondent's counsel in the mental retardation case, his or her advocate, the Office of the Attorney General; and

(4) Inform the respondent and his or her counsel in the mental retardation case of the option to request an independent comprehensive evaluation or individual habilitation plan developed pursuant to D.C. Code § 7-1304.04 (2003 Supp.).

(c) Time limits for preparation and filing of comprehensive evaluation report and individual habilitation plan.

(1) The comprehensive evaluation report and the individual habilitation plan shall be provided to respondent and his or her counsel in the mental retardation case at least 10 days prior to the commitment hearing. If the

petition was accompanied by a comprehensive evaluation and individual habilitation plan, copies of the report and plan shall be provided to respondent and his or her counsel within 3 days of the filing of the petition.

(2) Unless the petition is accompanied by a comprehensive evaluation report based on an evaluation performed within 6 months prior to the hearing, and an individual habilitation plan that was prepared within 30 days of the filing of the petition, the Court shall order the Department of Human Services Mental Retardation and Developmental Disabilities Administration to prepare and file the plan no later than 10 days before the commitment hearing and to provide a copy of the plan to respondent and his or her counsel in the mental retardation case and to the Department of Human Services Office of the Attorney General Corporation Counsel no later than 10 days prior to the commitment hearing.

(d) Initial status hearing. At the initial status hearing, the Court shall set a date for a commitment hearing. If the respondent requests a judge or jury trial the Court shall set a commitment hearing date that conforms to the requirements of D.C. Code § 7-1303.12a (2003 Supp.). The Court may also set pre-trial hearings as necessary to resolve any pre-trial issues, including those arising under § 7-1303.12a. (2003 Supp.)

(e) Commitment hearing procedures when trial is requested. In any trial conducted pursuant to D.C. Code § 7-1304.06a(2003 Supp.):

(1) All testimony shall be under oath;

(2) The District of Columbia shall have the burden of proving by clear and convincing evidence that the respondent is mentally retarded and because of such retardation is likely to injure others if allowed to remain at liberty;

(3) The respondent has the right to be present during the trial and to testify, but shall not be compelled to testify, and shall be so advised by the Court;

(4) The parties shall have the right to call witnesses, present evidence and cross-examine opposing witnesses;

(5) Jury verdict. The jury, or the Court in a bench trial, shall deliver a separate verdict on:

(a) Whether the respondent is mentally retarded; and, if so,

(b) Whether, because of such mental retardation, respondent is likely to cause injury to others if allowed to remain at liberty.

(6) Disposition Following Verdict.

A. If the Court or jury finds that the respondent is likely to cause injury to others as a result of mental retardation if allowed to remain at liberty, the Court shall order commitment to the Department of Human Services Mental Retardation and Developmental Disabilities Administration for placement in a facility that would be the least restrictive means of providing the habilitation indicated by the

respondent's habilitation plan and of preventing the respondent from causing injury to others as a result of the respondent's mental retardation.

B. In the event that the Court or jury finds that the respondent should not be committed, the Court shall dismiss the petition.

(f) *Commitment hearing procedures upon waiver of trial.*

(1) If the respondent waives trial rights, the Court shall make findings as to whether the respondent meets the statutory standard for commitment.

(2) Upon a finding by the Court that the respondent should be committed, the Court shall order commitment to the Department of Human Services Mental Retardation and Developmental Disabilities Administration for placement in a facility that will provide appropriate habilitation in accordance with D.C. Code § 7-1304.06c (2003 Supp.). In the event that the Court finds that the respondent should not be committed, the Court shall dismiss the petition.

(g) *Placement following commitment by judge or jury.*

Upon a finding that the respondent should be committed to the Department of Human Services Mental Retardation and Developmental Disabilities Administration, the Court shall order placement in a facility that would be the least restrictive means of providing the habilitation indicated by the respondent's individual habilitation plan and of preventing the individual from causing injury to others as a result of the individual's mental retardation.

Comment

Subsection 4B (f) (1) of this rule 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 circumstances presented by the particular case.

Rule 4C. Appeal.

Any commitment order entered pursuant to Rule 4A or Rule 4B may be appealed in a like manner as other civil actions.

Rule 5. Transfer of committed resident.

