

## **SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

### **Notice of Proposed Amendments to Superior Court Rules of Criminal Procedure**

The District of Columbia Superior Court Rules Committee recently completed review of proposed amendments to Superior Court Rules of Criminal Procedure 12.4, 45, 49, 100-17, and 119. The Rules Committee will recommend to the Superior Court Board of Judges that the amendments be approved unless, after consideration of comments from the Bar and the general public, the proposed amendments are withdrawn or modified.

Written comments must be submitted by November 27, 2019. Comments may be emailed as a PDF file to [Laura.Wait@dcsc.gov](mailto:Laura.Wait@dcsc.gov) or may be mailed to:

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All comments submitted in response to this notice will be available to the general public. New language is underlined and deleted language is stricken through.

## **Rule 12.4. Disclosure Statement**

### **(a) ~~Who Must File~~ WHO MUST FILE.**

(1) *Nongovernmental Corporation.* Any nongovernmental corporate party must file a statement identifying the party's parent corporation and subsidiaries and any publicly held corporation that holds 10% or more of its stock.

(2) *Partnership.* Any partnership that is a party must file a statement identifying all partners, including silent partners.

(3) *Organizational Victim.* On order of the court, the government must file a statement identifying any organizational victim of the alleged criminal activity. If the organizational victim is a corporation or partnership, the statement must also disclose the information required by Rule 12.4(a)(1) or (2) to the extent it can be obtained through due diligence.

### **(b) ~~Time for Filing; Supplemental Filing~~ TIME TO FILE; LATER FILING.** A party must:

(1) file the Rule 12.4(a) statement within 28 days after~~upon~~ the defendant's initial appearance or the court's order; and

(2) promptly file a ~~supplemental~~later statement if any required information changes~~upon any change in the information that the statement requires.~~

## **COMMENT TO 2019 AMENDMENTS**

New subsection (a)(3), addressing disclosure of organizational victims, differs from its federal counterpart. Based on the high volume of cases, the Superior Court provision requires the government to file a statement identifying an organizational victim only if ordered by the court.

Subsections (b)(1) and (2) were amended consistent with the 2018 amendments to Federal Rule of Criminal Procedure 12.4.

## **COMMENT TO 2016 AMENDMENTS**

This is a new rule.

Paragraph (a) differs from the federal rule by adopting language from District of Columbia Court of Appeals Rule 28. Specifically, it expands the requirement of filing a disclosure statement to include corporate subsidiaries and partnerships. In addition, the disclosure requirement covers institutional parties but not institutional victims.

Paragraph (b) is identical to the federal rule.

## **Rule 45. Computing and Extending Time**

(a) COMPUTING TIME. The following rules apply in computing any time period specified in these rules, in any court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 45(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 45(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute, rule or court order, the last day ends at midnight in the court's time zone.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined.* "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(B) any day declared a holiday by the President or Congress, or observed as a holiday by the court.

(b) EXTENDING TIME.

(1) *In General.* When an act must or may be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party's motion made:

(A) before the originally prescribed or previously extended time expires; or

(B) after the time expires if the party failed to act because of excusable neglect.

(2) *Exception.* The court may not extend the time to take any action under Rule 35, except as stated in that rule.

(c) ADDITIONAL TIME AFTER CERTAIN KINDS OF SERVICE. Whenever a party must or may act within a specified time after being served and service is made in the manner provided under ~~Superior Court Rule of Civil Procedure 549(ab)(23)(C), (D), and (F) (mailing), (D) (leaving with the clerk), or (F) (other means consented to)~~, 3 days are added after the period would otherwise expire under Rule 45(a).

#### COMMENT TO 2019 AMENDMENTS

The cross-references to Civil Rule 5 have been updated to reflect the new filing and service provisions found in Criminal Rule 49.

#### COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Criminal Procedure 45*, as amended in 2009 and 2016, except for 1) deletion of reference to local rules and 2) modification of subsection (a)(6)(B) to include holidays observed by the court, which made federal subsection (a)(6)(C) inapplicable. As explained in the Advisory Committee Notes to the federal rule, the 2009 federal amendments were intended to simplify and clarify the process for computing deadlines.

#### COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002, and to conform to a change in paragraph (c) of the federal rule in 2007. It is substantially identical to the federal rule. It retains a distinction, now in subparagraph (a)(3), that permits an extra day for computing time when the clerk's office is actually closed.

In subparagraph (a)(4)(B), the phrase "or observed as a holiday by the court" was added to account for local holidays, such as District of Columbia Emancipation Day, that are observed by the court.

Subparagraph (b)(2) includes a change made to the federal rule in 2005. In that year, *Federal Rule 45* was amended to conform to contemporaneous changes made to *Federal Rules 29* (Motion for Judgment of Acquittal), *33* (New Trial) and *34* (Arresting Judgment), removing the requirement that the court act within seven days on motions for enlargement of time.

The subject matter of former paragraph (d), concerning the timing of written motions and affidavits, is addressed in Rule 47. That paragraph has been deleted from this rule.

## **Rule 49. Serving and Filing Papers**

### **(a) ~~When Required~~ SERVICE ON A PARTY.**

~~(1) *What Is Required.* A party must serve on every other party~~ Each of the following must be served on every party: any written motion (other than one to be heard ex parte), opposition, written notice, designation of the record on appeal, or similar paper.

~~(2) *Serving a Party's Attorney. How Made.* Service must be made in the manner provided for in a civil action. Unless the court orders otherwise, W~~ when these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party, ~~unless the court orders otherwise.~~

~~(3) *Service: How Made.* A paper is served under this rule by:~~

~~(A) handing it to the person;~~

~~(B) leaving it:~~

~~(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or~~

~~(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;~~

~~(C) mailing it to the person's last known address—in which event service is complete upon mailing;~~

~~(D) leaving it with the clerk's office if the person has no known address;~~

~~(E) sending it to a registered user using the court's electronic-filing system or sending it by other electronic means that are permitted or required by administrative order or that the person consented to in writing—in which event service is complete upon sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or~~

~~(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.~~

### **(b) FILING.**

~~(1) *When Required; Certificate of Service.* Any paper that is required to be served must be filed no later than a reasonable time after service. No certificate of service is required when a paper is served using the court's electronic-filing system. When a paper is served by other means, a certificate of service must be filed with it or within a reasonable time after service or filing.~~

~~(2) *Means of Filing.*~~

~~(A) *Electronically.* A paper is filed electronically by filing it with the court's electronic-filing system. A filing made through a person's electronic-filing account and authorized by that person, together with the person's name on a signature block, constitutes the person's signature. A paper filed electronically is written or in writing under these rules.~~

~~(B) *Nonelectronically.* A paper not filed electronically is filed by delivering it:~~

~~(i) to the clerk; or~~

~~(ii) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.~~

~~(3) *Means Used by Represented and Unrepresented Parties.*~~

~~(A) *Represented Party.* A party represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is otherwise allowed or required by this rule or administrative order of the Chief Judge.~~

(B) Unrepresented Party. A party not represented by an attorney must file nonelectronically, unless allowed to file electronically by court order or administrative order of the Chief Judge.

(4) Signature. Every written motion and other paper must be signed by at least one attorney of record in the attorney's name—or by a person filing a paper if the person is not represented by an attorney. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or person's attention.

(5) Acceptance by the Clerk. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules.

(c) SERVICE AND FILING BY NONPARTIES. A nonparty may serve and file a paper only if doing so is required or permitted by law. A nonparty must serve every party as required by Rule 49(a), but may use the court's electronic-filing system only if allowed by court order or administrative order of the Chief Judge.

(de) Notice of a Court Order**NOTICE OF A COURT ORDER.**

(1) In General. In all cases where a party or the party's attorney is not present, immediately ~~upon the entry of~~after entering an order on a post-arraignment motion, the clerk must serve notice of the entry on each party. ~~a notice of the entry of the order and~~ The clerk must make a note in record the service on the docket ~~of the service.~~ Service must be made in the manner provided for in a civil action.

(2) Time to Appeal Not Affected by Lack of Notice. ~~A party's l~~ack of notice of the entry of the order does not affect the time ~~to~~for appeal, or relieve—or authorize the court to relieve—~~the~~a party's for ~~failure~~ingure to appeal within the time allowed, except as permitted by the ~~Rules of the~~ District of Columbia Court of Appeals Rules.

