SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Notice of Proposed Rules Changes

The District of Columbia Superior Court Rules Committee completed a review of Superior Court Rules of Criminal Procedure 1-60. In addition to the Rules previously posted for the comment on the D.C. Courts' website, the Rules Committee had reviewed and approved amendments to SCR Criminal 17.1, 26.1, 26.2, 26.3, 29.1 and 44-I. The Rules Committee will recommend approval of the changes to the Superior Court Board of Judges unless after consideration of comments from the Bar or the general public they are withdrawn or modified.

Written comments in respect to the rules above enumerated may be submitted by the close of business on Friday, April 3, 2009:

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All comments submitted in respect to this notice will be available to the general public. The rules are set forth below.

Rule 17.1. Pretrial Conference

On its own, or on a party's motion, the court may hold one or more pretrial conferences to promote a fair and expeditious trial. When a conference ends, the court must prepare and file a memorandum of any matters agreed to during the conference. The government may not use any statement made during the conference by the defendant or the defendant's attorney unless it is in writing and is signed by the defendant and the defendant's attorney.

COMMENT TO 2009 AMENDMENTS

This Rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the Federal Rule, and, consistent with the 2002 amendments to that Rule, it no longer prohibits a pretrial conference when the defendant is not represented by counsel.

Rule 26.1. Foreign Law Determination

A party intending to raise an issue of foreign law must provide the court and all parties with reasonable written notice. Issues of foreign law are questions of law, but in deciding such issues a court may consider any relevant material or source—including testimony—without regard to the law of evidence.

COMMENT TO THE 2009 AMENDMENTS

This Rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the Federal Rule except that it refers to the law of evidence rather than to the Federal Rules of Evidence.

Rule 26.2. Producing a Witness's Statement

(a) Motion to Produce.

After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, must order an attorney for the government or the defendant and the defendant's attorney to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter of the witness's testimony.

(b) Producing the Entire Statement.

If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party.

(c) Producing a Redacted Statement.

If the party who called the witness claims that the statement contains information that is privileged or does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any privileged or unrelated portions, the court must order delivery of the redacted statement to the moving party. If the defendant objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.

(d) Recess to Examine a Statement.

The court may recess the proceedings to allow time for a party to examine the statement and prepare for its use.

(e) Sanction for Failure to Produce or Deliver a Statement.

If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record. If an attorney for the government disobeys the order, the court must declare a mistrial if justice so requires.

(f) Statement Defined.

As used in this rule, a witness's ''statement'' means:

(1) a written statement that the witness makes and signs, or otherwise adopts or approves;

(2) a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or

(3) the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.

(g) Scope.

This rule applies at trial, at a suppression hearing under Rule 12, and to the extent specified in the following rules:

(1) Rule 32(c) (sentencing);

(2) Rule 32.1(c) (hearing to revoke or modify probation);

(3) Rule 46(f) (detention hearing); and

(4) Rule 8(c) of the Rules Governing Proceedings Under D.C. Code § 23-110.

COMMENT TO THE 2009 AMENDMENTS

This Rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the Federal Rule in two respects. First, consistent with the former Rule and unlike its federal counterpart, paragraph (g) omits preliminary hearings from the scope of the Rule. Second, subparagraph (g)(4), which is new to this Rule, refers to the local Rules Governing Proceedings Under D.C. Code § 23-110.

The last sentence of paragraph (c) is new to this and the Federal Rule. It requires that the court retain, under seal, the entirety of a witness's statement whenever parts are excised over the objection of the defendant. The former Rule required that the prosecutor retain such a statement.

Rule 26.3. Mistrial

Before ordering a mistrial, the court must give each defendant and the government an opportunity to comment on the propriety of the order, to state whether that party consents or objects, and to suggest alternatives.

COMMENT TO THE 2009 AMENDMENTS

This Rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the Federal Rule.

Rule 29.1. Closing Argument.

Closing arguments proceed in the following order:

(a) the government argues;

(b) the defense argues; and

(c) the government rebuts.

COMMENT TO 2009 AMENDMENTS

This Rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the Federal Rule.

Rule 44-I. Appointment of Counsel

(a) Appointment Authority. When a person qualifies for appointment of counsel under D.C. Code § 11-2601, or is otherwise entitled to have counsel appointed, a judge or magistrate judge must make the appointment from a list of attorneys and qualified law students approved by the Court under D.C. Code § 11-2601 et seq.

(b) Notification of Availability for Appointment. Attorneys available for appointment on a particular day must so advise the Defender Services Office by 7:00 a.m. on that day.

(c) Vacating Appointment. If an attorney appointed under this Rule is not present when the case is called for arraignment or presentment, the judge or magistrate judge may vacate the appointment and, if the attorney is absent without adequate excuse, he or she may be subject to further sanction.

(d) Scheduling of Trials. Attorneys appointed under this Rule must not schedule on any day more trials than may be permitted by administrative order of the Chief Judge.

(e) Legal Assistance by Law Students.

(1) Practice.