(a) *Filing of recommendation for transfer.* ~~A-When a~~ recommendation for transfer of a committed resident from one facility to another facility is made pursuant to D.C. Code ~~§ 6-1929(a) (1989 Repl.)~~ § 7-1303.09(a) (2001-2003 Supp.)-Ed.], four copies of the recommendation with the Court shall be filed with the Court. The Court shall send a copy of the recommendation -which copies shall be sent by the Court- to the resident, ~~and~~ the resident's attorney, advocate, and parent or guardian, and this copy and shall constitute the required notice. ~~The recommendation may be filed by the Director of the Department of Human Services or the Director's designee if the resident being transferred has been committed to Forest Haven.~~

(b) *Contents of recommendation.* The recommendation shall state the reasons why the ~~director has determined that the~~ transfer would be beneficial and consistent with the habilitation needs of the resident and shall provide a basis for

the Court to determine whether the transfer is to a more, equally or less restrictive facility. The recommendation shall also provide information sufficient to permit the Court to compare the facility in which the resident is residing with the facility to which transfer is sought; and shall include but not be limited to, descriptions of the location and size of the facilities, the particular habilitation services available to the resident in both facilities, their populations, and such other information particularly applicable to the resident which demonstrates that the facility to which transfer is sought is more or less or equally restrictive in relation to the resident's specific needs. The information shall also include the date of the proposed transfer. The recommendation shall be accompanied by copies of the resident's current comprehensive evaluation report and individual habilitation plan if they have not already been provided to the parties.

(c) *Transfer to more restrictive facility.* If the Court determines, upon consideration of the director's recommendation, that the transfer would be to a more restrictive facility, the Court shall promptly schedule a hearing on 5 five days' written notice, or as otherwise directed by the Court. In all cases this hearing shall take place prior to the date of the proposed movement of the committed person. Notice of the date of the hearing shall be sent by the Court to the resident, the Department of Human Services Mental Retardation and Developmental Disabilities Administration, the directors of both facilities, ~~of the facility,~~ the parent or guardian who initially petitioned for commitment, the resident's attorney and advocate, and the Office of the Attorney General

~~Corporation Counsel~~.

(d) *Transfer to an equally or less restrictive facility.* If the Court determines that the transfer would be to an equally or less restrictive facility, the Court shall send notice of that determination to the director~~s~~ of both facilities, the Department of Human Services Mental Retardation and Developmental Disabilities Administration, the resident, the resident's parent or guardian, attorney, and advocate, and the Office of the ~~Attorney General Corporation Counsel~~. The notice shall also provide instructions concerning the method for applying for a hearing to oppose the proposed transfer. A Court hearing shall be held only upon the written request of the resident, or his or her attorney, or his or her parent or guardian, which must be filed with the Court within 10 days ~~after receipt of the Court's notice~~ of being notified of the Court's determination. In cases involving residents committed pursuant to D.C. Code § 7-1304.06a (2003 Supp.), the District may petition the court in writing for a hearing within 10 days of being notified of the proposed transfer. If a request for a hearing has been made within this time, the Court shall promptly schedule a hearing on ~~5~~ five days' written notice, or as otherwise directed by the Court. In all cases this hearing shall take place prior to the date of the proposed transfer of the committed person. If a request for a hearing has not been made within this time the Court shall promptly send notice to the director~~s~~ of both facilities and all parties that no objection to the transfer has been filed.

(e) *Hearing.* If a hearing is required pursuant to paragraphs (c) or (d) of this

Rule, the transfer may not occur unless by order of the Court. At the hearing, the Court shall consider the following factors:

(1) Whether the proposed facility can provide the necessary habilitation; (2)

Whether the proposed facility is the least restrictive means of providing the necessary habilitation; ~~and~~

(3) Whether the relationship of the resident to the resident's family, guardian, or friends can be maintained by transfer to the proposed facility and whether visits beneficial to these relationships would be encouraged by the proposed transfer; and

(4) With respect to a resident committed pursuant to D.C. Code § 7-1304.06a (2001), whether the proposed placement can provide sufficient supervision or security to prevent the resident from causing injury to others as the result of his or her mental retardation.