(32) Who Can Perform the Clerk's Function. Nothing in this rule ~~shall~~precludes a judge or magistrate judge or his or her authorized staff member from performing the function of the clerk prescribed in Rule 49(~~de~~)(1).

~~(d) Filing.~~ A party must file with the court a copy of any paper the party is required to serve. A paper must be filed in a manner provided for in a civil action.

~~(e) Communications by Counsel to the Court.~~ Copies of all communications, memoranda and briefs (other than those regarding matters to be heard ex parte) submitted by counsel to a judge or magistrate judge and relating to a proceeding pending before him or her must be delivered to each of the parties.

## COMMENT TO 2019 AMENDMENTS

Consistent with the 2018 federal amendments to *Federal Rule of Criminal Procedure 49*, the filing and service provisions, which were previously addressed by reference to the civil rules, are now included in Rule 49.

## COMMENT TO 2016 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 several respects.

Paragraph (a) includes “opposition” in the list of papers a party must serve on every other party.

Consistent with the former rule, paragraph (c) explicitly requires the clerk to notify the parties of orders on motions entered outside their presence. The clerk must mail notice of the entry of the orders to the parties and must make an entry on the docket that the notice has been mailed. This requirement is in keeping with District of Columbia Court of Appeals Rule 4(b)(5), which defines entry of an order made outside the presence of the parties with reference to the entry on the criminal docket reflecting the mailing of notice.

Paragraph (e) is retained from the former rule. It was added to insure that all parties are informed of any communication delivered to a judicial officer. The term “judge” in former paragraph (e) of this rule was replaced with the term “judge or magistrate judge” to make it applicable to communications by counsel with magistrate judges. The parenthetical phrase “other than those regarding matters to be heard ex parte” was added to parallel similar language in paragraph (a) of this rule.

**Rule 100. ~~Creation of Sections~~[Deleted].**

~~—The Criminal Division shall include the following Sections: Assignment, District of Columbia, Traffic and Motions, and such other Sections as the Chief Judge shall establish. The duties of those Sections shall be performed by such judge or judges as shall be assigned thereto by the Chief Judge.~~

COMMENT TO 2019 AMENDMENTS

This rule was deleted because Rule 1(b) gives the Chief Judge the authority to divide the business of the Criminal Division.



## **Rule 101. ~~Duties and Operation of the Assignment Section of Cases~~**

~~(a) Duties.— The Calendar Control Judge who shall sit in the Assignment Section shall discharge on behalf of the Felony Branch and the Misdemeanor Branch of the Criminal Division the following duties, when applicable:~~

~~—(1) Assign cases to other judges of the Criminal Division for trial, except as otherwise provided in these Rules;~~

~~—(2) Grant or deny continuances, except as otherwise provided in these Rules;~~

~~—(3) Conduct any other matters, including the holding of trials or hearings, should the judge's schedule permit.~~

~~(b) Assignment of cases upon the filing of an information.— Except as otherwise provided in these Rules, cases prosecuted by the filing of an information, other than those to be prosecuted in the District of Columbia Traffic Branch or the Tax Division, shall be assigned for trial by the judge sitting in the Assignment Section in the following manner:~~

~~—(1) The Section shall convene promptly at 9:15 a.m.~~

~~—(2) The calendar call shall begin with the government's "ready cases", and then proceed to a call of the entire calendar. Cases may be certified for trial even if the government's witnesses are not present, but are available on call within not more than 30 minutes. Such cases shall be certified to the Criminal Assignment Commissioner who shall recertify them to the judge sitting in the Assignment Section if the witnesses do not appear as represented.~~

~~—(3) Defense attorneys shall be in the Assignment Section when their cases are called. No case may be certified unless the attorney and the attorney's client are present, except where the attorney has previously announced ready and has been certified for trial in another case. If an attorney is unable to be present in the Assignment Section because of the attorney's active engagement in trial or because of a required appearance in the United States District Court or an appellate court, the attorney shall leave a slip with the courtroom Clerk indicating where the attorney will be, when the attorney expects to return, and whether the attorney is ready for trial.~~

~~—(4) When an attorney's 1st case is called, the attorney shall advise the Court of any other cases the attorney has on the calendar, so that the judge sitting in the Assignment Section can review the status of all such cases at the same time. So far as practicable, the calendar shall be printed, grouping all of an attorney's cases together, and posted in a conspicuous place outside the courtroom in which the Assignment Section is convened.~~

~~—(5) Each morning 1 or more ready cases shall be certified directly to trial judges by the judge sitting in the Assignment Section.~~

~~—(6) After 1 or more cases have been sent to each trial judge, the balance of ready cases shall be certified by the judge sitting in the Assignment Section to the Criminal Assignment Commissioner. All of an attorney's cases shall be sent to the same judge whenever possible. The Assignment Commissioner shall insure that at least 1 back-up case is waiting in each trial judge's courtroom at all times, unless the Commissioner is advised by the trial judge that the current case in trial or hearing is expected to last in excess of one-half of a trial day, or will carry over until the next day. The Assignment Commissioner shall periodically inform the judge sitting in the Assignment Section of the status of cases certified for trial.~~

~~—(7) Attorneys shall report directly to the courtroom to which their cases have been assigned. If they wish to leave the courtroom, they must first make arrangements with that courtroom's Clerk. Attorneys whose cases have been certified to the Assignment Commissioner shall not leave the lawyer's lounge without the permission of the Assignment Commissioner.~~

~~(a) IN GENERAL. The clerk will assign new criminal cases to the appropriate calendar using criteria established by the Chief Judge or the Chief Judge's designee.~~

~~(b) SPECIAL ASSIGNMENTS. The Chief Judge may specially assign a criminal case for all purposes to a specific calendar or a single judge. The Chief Judge may delegate to the Presiding Judge of the Criminal Division the authority to make special assignment of cases to a judge currently assigned to the Criminal Division.~~

~~(c) RELATED CASES.~~

~~(1) "Related Case" Defined. Criminal cases are deemed related when:~~

~~(A) more than one indictment or complaint is filed or pending against the same defendant or defendants, unless the case designation is different;~~

~~(B) more than one information is filed or pending against the same defendant or defendants, unless the prosecuting authority or case designation is different; or~~

~~(C) prosecution against different defendants arises from a common wiretap, search warrant, or activities that are a part of the same alleged criminal act or transaction.~~

~~(2) Notice. At the time the indictment, complaint, or information is filed, the attorney for the government must indicate whether there is a related case.~~

~~(3) Assignment.~~

~~(A) At Time of Filing. When the existence of a related case is noted at the time the indictment, complaint, or information is filed, the clerk must assign the new case to the judge or magistrate judge to whom the oldest related pending case is assigned.~~

~~(B) After Initial Assignment. When the existence of a related case is revealed after the cases are assigned, the judge or magistrate judge, who has the later-numbered case, may transfer that case to the judge or magistrate judge, who has the earlier case.~~

~~(d) REFILED CASE.~~

~~(1) "Refiled Case" Defined. A criminal case is deemed refiled if, after it was terminated by nolle prosequi or by dismissal without prejudice, the attorney for the government elects to reinstitute the prosecution or to bring a subsequent prosecution against the same defendant or defendants arising out of the same act or transaction that was the subject of the terminated case.~~

~~(2) Assignment. The clerk must reassign the refiled case to the original calendar unless the Presiding Judge orders otherwise.~~

## COMMENT TO 2019 AMENDMENTS

As used in this rule, "case designation" includes designations such as Felony 1 ("CF1"), Domestic Violence Misdemeanor ("DVM"), or General Misdemeanor ("CMD"). Thus, in accordance with subsection (c)(1)(B), the clerk would assign two CMD cases involving the same defendant to the same judge, but if there was a pending CMD case, the clerk would not assign a new DVM case involving the same defendant to the same judge. This rule does not prevent a judge or magistrate judge from transferring the case at a later time on motion or on its own initiative.