(A) Any law student admitted to the limited practice of law under Rule 48 of the Rules of the District of Columbia Court of Appeals may engage in the limited practice of law in the Superior Court in connection with any criminal case or matter (not involving a felony), on behalf of any indigent person who has consented in writing to that appearance, provided that a "supervising lawyer," as defined below, has approved such action and also entered an appearance.

(B) Any law student eligible under these rules may also appear in any criminal case or matter on behalf of the United States or the District of Columbia with the written approval of the United States Attorney or the Attorney General for the District of Columbia, or their authorized representatives, and the "supervising lawyer."

(C) In each case, the written consent and approval referred to above must be filed in the record of the case.

(2) Requirements and Limitations.

(A) The law student must be enrolled in a clinical program. A clinical program for purposes of this rule is a law school program for credit of at least four semester hours held under the direction of a full-time faculty member of the law school, or an adjunct professor for a consortium of law schools, whose primary duty is the conduct of such program in which a law student obtains practical experience in the operation of the District of Columbia legal system by participating in cases and matters pending before the courts or administrative tribunals. A student need not be so enrolled if that student has satisfactorily completed a clinical program and is continuing in the representation of a program's client.

(B) The law student must be registered and certified by the Admissions Committee of the District of Columbia Court of Appeals as eligible to engage in the limited practice of law as authorized by Rule 48 of the Rules of the District of Columbia Court of Appeals.

(C) The law student must not schedule more than one trial for any single date except with the Court's permission.

(3) Supervision. The "supervising lawyer" referred to in this Rule must:

(A) Be a lawyer whose service as a supervising lawyer for the clinical program is approved by the law school in which the law student is enrolled and who is an active practitioner of law in this court;

(B) Assume full responsibility for guiding the student's work in any pending case or matter or any case-related activity in which the student participates, and for supervising the quality of that student's work;

(C) Assist the student to the extent necessary, in the supervising lawyer's professional judgment, to insure that the student participation is effective;

(D) Sign each pleading, memorandum, or other document filed by the student, and appear with the student at each court appearance, except that the supervisor need not be present for a non-adversary matter so long as he or she is available to the court within one-half hour;

(E) Not schedule more than 3 cases for trial on any given day for law students whom he or she is supervising.

(4) General. No CJA funds may be paid to any student or supervising lawyer in any case in which a law student is appointed pursuant to this Rule.

(f) Suspension or Removal.

(1) Grounds.

(A) An attorney may be suspended from the list of attorneys maintained under D.C. Code § 11-2602 for willful falsification, by commission or omission, of any material information in any voucher, requisition or other document relating to the District of Columbia Criminal Justice Act; for receipt of other payments in violation of D.C. Code §§ 11-2604 to 11-2606; or for any other conduct that violates the provisions of the District of Columbia Criminal Justice Act, the Plan For Furnishing Representation To Indigents Under The District Of Columbia Criminal Justice Act or any guidelines promulgated by the Superior Court Board of Judges for the implementation of the Plan.

(B) Any person or organization authorized under D.C. Code § 11-2605 to provide investigative, expert or other services may be suspended or removed from further participation in the District of Columbia Criminal Justice Act Program for willful falsification, by commission or omission, of any material information in any voucher, requisition or other document relating to the District of Columbia Criminal Justice Act; for receipt of other payments in violation of D.C. Code § 11-2606; or for any other conduct that violates the provisions of the District of Columbia Criminal Justice Act, the Plan For Furnishing Representation To Indigents Under The District Of Columbia

Criminal Justice Act or any guidelines promulgated by the Superior Court Board of Judges for the implementation of the Plan.

(2) Disciplinary Committee. The power to suspend any attorney and the power to suspend or remove any other person or organization appointed or otherwise employed under the District of Columbia Criminal Justice Act is vested in a committee of judges appointed by the Chief Judge.

(3) Procedures. No order of suspension or removal may be entered unless the respondent has been given an opportunity to be heard. Notice of the hearing date together with a clear and concise statement of the complaint against the respondent must be served by certified mail not less than 21 days before the date of the hearing. In the conduct of the hearing, the committee may follow such procedures as it deems appropriate.

COMMENT TO 2009 AMENDMENTS

This Rule, retained from the former Rule, has no federal counterpart. In keeping with general stylistic changes made to the federal rules, the Rule has been redrafted to make it more easily understood and to maintain consistency throughout the rules. In addition, what was formerly paragraph (d), entitled "Appointment Considerations," has been deleted as unnecessary, and the remaining paragraphs have been redesignated accordingly.

Paragraph (d) of this rule replaces paragraph (e) of the former rule. To promote trial date certainty, the maximum number of trials an attorney may schedule per day will be governed by Administrative Order.

Subparagraph (f)(2) does not address the power to remove an attorney from the list of attorneys authorized to practice under the Criminal Justice Act. The power to remove an attorney from the list is vested in the Joint Committee For Judicial Administration pursuant to Section 11 A(2) of the Plan For Furnishing Representation To Indigents Under the District of Columbia Criminal Justice Act.