After consideration of these factors, the Court shall issue an order approving or denying the recommendation for transfer and shall send notice of its decision to the resident, the resident's parent or guardian, attorney, and advocate, the directors of both facilities, the Department of Human Services Mental Retardation and Developmental Disabilities Administration, and the Office of the Attorney General ~~Corporation Counsel.~~

(f) *Emergency transfer.* In an emergency situation, when the life of a resident is in danger, ~~the~~ transfer of ~~a~~ the resident to a health care facility may be accomplished without prior Court approval, in accordance with D.C. Code ~~§ 6-~~

1929(c) (1989 Repl.) § 7-1303.09(c) (2001-2003 Supp.) Ed.] (Amended, effective May 20, 1991.)

COMMENT

Rule 5 was amended to ensure that no transfer of a resident from his or her facility is effectuated without the knowledge and input of all relevant parties including the resident, the resident's attorney, parents or guardian, and advocate. See In re Cook, 118 Daily Wash. L. Rept. 1057 (D.C. Super. Ct. May 15, 1990). "Transfer" does not include a respite care placement or a brief stay in another facility for appropriate medical, recreational, or social purposes.

Rule 6. Discharge from residential placement.

(a) *Discharge by director of facility.* If the director of a facility determines, based upon consideration of the judgment of the chief program director and the results of an annual comprehensive evaluation, that continued residential care of an individual is no longer advisable, the director shall file with the Court a notice of intention to discharge. The notice of intention to discharge a resident committed pursuant to D.C. Code § 7-1304.06a (2003 Supp.) shall be filed at least 30 days prior to the proposed discharge. The Court shall thereafter send a copy of this notice to the resident, the resident's parent or guardian, attorney and advocate, and the Office of the Attorney General Corporation Counsel. The notice shall inform the resident, the resident's parent or guardian, attorney, and advocate, and the Office of the Attorney General Corporation Counsel, in cases

in which the resident is committed pursuant to D.C. Code § 7-1304.06a (2003 Supp.), of their right to a hearing pursuant to D.C. Code ~~1981, § 6-1930~~ § 7-1303.10 (2001 2003 Supp.) Ed. and subparagraph (a) (1) of this rule.

(1) If the resident, his or her parent or guardian, attorney, or advocate object to the discharge, he or she may file with the Court a petition requesting a hearing. The petition must be filed no later than 10 days after receipt of the director's notice of intention to discharge. The Court shall thereafter schedule a hearing and provide notice thereof to all parties. If the Court finds that residential care is no longer advisable, the Court shall order the resident discharged.

(2) If a petition for a hearing is not filed pursuant to subparagraph (a)(1) of this rule, the Court shall promptly notify the director of the facility that no objection to the discharge has been filed.

(b) *Discharge upon request of resident.* A resident committed to a mental retardation facility may seek discharge from the facility any time after reaching his or her 14th birthday by filing a written request for discharge. The Court shall mail a copy of this request to the director of the facility, the Office of the Attorney General Corporation Counsel, the resident's parent or guardian, ~~the~~ attorney, and ~~the mental retardation~~ advocate. If the Court determines that a hearing is required on the issue of the resident's competence to seek discharge, the Court shall schedule one promptly. ~~At this hearing, the Court shall determine whether the resident is competent to request discharge.~~ If the Court concludes at this

hearing that the resident is competent to request discharge, it shall order the resident discharged.

(c) *Discharge upon request of parent or guardian.* A parent or guardian who petitioned for the commitment, may seeks discharge of a committed resident ~~shall by filing~~ with the Court a written request for such discharge. The Court shall schedule a hearing concerning the discharge. ~~The Court shall thereafter send a copy of the request to the resident and the resident's attorney and advocate, the director of the facility where the resident resides, and the office of the Corporation Counsel. If any of these parties objects to the discharge, that party may file, within 10 days after receipt of such request, a petition for a hearing, to be served upon the parties. The resident's attorney may object by filing and serving a praecipe. If no objection is made, the Court shall make a jacket entry to that effect and shall notify the parties and the director that no objection has been made and that the resident will be discharged.~~

Comment

Rule 6 (c) has been amended to ensure, in accordance with D.C. Code § 7-1303.08 (2003 Supp.), that the Court consults with the committed resident, his or her counsel, and his or her advocate to determine whether the resident consents to the release that his or her parent or guardian has requested.