**Rule 102. ~~Duties and Operation of the District of Columbia Section~~~~[Deleted].~~**

~~(a) Duties. Subject to the provisions of paragraph (b), a judge or hearing commissioner designated by the Chief Judge sitting in the District of Columbia Section shall conduct proceedings, including non-jury trials, prosecuted in the name of the District of Columbia, except for (1) those cases joined for prosecution in another branch of the Criminal Division under Rule 1, (2) traffic cases which are not joined for prosecution with other cases in the District of Columbia Section, and (3) those cases which are to be conducted in the Tax Division.~~

~~(b) Operation.~~

~~—(1) Time. The District of Columbia Section shall convene promptly at 10:00 a.m.~~

~~—(2) Jury trial continuances. At arraignment, all cases in which a jury trial is demanded shall be continued for trial to a date on which, according to the Court's calendar of available continued jury trial dates, no more than the maximum permissible number of cases has already been set.~~

~~—(3) Certification to Criminal Assignment Commissioner. All jury trials shall be certified to the Criminal Assignment Commissioner when ready. Defense attorneys shall be in the District of Columbia Section when their cases are called. No jury trial may be certified to the Criminal Assignment Commissioner unless the attorney and the attorney's client are present, except where the attorney has previously announced ready and has been certified for trial in another case.~~

COMMENT TO 2019 AMENDMENTS

This rule has been deleted because it addressed administrative processes that are now covered by administrative order and internal operating procedures. The rule also referenced the now-obsolete assignment commissioner.

**Rule 103. Duties and Operation of the Traffic Section~~[Deleted]~~.**

~~(a) Duties. Subject to the provisions of paragraph (b), the Traffic Section shall conduct proceedings in traffic cases prosecuted in the name of the District of Columbia, except for those traffic cases which are joined for prosecution in another branch of the Criminal Division under Rule 1 or the District of Columbia Section under Rule 102.~~

~~(b) Operation.~~

~~—(1) Initial call. At 9:30 a.m. the Clerk shall call all new and continued cases which are set for that time. The Clerk shall again make an initial call at 1:00 p.m. If both defendant and the police officer are present at either time they will be told to remain in Court until the case is called. If either defendant or police officer is not in Court, the party answering will be told to remain in Court until the case is called.~~

~~—(2) Judges or hearing commissioners call. At or before 10:00 a.m. the judge or hearing commissioner shall make a 2nd call of cases which were initially called at 9:30 a.m. and in which either defendant or police officer failed to answer. The judge or hearing commissioner shall also make a 2nd call at 1:30 p.m. similar to the one made at 10:00 a.m. If the defendant fails to answer the 2nd call, the Clerk shall note the defendant's non-appearance and the judge or hearing commissioner shall authorize the issuance of a judicial summons or arrest warrant. If the police officer fails to answer the 2nd call but defendant answers, the case may be dismissed for want of prosecution. If the officer has checked in with the police liaison office the officer shall be deemed to have "answered".~~

~~(c) Order of calendar call.~~

~~—(1) Morning call. After the judge or hearing commissioner has taken the bench at or before 10:00 a.m., cases shall be called in the following order:~~

~~—(i) New or continued cases set for 9:30 a.m. in which defendant failed to answer at the 9:30 a.m. call.~~

~~—(ii) New or continued cases set for 9:30 a.m. in which the police officer failed to answer at the 9:30 a.m. call.~~

~~—(iii) New or continued lock-up, citation, and bond cases.~~

~~—(iv) Trials of new and continued cases set for 9:30 a.m.~~

~~—(2) Afternoon call. After the judge or hearing commissioner has taken the bench at 1:00 p.m., the cases shall be called in the following order:~~

~~—(i) New or continued cases set for 1:00 p.m. in which the defendant has failed to answer at the 1:00 p.m. call.~~

~~—(ii) New or continued cases set for 1:00 p.m. in which the police officer has failed to answer at the 1:00 p.m. call.~~

~~—(iii) Trials of new or continued citation and bond cases.~~

~~—(iv) Motions to set aside forfeitures of collateral.~~

~~—(v) Trials of new and continued cases set for 1:00 p.m.~~

~~(d) Time of continued non-jury trials. All new and continued traffic cases are to be set for trial either at 9:30 a.m. or 1:00 p.m.~~

~~(e) Duties of traffic court judges and hearing commissioners.~~

~~—(1) Trials. All new and continued cases shall, to the extent possible, be tried by the judge or hearing commissioner sitting in the Traffic Section on the day and time they are shown to be set for trial.~~

~~—(2) Other duties. All new lock-up, citation, and bond cases involving traffic offenses shall be called in the Traffic Section for the purpose of appointment of counsel, disposition of preliminary matters, setting of trial date, and trial or certification to the Criminal Assignment Commissioner for trial in the Criminal Division.~~

~~(f) Presence of attorneys. Defense attorneys shall be in Court when their cases are called.~~

#### COMMENT TO 2019 AMENDMENTS

This rule has been deleted because it addressed administrative processes that are now covered by administrative order and internal operating procedures.

**Rule 104. ~~[Deleted]. Operation of the Tax Division in Criminal Proceedings~~**

~~(a) Duties of the Deputy Clerk. Upon the filing of an information, the Deputy Clerk of the Tax Division shall in non-sequential order and at random assign the matter to a judge of the Tax Division. The Deputy Clerk shall thereupon notify all counsel of the assignment and the date and time at which arraignment shall be conducted.~~

~~(b) Arraignment. Arraignment shall be conducted on a date set by the judge within 2 weeks from the filing of the information.~~

COMMENT TO 2019 AMENDMENTS

This rule has been deleted because the criminal tax cases are assigned in accordance with criteria established by the Chief Judge or the Chief Judge's designee— as provided in Rule 101(a).

**Rule 105. Assignment of Felony Cases and Related Cases~~[Deleted]~~.**

~~(a) Assignment process.~~

~~—(1) Supervision. The Chief Judge, or such other judge as the Chief Judge may choose, shall direct by designated Court officers, the assignment and calendaring of felony and related cases.~~

~~—(2) Assignment cards. The Criminal Clerk shall prepare a block of assignment cards each month from the list of judges assigned by the Chief Judge for trial duties in the Felony Branch. The order of judge's names within each block shall be non-sequential and at random and shall not be disclosed until assignment. Immediately after assignment, the case number shall be stamped on the assignment card which shall be preserved.~~

~~—(3) Time of Assignment. Upon the return of an indictment, it shall be forthwith filed with the Criminal Clerk. Except as otherwise provided by this Rule, or by order of the Chief Judge or such other judge as the Chief Judge may choose, upon this filing, the Criminal Clerk shall promptly assign the matter to the judge whose name appears on the assignment card.~~

~~(b) Related cases.~~

~~—(1) Definition. Criminal cases are deemed related when (i) a superseding indictment or information has been filed or (ii) more than 1 indictment or information is filed or pending against the same defendant or defendants. Notice of such relationship shall be given to the Criminal Clerk by the prosecutor at the time of return of the indictment.~~

~~—(2) Assignment. (i) Whenever it appears that an indictment is filed with respect to an accused against whom a [an] indictment is already pending, the Criminal Clerk shall promptly assign the matter to the judge before whom the previous indictment is pending. (ii) Whenever it appears that an information is filed with respect to an accused against whom an indictment is already pending, the judge sitting in the Assignment Section, after conducting the arraignment, shall assign the matter to the judge before whom the indictment is pending. (iii) Whenever it appears that an indictment is filed with respect to an accused against whom an information is already pending, the Criminal Clerk shall assign the previously unassigned misdemeanor case to the judge assigned the felony case, except that no such misdemeanor case, without the consent of the defendant, shall be assigned within 5 days of trial to an individual judge of the Felony Branch. (iv) Subject to the provisions of (iii) above, if related cases have been assigned to different judges, counsel may make a motion for transfer of the subsequently filed case. Such motion shall be referred to the judge to whom the 1st felony case was assigned. If the motion is denied, the case shall be returned to the judge assigned to the subsequently filed case.~~

~~(c) Consolidation of cases. When a motion for the consolidation of cases is made, it shall be referred to the judge before whom the 1st felony case is pending. If such a motion is granted, the procedure thereafter shall be the same as for related cases.~~