Rule 7. Periodic review of orders for commitment and admission.

(a) *Initiation of review.* The initial review of the commitment of a ~~resident~~

respondent committed to a ~~mental-retardation~~ facility pursuant to D.C. Code 1981, §§ ~~6-1924 or 1926~~ [§§ 7-1303.04 or 7-1303.06 or 7-1304.06a (~~2001~~2003 Supp.)~~Ed.~~] shall be scheduled by the Court in the commitment order or in a subsequent order of the Court. All other reviews of the status of residents may be commenced by the filing with the Court of a motion for review, or by the Court on its own motion ordering the scheduling of a hearing. The Court shall send notice of the date of the hearing to the resident, the resident's parent or guardian, ~~resident's~~ attorney, advocate, ~~and parent or guardian~~, and the Office of the Attorney General Corporation Counsel.

(b) *Necessary documentation for consideration by Court.* The Court shall order the ~~director of the facility~~ Department of Human Services Mental Retardation and Developmental Disabilities Administration to file a comprehensive evaluation report and individual habilitation plan no later than 10 days before the date of the hearing, unless a motion for review is accompanied by a current report and plan. Both the report and the plan shall have been prepared no earlier than 1 ~~one~~ year before the date of the hearing, pursuant to D.C. Code 1981, § ~~6-1964(a)~~ [§ 7-1305.04(a) (~~2001~~2003 Supp.)~~Ed.~~]. The ~~director~~ Department of Human Services Mental Retardation and Developmental Disabilities Administration shall file this material no later than 10 days before the hearing. The Court shall thereafter send copies of the report and plan to the resident's attorney, advocate, ~~and~~ parent or guardian, and the Office of the Attorney General Corporation Counsel. The Court may order the preparation

and filing of other documentation deemed necessary and appropriate for rendering its decision in connection with the review hearing.

(c) *Preparation and discovery.* Upon notification of the hearing date, the ~~mental-retardation~~ advocate and the resident's attorney shall review the documents filed with the Court and shall consult with appropriate facility personnel to insure that all required documentation has been filed in a timely manner and that the attorney and the advocate are informed about the care and habilitation the resident is receiving.

(d) *Independent comprehensive evaluation report and individual habilitation plan.* The Court shall inform the resident and his or her attorney of the right to have prepared an independent comprehensive evaluation report and individual habilitation plan. If these are requested and the Court is satisfied that the resident is unable to afford the development of this material, the District of Columbia shall pay such costs, pursuant to D.C. Code ~~1981, § 6-1944~~ [§ 7-1304.04 (2001-2003 Supp.) Ed.].

(e) *Standards for review.*

(1) The Court shall order the discharge of a resident whose admission was ordered prior to March 3, 1979, or whose commitment is being reviewed, unless it finds that:

(A) The resident has benefited from the habilitation; ~~and~~

(B) Continued residential habilitation is necessary for the resident's habilitation program; ~~and~~

(C) The resident is a resident of the District of Columbia; and

(D) The resident meets the requirements for commitment in D.C. Code §§ 7-1303.04 (b) and 7-1303.06 (a) (2003 Supp.).

(2) A respondent committed pursuant to D.C. Code § 7-1304.06a (d) (2003 Supp.) shall not be discharged if the Court finds that the respondent, if discharged, would likely cause injury to others as the result of his or her mental retardation.

~~(2)(3) In determining whether the standards set forth in subparagraph (e)(1) of this rule have been fulfilled, the Court may, where appropriate, take into consideration the standards for admission or commitment, as the case may be, pursuant to D.C. Code 1981, § 6-1922 [§ 7-1303.02 (2001-2003 Supp.)-Ed.] and D.C. Code 1981, §§ 6-1924 and 1926 [§§ 7-1303.04 and 7-1303.06 (2001) Ed.], respectively.~~

Rule 8A. Incorporation of and Reference to Civil Rules.

The following Superior Court Rules of Civil Procedure are incorporated: Rules 59(e) and 60. Except where inconsistent with these Mental Retardation Rules or D.C. Code 1981, § 6-1901 et seq. [§ 7-1301.02 et seq. (2001-2003 Supp.)-Ed.], the remaining Superior Court Rules of Civil Procedure may be used as a guide in proceedings before the Mental Health and Mental Retardation Branch of the Family Court of the Superior Court.