~~(d) Dismissed cases. When a case previously assigned to an individual judge is dismissed, with or without prejudice, and an indictment or information is filed involving the same parties and relating to the same subject matter, the 2nd case shall be transferred to the Chief Judge or the Chief Judge's designee in the case of a felony, or to the judge sitting in the Assignment Section in the case of a misdemeanor, for consideration of reassignment to the judge to whom the original was assigned.~~

~~(e) Other transfers and reassignments. When reassignment of a case is necessitated by the death, retirement, resignation, incapacity or assignment to other duties of any judge, by appointment of a new judge or a visiting judge, or by any circumstances not otherwise provided for in these Rules, the Chief Judge or such other judge as the Chief Judge may choose, shall determine the necessity of such reassignment and by order effect such reassignment.~~

~~(f) Sanctions.~~

~~—(1) Officers and employees. No Court officer or employee may reveal to any other person, other than the Chief Judge or such other judge as the Chief Judge may choose, the sequence of judges' names within each block of assignment cards. No Court officer or employee may number or assign any case other than in the manner provided or in the manner ordered by the Chief Judge or such other judge as the Chief Judge may choose. Any person violating this provision may be punished for contempt of Court.~~

~~—(2) Others. No person may directly or indirectly cause, or procure or attempt to cause or procure, a Court officer or employee (i) to reveal to any person, other than the Chief Judge or such other judge as the Chief Judge may choose, the sequence of the judges' names within each block of assignment cards or (ii) to number or assign any case otherwise than as herein provided or as ordered by the Chief Judge or such other judge as the Chief Judge may choose. Any person violating this provision may be punished for contempt of Court.~~

~~(g) Scope. This Rule shall not apply to any prosecution which under Rule 1 is to be conducted in either the District of Columbia Traffic Branch or the Tax Division.~~

#### COMMENT TO 2019 AMENDMENTS

The substance of this rule has been revised and moved to Rule 101.



**Rule 106. ~~Special Assignments~~[Deleted].**

~~—For good cause shown, a case or cases may be assigned specially to a single judge for all purposes at any time during the litigation by order of the Chief Judge entered (1) sua sponte or (2) upon recommendation of the Calendar Control Judge on the judge's own motion or on written request of any party or (3) upon a joint request of all parties. The Chief Judge may delegate the authority under this Rule to the Calendar Control Judge, except that such Judge may make a special assignment only to a judge then currently assigned to the trial of Criminal Division cases. The judge so assigned shall be responsible for scheduling and conducting all further proceedings in the case.~~

COMMENT TO 2019 AMENDMENTS

The substance of this rule has been revised and moved to Rule 101.

**Rule 107. ~~Notice of Assignments, Transfers and Reassignments~~[Deleted].**

~~(a) Assignments. The Criminal Assignment Commissioner shall give notice to the judge involved and to all counsel of the assignment (1) of all felony cases, including protracted felony cases, and (2) of all related cases. The notice shall include, where applicable, the date and time at which arraignment shall be conducted.~~

~~(b) Transfers and reassignments. Upon the transfer and reassignment of any case notice shall be given to the judges involved and to all counsel.~~

COMMENT TO 2019 AMENDMENTS

This rule has been deleted because the assignment commissioner system has been abolished.

**Rule 108. ~~Felony Case Arraignment~~[Deleted].**

~~—An arraignment in a felony case shall be conducted within 2 weeks from the return of indictment. The next subsequent appearance of the defendant and action in the case shall be scheduled at arraignment. If the judge to whom the case is assigned is unavailable, the arraignment may be conducted by a substitute judge.~~

COMMENT TO 2019 AMENDMENTS

This rule has been deleted because it addressed a process that is the subject of internal operating procedures.

**Rule 109. ~~Arraignments in Misdemeanor Cases and Presentments~~[Deleted].**

~~(a) Duties. The Chief Judge, or such other judge or judges, or hearing commissioners as the Chief Judge may assign shall discharge on behalf of the Felony Branch and the Misdemeanor Branch of the Criminal Division the following duties, when applicable:~~

- ~~—(1) Conduct presentments where the case, prior to the return of an indictment or the filing of an information, is prosecuted by formal complaint;~~
- ~~—(2) Conduct arraignments where the case is prosecuted by information, except as otherwise provided for in Rules 102, 103, 104, and 108;~~
- ~~—(3) Upon arraignment before the judge or hearing commissioner schedule the case for trial;~~
- ~~—(4) Schedule preliminary hearings, including not otherwise scheduled or assigned pretrial detention hearings under Rule 46-1;~~
- ~~—(5) Appoint counsel from a list of attorneys prepared under the authority of Section 302(b) of the District of Columbia Court Reorganization and Criminal Procedure Act of 1970, Public Law 91-358 [§ 1-2702, D.C. Code, 1981 Ed.];~~
- ~~—(6) Set conditions of release or detention in all cases prior to the filing of an indictment or the commencement of trial;~~
- ~~—(7) Except as otherwise provided in these Rules, grant or deny continuances; and~~
- ~~—(8) Entertain motions for mental observation in accordance with the procedures set forth in paragraph (c) of this Rule. Motions for mental observation made after arraignment or presentment shall come before the judge to whom the case has been assigned or, if not so assigned, before the judge assigned to hear criminal motions.~~
- ~~—(9) Conduct any other matters, including the holding of trials or hearings, as time permits.~~

~~(b) Operation. Presentments and arraignments shall commence at 1:00 p.m. The order of call shall insofar as practicable, be as follows:~~

- ~~—(i) Attorneys who are scheduled for an afternoon trial or hearing;~~
- ~~—(ii) Felonies;~~
- ~~—(iii) Misdemeanors.~~

~~(c) Procedures for mental examination. Repealed. See now Rule 120.~~

**Rule 110. ~~Place of Preliminary Hearings Including Pretrial Detention Hearings~~[Deleted].**

~~Except for those preliminary hearings which may be held by the judge or magistrate judge sitting in the Assignment Section, all preliminary hearings, and pretrial detention hearings pursuant to Rule 46-I, shall be held commencing at 1:30 p.m. before a judge or judges or magistrate judges designated by the Chief Judge other than the judge or magistrate judge sitting in the Assignment Section. If, as of the date set for a preliminary hearing, the government determines to enter a nolle prosequi on the felony charge or charges and to proceed with a misdemeanor charge, or charges, the nolle prosequi shall be entered and the misdemeanor arraignment held before the judge or magistrate judge conducting preliminary hearings.~~

## **Rule 111. Motion for Continuances**

### **(a) By whom determined prior to trial IN GENERAL.**

~~—(1) Misdemeanor Branch cases. Except as otherwise provided in this Rule, cases, in which a continuance is requested before trial, shall be directed to the judge sitting in the Assignment Section. The judge to whom the case has been certified for trial may, if the judge is of the opinion that a continuance is necessary to prevent manifest injustice, recertify the case to the judge sitting in the Assignment Section with a recommendation for continuance.~~

~~—(2) District of Columbia-Traffic Branch cases. In any case pending in the District of Columbia Section or Traffic Section or certified to a trial court, only the judges presiding in those sections may grant a continuance prior to the start of trial. The judge to whom the case has been certified for trial may, if the judge is of the opinion that a continuance is necessary to prevent manifest injustice, recertify the case to the judge sitting in the Assignment Section with a recommendation for continuance.~~

~~—(3) Felony Branch and other individually assigned cases. In any case in the Criminal Division which has been assigned under Rules 105, 106, 107, or in any case in the Tax Division, only the judge to whom such case has been assigned, reassigned, or transferred may grant a continuance prior to trial.~~

### **(b) Motions.**

~~—(1) In general. Any party seeking a continuance must file a motion for continuance. Before filing a motion, the moving party must make a good faith attempt to ascertain whether the other party will consent to the continuance. A Motions for continuances of hearings or trials shall be in writing on a form provided by the Clerk's Office,must be served on the otherpposite party,~~

~~and filed at the earliest practicable date with the Clerk of the appropriate division unless the Court otherwise directs. Such motions if contested shall be calendared for hearing as expeditiously as possible.~~

~~(b) ORAL MOTION. For good cause, the court may permit an oral motion for continuance.~~

~~(c) CONTENT. A Motions, whether or not contested, for continuance shallmust containstate:~~

~~\_\_ (1) the reasons therefor the request; and~~

~~\_\_ (2) whether the other party consents to the continuance or what good faith attempt was made to ascertain the other party's position. at least 1 date, not on the stop list, to which the parties agree the case may be continued if the motion is granted.~~

### ~~(d) TIMING.~~

~~\_\_ (1) In General. A motion for continuance must be filed at the earliest practicable date.~~

~~\_\_ (2) 3-Day Rule. Except in extraordinary or unforeseen circumstances, a party seeking a continuance of the trial date must file a motion for continuance at least 3 days before the scheduled trial date.~~

~~—(2) Exception. The determination of an uncontested motion for continuance may be made by the judge without counsel present. It shall be the obligation of any counsel not present to determine from the Clerk of the appropriate division whether the motion was granted and, if so, the new date and time of the hearing or trial.~~

~~(c) "Two-day rule". Except in extraordinary or unforeseen circumstances, no continuances shall be granted in any case unless requested at least 2 days before the scheduled date of trial.~~

#### COMMENT TO 2019 AMENDMENTS

This rule has been amended consistent with the general restyling of the federal rules in 2002. The provisions relating to the Assignment Section have been deleted because they are obsolete. Additionally, the rule now requires a party to ascertain and state whether the other party consents to the continuance.

**Rule 112. ~~Continuing Effect of Praecipe~~ Notice of Appearance Submitted by Defense Counsel**

~~Defense counsel must submit a completed praecipenotice entering the attorney's appearances shall be entered by defense counsel, whether appointed or retained, in every criminal case within 1-Court3 days of the attorney's appointment or retention. Such The praecipenotice shall must state the attorney's name, address, email address, telephone number, and, if applicable, attorney registration D.C. Bar number. No attorney may withdraw an appearance except by leave of court after notice served the attorney's client.~~

COMMENT TO 2019 AMENDMENTS

This rule has been amended consistent with the general restyling of the federal rules in 2002. The provision addressing withdrawal has been deleted because this subject matter is covered by Rule 57's incorporation of Civil Rule 101.



### **Rule 113. Witness Fees and Allowances**

(a) ~~Amounts~~ **AMOUNTS.** ~~(1) Fees.~~ Except as ~~hereinafter~~ **otherwise** provided **by statute or these rules**, ~~each~~ witness attending ~~C~~ court or a deposition pursuant to any rule or court order ~~of a court shall~~ **must be paid the fees and allowances provided in this rule.**

#### **(1) Fees.**

~~(A) In General.~~ **A witness must** receive \$40 **per day** for each day's attendance and for the time necessarily occupied in going to and returning from the ~~same~~ **place of attendance.**

~~(B) Expert Witness.~~ An expert witness ~~shall~~ **must** receive ~~such~~ **the** amount ~~as to which~~ the expert witness is entitled ~~to~~ by law **or court order.**

~~(C) Detained Witness.~~ A witness detained ~~for want of security for the witness's appearance~~ under D.C. Code § 23-1326 (2012 Repl). ~~shall be~~ **is** entitled to \$40 ~~per day~~ for each day ~~of detention when not in~~ **s** attendance ~~at court.~~

~~(D) Employee of the United States or the District of Columbia.~~ No witness fee ~~shall~~ **will** be paid to an employee of the United States, ~~or any agency thereof or of the District of Columbia, or an agency of either,~~ who has been called as a witness on behalf of the United States or the District of Columbia.

#### **(2) Travel ~~a~~ Allowance.**

~~(A) By Common Carrier.~~ **A witness, who resides outside of the District of Columbia and travels by common carrier, must be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from the witness's residence by the shortest practical route in going to and returning from the place of attendance. The witness must utilize a common carrier at the most economical rate reasonably available and must provide a receipt or other evidence of actual cost.** ~~Except as hereinafter provided, each~~

~~(B) Per Mile.~~ **A witness, who resides outside of the District of Columbia and travels by private vehicle, shall** ~~must~~ receive a per mile travel allowance ~~as provided by D.C. Code § 15-714~~ for going from and returning to the witness's residence. ~~The travel allowance must be calculated in accordance with 28 U.S.C. § 1821. Regardless of the mode of travel employed by the witness, computation of mileage shall be made on the basis of a uniform table of distances as provided under 28 U.S.C. § 1821.~~

~~(C) Tolls and Other Expenses.~~ **A witness, who resides outside of the District of Columbia, must be reimbursed for the following expenses:**

- ~~(i) toll charges for toll roads, bridges, tunnels, and ferries;~~
- ~~(ii) taxicab fares between places of lodging and carrier terminals; and~~
- ~~(iii) upon presentation of a valid parking receipt, parking fees.~~

~~(D) Detained Witness.~~ A witness detained under D.C. Code § 23-1326 (2012 Repl.) ~~is not entitled to a travel allowance.~~

~~(E) Employee of the United States.~~ A witness, who is an employee of the United States or any ~~United States~~ agency ~~thereof~~ and is called to testify in the witness's official capacity or produce an official record, ~~shall~~ **must** be paid a travel allowance fixed by applicable statutes and regulations. ~~No witness residing in the District of Columbia shall be entitled to a travel allowance.~~

~~No witness detained for want of security for the witness's appearance shall be entitled to a travel allowance.~~

#### **(3) Subsistence.** ~~Except as hereinafter provided, a~~

(A) In General. A witness, who is attending Court or a deposition at a place so far removed from the witness's residence that the witness cannot as to prohibit return to the residence thereto from each day to day, shall be entitled to an additional allowance fixed by statute for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance.

(B) Detained Witness. A witness detained in prison for want of security for the witness's appearance under D.C. Code § 23-1326 (2012 Repl.) shall be entitled to the witness's subsistence.

(C) Employee of the United States. An officer or employee of the United States or any United States agency thereof summoned as a witness on behalf of the United States shall must receive a per diem allowance, in lieu of subsistence, Such per diem shall be fixed at a rate prescribed by law.

(b) Payment from public funds PAYMENT FROM PUBLIC FUNDS.

(1) Certification Required. No witness entitled to any payment under paragraph Rule 113(a) shall will be paid from public funds except upon certification of the witness that:

(A) the witness was compelled by subpoena to attend as a witness on behalf of a defendant unable to pay or was present pursuant to the direction of the Court or prosecutor, in a specified pending criminal case; and that

(B) the witness did attend.

(2) Endorsement. Such The certification shall must be endorsed by the Court or by the counsel of record issuing the subpoena or direction and shall must be submitted to the Clerk of the Court for certification. The Executive Officer upon submission of the endorsed and verified certification shall make payment by cash or check.

(c) No payment of fee or allowance after voluntary appearance VOLUNTARY APPEARANCE. No person who appears in Court for a judicial proceeding or at a deposition shall will be paid a fee or allowance unless the person is subpoenaed or present pursuant to direction of the Court or prosecutor.

(d) One fee rule ONE FEE RULE. No person under subpoena to attend in a number of multiple pending criminal cases shall will be permitted to receive more than 4one fee or allowance for attendance on any 4one day.

(e) Construction CONSTRUCTION. This Rrule shall should not be construed to supersede or conflict with or otherwise supersede any federal statute or regulation of the United States or regulation promulgated thereunder or any District of Columbia statute of the District of Columbia.

## COMMENT TO 2019 AMENDMENTS

This rule incorporates, without expanding, the requirements of D.C. Code § 15-714 (2012 Repl.), which provides that Superior Court witnesses be paid the same fees and travel allowances as those paid to witnesses appearing before the United States District Court for the District of Columbia (governed by 28 U.S.C. 1821).

**Rule 114. ~~Indictable Misdemeanors~~[Deleted].**

~~—Whenever a defendant is charged with an indictable misdemeanor, all Rules and procedures applicable to felonies shall pertain thereto.~~

COMMENT TO 2019 AMENDMENTS

This rule has been deleted as unnecessary and inaccurate. Rules addressing indictments would already apply to an indicted misdemeanor. However, not all rules applicable to felonies can be applied to indicted misdemeanors. For example, Rule 17(e)(2), which restates a provision from D.C. Code § 11-942 (2012 Repl.), permits service at any place in the United States when a felony is charged. This could not be applied to a misdemeanor.