Rule 8B. Time.

Except where inconsistent with these Mental Retardation Rules or D.C. Code § 1301.02 et seq., SCR-Civil Rule 6 is incorporated by reference.

Rule 8C. Limited discovery in commitment proceedings pursuant to D.C. Code § 7-1304.06a (2003 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. To this end the parties shall engage in informal exchange of information to obtain information in addition to that which is required to be disclosed pursuant to statute 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 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 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 others as a result of mental retardation if allowed to be at liberty. 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) Disclosure of information in underlying criminal case. The petitioner shall comply with Rule 16 of the Superior Court Rules of Criminal

Procedure when the petitioner intends to rely at trial on the conduct for which the respondent was charged in the criminal case in which the respondent was found incompetent to stand trial.

(f) *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 under 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 8C (a) includes D.C. Code § 7-1305.12 (2003 Supp.), which provides for access to mental retardation records, as well as D.C. Code § 21-562 (2003 Supp.), and D.C. Code § 7-1201.01 *et seq.* (2003 Supp.), which provides access to mental health records.

In general, formal discovery as to all medical 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 the respondent.

Rule 8C does not address pre-trial hearings because Rule 4B (d) provides that the Court may set pre-trial hearings to resolve any pre-trial issues.

Rule 9. Service of legal papers; proof of service.

(a) *Service.* Except when these rules provide otherwise, copies of all papers filed in a mental retardation case shall be served upon the ~~allegedly mentally individual who is the subject of the proceeding, retarded person,~~ his or her attorney, advocate, and parent or guardian (or other petitioner), and the Office of the ~~Attorney General Corporation Counsel~~. Service may be made by first class mail.

(b) *Proof of service.* Proof of service of papers served pursuant to these rules shall be accomplished by means of a certificate of service on the last page of the paper served. This certificate shall show the date and manner of service and the names and addresses of all persons served. Failure to make proof of service shall not affect the validity of such service. The Court may at any time allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

Rule 10. Motions practice.

All written motions relating to a mental retardation proceeding shall be filed with the ~~Deputy Clerk of the Mental Retardation Branch~~ Family Court Central Intake Center. Each motion shall include 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 ~~judge's~~ order shall be sent. In addition, the moving party shall accompany the motion with addressed envelopes or labels ~~addressed to~~ for all persons to whom copies of the order shall be sent.

Each motion shall be accompanied by specific points and authorities to support the motion, including, where appropriate, a concise statement of material facts. The statement of 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 shall be filed and served within 10 days after the motion is filed-served or such further time as the Court may order. If a statement of opposing points and authorities is not filed within the prescribed time, the Court may treat the motion as conceded.

Rule 11. Appointment and withdrawal of counsel.

(a) *Right to counsel.* Individuals who come or are brought before the Mental Health and Mental Retardation Branch of the Family Division-Court have a right to be represented by retained or appointed counsel during any proceeding pursuant to D.C. Code ~~1981, §§ 6-1924, 1926, 1928, 1929, 1930, 1951, and 1985~~ §§ 7-1303.04, 1303.06, 1303.08, 1303.09, 1303.10, 1304.11, and 1306.05 (2001-2003 Supp.) Ed., and in any other mental retardation proceeding as provided by D.C. Code § 7-1304.02 (2003 Supp.) or as otherwise provided by law. Individuals who come before the Court for voluntary admission to a facility are entitled to Court-appointed counsel only if admission is

~~questioned on grounds of voluntariness or competence of the individual. If an individual whose admission to a facility under § 6-1922 [§ 7-1303.02 2001 Ed.] is questioned requests the appointment of counsel, the Court shall appoint counsel if the individual is unable to afford to retain counsel.~~

(b) *Appointment of counsel by the Court.* The Court shall appoint counsel pursuant to D.C. Code § 7-1304.02 (2003 Supp.) for any individual who is unable to afford counsel and has a right to counsel as provided by law. Such appointment shall be made promptly after a mental retardation proceeding is initiated, filed with the Court, pursuant to § 6-1942 [§ 7-1304.02 2001] Ed.]. Appointed counsel shall be paid in accordance with Criminal Justice Act criteria established by the Court.

(c) *Withdrawal and substitution of counsel.* An attorney shall be permitted to withdraw from representation only upon the filing of a motion and proposed order for withdrawal with the ~~Deputy Clerk of the Mental Retardation Branch Family Court Central Intake Center~~ of a motion and proposed order for withdrawal. Counsel may, in a motion to withdraw, propose substitute counsel, provided that the motion is accompanied by a certification signed by the proposed substitute counsel agreeing to assume the case, ~~and provided that the proposed substitute counsel is on the roster of mental retardation attorneys maintained by the Deputy Clerk~~. If counsel does not propose substitute counsel, or if such proposal is not accepted by the Court, the Court shall select and appoint ~~may name~~ substitute counsel, ~~or may direct the Deputy Clerk to submit~~

~~the name of a substitute counsel from the roster of mental retardation attorneys, to then be appointed by the Court.~~ Upon withdrawal and substitution of counsel, the ~~Deputy Clerk~~ Mental Health and Mental Retardation Branch shall send notice to all parties and shall provide the substitute counsel with a copy of the order of appointment.

Rule 12. Appointment, training and removal of mental retardation advocates.

All selection, appointment, training and removal of ~~mental retardation~~ advocates, as provided by D.C. Code ~~1981, § 6-1953-1~~ § 7-1304.13 ~~(2001-2003 Supp.) Ed.~~, shall be performed by the ~~Deputy Clerk of the~~ Mental Health and Mental Retardation Branch.

Rule 13. Continuances.

(a) Requests for continuance of a hearing date shall be made in writing on the Request for Continuance form ~~appropriate Family Division form~~ and shall be filed with ~~the Deputy Clerk of~~ in the Family Court Central Intake Center ~~Retardation Branch~~. The individual party seeking a continuance shall be required to submit a statement of reasons in support of an application made less than 5 five days before the scheduled hearing date. Except in extraordinary or unforeseen circumstances, no further continuance may be granted in any continued case unless requested at least 2 two days prior to the date to which the case was previously continued.

(b) All requests for continuance must state that all parties, including the ~~mental retardation~~ advocate, and the appropriate facility staff, have been contacted, and a statement of which parties have agreed to a substitute date for hearing, which date shall be stated.

(c) Requests for continuance are subject to approval by the ~~Court~~ hearing commissioner or judge assigned to the case, as the case may be.

Rule 14. Contempt before a hearing commissioner. ~~[DELETED]~~

~~A hearing commissioner~~ Magistrate Judge may cite an individual for contempt committed in the presence of the hearing ~~commissioner~~ Magistrate Judge. The commissioner shall thereafter certify the contempt proceeding for hearing and disposition before a judge, pursuant to SCR Crim. 42(b).

Comment

Rule 14 has been deleted because magistrate judges' authority concerning contempt is now set forth at D.C. Code § 11-1732A (d) (3) (2003 Supp.).

Rule 15. Findings of fact and conclusions of law.

Within 10 days after a hearing, the attorney for the ~~allegedly mentally retarded individual~~ respondent shall file and serve on the Office of the Attorney General Corporation Counsel such proposed written findings of fact, conclusions of law, and orders as the Court may direct. Opposing proposed

findings, conclusions, and orders may be filed and served on respondent's
counsel within 10 days thereafter.

Rule 16. Entry of Judgment.

Any final order granting or denying commitment shall be signed by the
judicial officer and entered on the docket.

Rule 17. Closure of case due to death of resident.

Within 48 hours after the death of a resident, the director of the facility
where the individual resided shall file with the Family Court Central Intake
Center ~~Deputy Clerk~~ and serve upon all parties a notice of death and shall
request dismissal of all proceedings then pending. Upon receiving the notice, the
Court shall enter an order dismissing all such proceedings and ~~formally~~ closing
the case. ~~A copy of the order shall be placed in the court jacket and sent to all~~
~~parties.~~

By the Court:

Date: October 18, 2005

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

Copies to:

All Judges
All Magistrate Judges
Director of the Family Court
Branch Chief Mental Health and Retardation Branch
David Luria, Esq.