**Rule 115. ~~Practice by Attorneys Not Members of the Bar of the District of Columbia~~[Deleted.]**

~~An attorney who is a member in good standing of the bar of the highest court of any state of the United States, may appear and participate in the Criminal Division in a particular case by leave of court provided that the attorney has complied with the requirements of District of Columbia Court of Appeals Rule 49(c).~~

COMMENT TO 2019 AMENDMENTS

This rule has been deleted because District of Columbia Court of Appeals Rule 49 addresses the unauthorized practice of law.

## **Rule 116. Bond or Collateral Securitys and Sureties**

### **(a) Authorization of sureties.**

~~—(1) By Court order. Except by Court order no person shall be authorized to engage in the bonding business in criminal cases in this Court. No order of authorization shall be entered until such application and such supporting documents as are hereinafter required shall have been filed and the approval by this Court shall have been noted thereon.~~

~~—(2) Contents of application. Every individual proposing to engage in the bonding business in criminal cases in this Court shall file with the Court a written application which shall set forth the following information and statements under oath:~~

~~—(i) A listing of real estate owned by the applicant in the District of Columbia. The listing shall state with respect to each parcel: The street address, lot and square number, the current assessed value, the date and from whom title was acquired, the purchase price whether paid in cash or otherwise, the liber and folio of the land records of said District recording the deed or deeds thereto; that the property is not in any way encumbered; whether the property is improved and description of any improvements granted; if married, the applicant shall fully disclose the nature and extent of the spouse's title or interest in any or all parcels of real estate listed; and an Abstract of Title, establishing clear and unencumbered Title to such real estate;~~

~~—(ii) The amount of the applicant's unsecured indebtedness and obligations, together with a prepaid request to a Credit Bureau specified by the Court for a full Credit Report to be mailed by the Bureau directly to the Court;~~

~~—(iii) Whether the applicant is, or has been, in default in the payment of forfeited bail bond or recognizance in any court in the District of Columbia, the amount of bail bond or recognizance on any default recited, the date of forfeiture, the court, title and number of the cause in which such forfeiture was declared;~~

~~—(iv) Whether the applicant has ever been arrested, charged or convicted of any offense;~~

~~—(v) Proof of applicant's good moral character, attested by the statements of at least 2 residents of the District of Columbia not related to the applicant, and who shall so certify;~~

~~—(vi) A declaration by the applicant that the applicant will in all respects abide by the terms and provisions of these Rules and Chapter 11 of Title 23 of the D.C. Code;~~

~~—(vii) A listing of the name, age and residence of each and every person authorized to represent the applicant as agent, clerk or representative in the bonding business, accompanied by an affidavit from each person listed, declaring that the person will in all respects abide by the terms and provisions of these Rules and Chapter 11 of said Title 23;~~

~~—(viii) Each person holding a power of attorney from an authorized individual surety shall file a duplicate original copy thereof with the Clerk of this Court, together with the person's affidavit stating whether the person has ever been arrested, charged or convicted of any offense, accompanied by the written statement of at least 2 residents of the District of Columbia who certify to the agent's good moral character and that they are not related to the said surety or agent;~~

~~—(ix) The application shall also recite the following declaration to which the applicant shall fully agree and subscribe:~~

~~"In the event this application is approved, I will not sell, convey, mortgage, or otherwise encumber any of the real estate listed herein without first obtaining leave of court, and I do hereby irrevocably stipulate and agree that any person, company or corporation may advise the Clerk of this Court of any information with respect to any sale, conveyance, mortgage, encumbrance or title examination which affects the real estate listed in this application; and, I hereby agree that if this application is approved, any and all property listed herein is to be held to satisfy any unpaid forfeiture of any bond or bonds written by me during the period of my authorization, and the order granting this application shall constitute a lien against all of the real estate involved herein, for the purpose of satisfying any forfeiture which may hereafter be declared against me, either in this Court or in the United States District Court for the District of Columbia; and it is further agreed that this lien will be filed with the Recorder of Deeds of the District of Columbia, upon the granting of this application and continue as a lien on such property until duly released by the court. If so released, the Court could cancel the authority granted pursuant to this Application."~~

~~—(3) Date of filing. An application containing like statements shall be filed on or before the 10th day of January of each 2nd year thereafter, or oftener if required by the Court, by each individual surety desiring to continue in said business, which application must receive the approval of the Court before the surety shall be entitled to continue to appear as surety on bonds or recognizances in this Court.~~

~~—(4) Further affidavits. With each application for renewal there shall also be filed an affidavit to the effect that since the surety's previous qualifications the surety has in all respects abided by the terms and provisions of these Rules and Chapter 11 of said Title 23, together with a certificate of the Clerk of this Court wherein it is stated that the Clerk has examined the records of the applicant and found them to be in good order as to form.~~

~~—(5) Other requirements. The original application of every individual proposing to engage in the bonding business, and every application for renewal of authority to continue herein, shall state the aggregate amount of bonds or recognizance in any court of the District of Columbia upon which such person is surety.~~

~~—(6) Fingerprinting. The applicant shall submit to the taking of the applicant's fingerprints by the Clerk of this Court, as shall each person authorized to represent the applicant as agent, clerk or representative in the bonding business. On all renewals, the Clerk of the Court, with the approval of the Chief Judge, may waive the requirement for refingerprinting.~~

~~(b) Scope and suspension of authorization.~~

~~—(1) Monetary limit on authorization. Except as otherwise limited herein, the authorization by this Court shall be effective so long as the aggregate penalties of the bonds written thereunder shall not exceed 3 times the amount of the current assessed value of the real estate listed. Provided, however, that when 2 or more sureties join in the writing of a single bond, the penalty of the bond shall be prorated between the several sureties, either equally or on the same proportionate basis as the sureties participate in the writing of the bond, as the case may be.~~

~~—(2) Revocation and suspension of authority. Any authorization given pursuant to these Rules may be revoked for good cause shown after notice and hearing at any time~~

~~by this Court or any judge thereof. When it appears to the Court that the public interest so requires, any authorization given pursuant to these Rules may upon the order of any 3 judges of the Court be suspended prior to hearing upon the issue of good cause for a period not exceeding 60 days.~~

~~—(3) Suspension due to forfeiture. Whenever any forfeiture is declared under any bond in any court in the District of Columbia, the authority granted by this Court to the authorized surety thereon shall be automatically suspended 14 days after such forfeiture is declared until the said forfeiture is satisfied in full, or until further order of this Court.~~

~~—(4) Suspension on sale of listed property. Any person engaged in the business of executing bonds for compensation in this Court, who, after having filed with the Clerk of the Court the application required by these Rules, shall sell, convey, mortgage or otherwise encumber any of the real estate listed in the application, shall be suspended from the executing other or further bonds until the further order of the Court unless the person forthwith reports the said transaction to the Court and the person's limit of liability shall be correspondingly reduced.~~

~~—(5) Suspension due to activities besides bonding. Any person engaged in the business of executing bonds for compensation in this Court who shall appear in any cause before the Court, the Office of the United States Attorney, or the Office of the Corporation Counsel, in a representative capacity, except for the purpose of discharging the person's duties as a surety in said cause, shall be suspended from executing other or further bonds until the further order of this Court.~~

~~—(6) Suspension due to excess commission fees. Any surety who shall charge and receive a commission, fee or other remuneration in excess of \$ 10 per \$ 100 of any bond executed by the surety in this Court shall be suspended from writing other or further bonds until the further order of this Court.~~

~~—(7) Suspension for procuring business for an attorney. Any surety who procures or assists in procuring or attempts to procure the retention or employment of any attorney to represent any person charged with an offense cognizable in this Court, or solicits or receives or enters into any agreement to receive any fee, commission money, property or other things of value for procuring or assisting or attempting to procure the retention or employment of any attorney to represent any person charged with an offense cognizable in this Court, shall be suspended from executing other or further bonds until the further order of this Court.~~

~~—(8) Suspension for loitering to solicit business. Any surety, the surety's agents or employees who are guilty of loitering in or about or in the vicinity of any place where persons in the custody of law are detained, or of this Court, for the purpose of soliciting bonds or who shall obtain a bond through such loitering shall be suspended from executing any other or further bonds until the further order of this Court.~~

~~—(9) Suspension for procuring business in certain instances. Any surety who, either directly or indirectly, gives, donates, lends, contributes, or promises to give, donate, lend, or contribute anything of value whatsoever to any attorney at law, police officer, deputy United States Marshal, jailer, probation officer, clerk, or other attache of a criminal court, or public official of any character, for procuring or assisting in procuring any person to employ the surety to execute as surety any bond for compensation in any~~

~~criminal case shall be suspended from executing other or further bonds until the further order of this Court.~~

~~(c) Duties of the surety.~~

~~—(1) Maintenance of office. Each authorized bondsman shall, at all times, maintain an office and telephone, for the transaction of business, in the District of Columbia.~~

~~—(2) Records. Any surety authorized under these Rules shall keep an accurate record of each and every bond upon which the surety appears as surety in this Court, said record to be available for inspection upon demand by this Court, or any designated representative thereof, or any designated representative of any law enforcement agency of the District of Columbia; such record to include:~~

~~—(i) The full name and address of the defendant for whom the bond is executed and the full name and address of the defendant's employer, if any;~~

~~—(ii) The offense with which the defendant is charged;~~

~~—(iii) The name of the court or officer authorizing the defendant's admission to bail;~~

~~—(iv) The amount of the bond;~~

~~—(v) The name of the person who called the surety, if other than the defendant;~~

~~—(vi) The amount of the surety's charge for executing the bond;~~

~~—(vii) The full name and address of the person to whom the surety presented the bill for the charge;~~

~~—(viii) The full name and address of the person paying the charge; and~~

~~—(ix) The manner of payment of the charge.~~

~~A separate like record shall be kept of all other bonds written by any surety so authorized, which shall likewise be available for inspection upon demand by this Court.~~

~~The records which the authorized surety is required to maintain shall be retained for a period of at least 3 years; the said records shall be submitted to the Clerk of this Court for examination and report at a reasonable time prior to the filing of an application for renewal.~~

~~—(3) Obtaining release of the defendant. After the Court has fixed the amount of the bond, it shall be the duty of the surety who agrees to write the bond to obtain a release of the defendant from the Clerk.~~

~~—(4) Continuing obligation. Any bond authorized by a judge of the Court or an official authorized to take bonds pursuant to paragraph (d)(2) of this Rule shall be a continuing bond and shall obligate the surety until final disposition of the charge by this Court or by the United States District Court for the District of Columbia, provided, however, that a surety may be relieved of the continuing obligation upon a proper showing made by written application. Any obligation of a surety may be appropriately reduced whenever a charge against a defendant is reduced or whenever 1 or more charges are dropped from the original charges.~~

~~(d) Duties of the Clerk and Marshal.~~

~~—(a) Schedule of bonds and collateral security. LIST OF BONDS AND COLLATERAL SECURITY. From time to time The clerk must prepare a listschedule shall be prepared by the Clerk of bonds and collateral security to be taken from persons charged with offenses cognizable in this Court for to resolve certain misdemeanor offenses under D.C. Code § 5-335.01 (2019 Repl.) or to assure their person's appearance for trial or for further hearing. ~~The bonds and collateral security provided in such schedule shall be~~~~



subject to change in individual cases by any judge before whom a case may be pending.

~~—(b2) Substitute clerk RELEASING OFFICIAL. The judges of the Superior Court shall may appoint officials of the Metropolitan Police Department or other law enforcement agency operating in the District of Columbia to act as clerks ~~of this Court~~ with authority to take bonds or collateral security in accordance with the list established under Rule 116(a), schedule prepared and adopted by the Court from persons charged with any offense cognizable in the Court at all times when the Clerk's Office is not open and its clerks accessible. Officials so appointed shall have such other authority and be subject to the limitations provided by *D.C. Code § 23-1110*.~~

~~—(3) Release of defendant by Clerk. After the Court has fixed the amount of a bond, any release of the defendant given by the Clerk to the surety to write the bond shall direct the Marshal to bring the defendant to the Clerk. After the Clerk has determined that the surety is authorized to execute the bond, the bond shall be executed by both the defendant and surety, and the Marshal shall then release the defendant into the custody of the surety.~~

~~—(4) Custody on increased charges or conditions. The defendant shall be taken into custody and a new bond shall be required whenever (i) the amount of the bond is increased, (ii) the charge is increased from a misdemeanor to a felony, or (iii) 1 or more additional charges are added to the original charge.~~

~~—(5) Limit on acceptance of obligation. No single bond or recognizance shall be taken or approved which obligates the surety in an amount exceeding the current assessed value of the surety's listed real estate.~~

~~—(6) Liaison with District Court. It shall be the duty of the Clerk of this Court to maintain close liaison with the Clerk of the United States District Court for the District of Columbia on all matters relating to sureties and their operations.~~

~~(e) [Deleted].~~

~~(f) Corporate sureties.~~

~~—(1) Terms and conditions. Bonds, undertakings or recognizances in criminal cases may be accepted from corporations authorized by Court order to engage in the business of acting as surety under the same terms and conditions as are now required by this Rule and practices in this Court for individuals.~~

~~—(2) Exception. Corporate sureties holding authority from the Secretary of the Treasury to do business in the District of Columbia and having a process agent therein shall be excused from compliance with the provisions of paragraph (a)(2) applicable to corporations, provided their agents and employees holding power of attorney to act in a representative capacity for them in this Court shall have complied with paragraph (2)(d), (e) and (f).~~

~~(g) Private sureties. Any person proposing to go on bond without compensation for same shall satisfy the Clerk of the Court that (1) said person is of good moral character and standing in the community; (2) the real estate offered as bond is free of any mortgages, liens or encumbrances of any kind, is located within the District of Columbia, disclosing the nature and extent of the interest of anyone, other than the person in whose name the real estate is assessed, in any or all of the parcels so offered; and (3) shall exhibit a certification from the Assessor's Office of the District of Columbia,~~

indicating the square and lot numbers, street address, current assessed value, and in whose name the property is assessed.

(c) ~~FORFEITURE~~ forfeiture of bail.

(1) ~~Declaration~~ Violation of Condition. -If there is a breach defendant violates of a condition of ~~the~~ bond or collateral, the ~~C~~ court shall ~~must~~ declare a forfeiture of the bond or collateral ~~bail~~.

(2) ~~Setting a~~ Side. If the court determines that justice does not require enforcement of a forfeiture, ~~The~~ C ~~court may direct that set aside the~~ forfeiture be set aside, upon such and impose appropriate conditions ~~as the Court may impose, if it appears that justice does not require the enforcement of the forfeiture. No forfeiture may be set aside~~ ! ~~In the case of a defendant who has failed to appear, only except upon the approval of the judge who originally imposed the forfeiture~~ may set it aside.

(3) ~~Enforcement.~~ When the court declares a forfeiture ~~has not been set aside~~, the ~~C~~ court shall ~~must~~, on motion, enter a judgment of default, and execution may issue ~~thereon~~ the judgment. By entering into a bond, the obligors submit to the jurisdiction of the ~~C~~ court and irrevocably appoint the ~~C~~ clerk of the Court as their agent ~~upon whom~~ any papers affecting their liability may be served. Their liability may be enforced on motion without ~~the necessity of filing~~ an independent action. The motion and ~~such any~~ notice of the motion required by ~~as~~ the ~~C~~ court prescribes may be served on the ~~C~~ clerk of the Court, who ~~shall~~ will ~~forthwith~~ immediately mail copies to the obligors at their last known addresses.

~~—(4) Remission.— After entry of such judgment, the Court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in subparagraph (2) of this section.~~

(d) ~~Exoneration~~ RELEASE. When the defendant satisfies the conditions of the bond or collateral ~~has been satisfied or the forfeiture thereof has been set aside or permitted~~, the ~~C~~ court shall ~~exonerate the obligors and~~ must release ~~any bail~~ the bond or collateral. ~~A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.~~

## Rule 117. Magistrate Judges

(a) ~~Assignment of duties~~ASSIGNMENT OF DUTIES. Magistrate judges appointed pursuant to ~~under~~ the Superior Court rules of this Court, when specifically designated by the Chief Judge, may perform the duties specified in this ~~R~~rule and ~~such any~~ other functions incidental to these duties ~~as that~~ are consistent with the Superior Court rules of ~~the Superior Court~~ and the Constitution and laws of the United States and of the District of Columbia.

(b) ~~Pretrial proceedings~~PRETRIAL PROCEEDINGS.

(1) ~~Determining p~~Pretrial r~~Release or e~~Detention. A person accused of committing a criminal offense in the District of Columbia may be brought before a magistrate judge. The magistrate judge ~~shall will~~ determine conditions of release and pretrial detention pursuant to ~~under~~ these rules and Title 23 of the District of Columbia Code D.C. Code §§ 23-1321 to -1333 (2012 Repl. & 2019 Supp.). ~~Review of the magistrate judge's determination of conditions of release may be made sua sponte and shall be made, upon motion, by the judge to whom the case is assigned. Where the case has not been assigned to a judge at the time the motion is filed, review shall be made by a judge to whom the case is assigned for purposes of review.~~

(2) ~~Conducting p~~Preliminary e~~Examinations~~. A magistrate judge may conduct preliminary examinations ~~in all criminal cases, pursuant to SCR Grim under Rules 5 and 5.1,~~ to determine if there is probable cause to believe that an offense has been committed and that the accused committed it.

(3) ~~Other e~~Duties. ~~The~~A magistrate judge may appoint counsel for indigent defendants ~~in any criminal action, assign trial dates or certify an action for disposition before a judge, and rule on motions to continue a trial date. In addition, the~~A magistrate judge may issue a judicial summons or warrant, ~~pursuant to SCR Grim in accordance with Rule 9, for when~~ a defendant's failure ~~sure~~ to appear in Ccourt.

(c) ~~Hearing of certain non-jury matters~~NON-JURY, NON-FELONY MATTERS.

~~(1) With Consent of Parties. Upon~~With the consent of the parties, a magistrate judge may make findings and enter final orders or judgments in any criminal action, other than a jury or felony trial by jury, in which (1) the maximum confinement provided by law is 180 days or less and the maximum fine provided by law for each offense does not exceed \$ 1,000, or (2) the accused is charged with any offense heard in the District of Columbia and Traffic calendars of the Criminal Division.

~~(2) Advising Defendant. Prior to the commencing~~ment of any such contested proceeding under Rule 117(c)(1), ~~the~~a magistrate judge ~~shall must~~ advise the defendant that:

(A) the defendant may not appeal to the District of Columbia Court of Appeals without first bringing the appeal requesting review to by a Superior Court judge of the Superior Court; and

(B) the request for review by a Superior Court judge must be filed within 140 days after a final order or judgment has been entered.

~~(d) Acceptance of guilty pleas and imposition of sentence. A magistrate judge may, with the consent of the parties, accept a defendant's plea of guilty or nolo contendere and impose sentence in any criminal matter in which the maximum confinement provided by law for each offense is 180 days or less and the maximum fine provided by law does not~~

~~exceed \$ 1,000 and all traffic actions heard in the District of Columbia and Traffic Branch of the Criminal Division.~~

~~(de) Notification of right to appeal~~ADVISING OF RIGHT TO APPEAL.

~~(1) In Case of Trial.~~ After pronouncing the sentence in a case which has gone to trial, the magistrate judge ~~shall~~must advise the defendant ~~of that:~~

~~\_\_\_\_\_ (A) the defendant's~~ has the right to seek a review by a Superior Court judge of any final order or judgment entered or made by the magistrate judge; ~~and that~~

~~\_\_\_\_\_ (B) any claim of error not raised before a Superior Court judge may not ordinarily be raised in a subsequent appeal which the defendant is otherwise entitled to make to the District of Columbia Court of Appeals; and Furthermore, the magistrate judge shall advise the~~

~~\_\_\_\_\_ (C) a~~ defendant ~~of the right of a person~~ who is unable to pay the cost of an appeal ~~to~~may apply for leave to appeal in forma pauperis.

~~(2) In Case of Plea.~~ ~~There shall be no duty on the~~ magistrate judge does not have a duty to advise the defendant of any right to appeal after sentence is imposed following a plea of guilty or nolo contendere.

~~(ef) Conducting initial probation revocation hearings~~INITIAL PROBATION REVOCATION HEARINGS.

A magistrate judge may conduct initial probation revocation hearings in all criminal cases, ~~pursuant to SCR Crimin~~ accordance with Rule 32.1, to determine if there is probable cause to hold the probationer for a final revocation hearing.

~~(fg) Review of magistrate judge's order or judgment; appeal~~REVIEW OF ORDER OR JUDGMENT; APPEAL.

~~(1) Upon Motion.~~ ~~With respect to proceedings and hearings under paragraphs (b)(2), (c), (d) and (f) of this Rule~~On motion, a judge designated by the Chief Judge or the judge assigned to the case must a review ~~of the~~ magistrate judge's order or judgment, in whole or in part, ~~shall be made by a judge designated by the Chief Judge upon motion of a party; which~~

~~\_\_\_\_\_ (A) Timing.~~ The motion shallmust be filed and served within 140 days after: ~~service of~~

~~\_\_\_\_\_ (i) the order or judgment~~ was servedup on the party; ~~or,~~

~~\_\_\_\_\_ (ii) if the~~ magistrate judge order or judgment was stated on the record, ~~within 10 days thereafter.~~

~~\_\_\_\_\_ (B) Assignment for Review.~~ If the defendant is incarcerated as a result of the magistrate judge's judgment or order, the case shallwill be assigned for review within 4one court day.

~~\_\_\_\_\_ (C) Content.~~ The motion for review shallmust:

~~\_\_\_\_\_ (i)~~ designate the order, judgment, or part thereof, for which review is sought; ~~shall~~

~~\_\_\_\_\_ (ii)~~ specify the grounds for objection to the magistrate judge's order, judgment, or part thereof; ~~and shall~~

~~\_\_\_\_\_ (iii)~~ include a written summary of the evidence presented before the magistrate judge relating to the grounds for objection.

~~\_\_\_\_\_ (D) Response.~~ Within 140 days after being served with ~~said~~the motion, a party may file and serve a response, which shallmust describe any proceedings before the magistrate judge which conflict with or expand upon the summary filed by the moving party.

(E) Review by Judge. The judge designated by the Chief Judge or the judge assigned to the case shall ~~must~~ review the ~~these~~ portions of the magistrate judge's order or judgment to which objection is made. The judge may decide the motion for review with or without a hearing and may affirm, reverse, modify, or remand, in whole or in part, the magistrate judge's order or judgment and enter an appropriate order or judgment.

(2) ~~On the Court's Own Initiative of the Court.~~ Not later than 30 days after entry of a magistrate judge's order or judgment ~~pursuant to paragraphs (b)(2), (c), (d) or (f) of this Rule, thea~~ judge designated by the Chief Judge or the judge assigned to a case may, on the judge's own initiative, sua sponte review ~~saidan~~ order or judgment in whole or in part. After giving the parties ~~due~~ notice and an opportunity to make written submissions on the matter, the judge, with or without a hearing, may affirm, reverse, modify, or remand, in whole or in part, the magistrate judge's order or judgment.

(3) ~~Stay of eExecution; rRelease pending rReview.~~ UpeOn the filing of a motion for review ~~pursuant to subparagraph under Rule 117(fg)(1) of this Rule, the court may stay execution of a judgment of conviction entered by a magistrate judge may be stayed in the same manner as on appeal from a judgment of the Superior Court to the District of Columbia Court of Appeals~~ the sentence under Rule 38. During the pendency of a motion for review, the defendant may be released under D.C. Code § 23-1321 (2019 Supp.) by the magistrate judge or, on motion, by the reviewing judge ~~upon if the defendant~~ a showing by clear and convincing evidence that:

(A) the defendant is not likely to flee or pose a danger to any other person or to the property of others; and that

(B) the defendant's motion for review presents a substantial question of law or fact. ~~Upon such findings, the judge or magistrate judge shall treat the defendant in accordance with the provisions of D.C. Code § 23-1321.~~

(4) ~~Extension of tTime to fFile mMotion for rReview.~~ UpeOn a showing of excusable neglect and notice to the parties, the judge designated by the Chief Judge or the judge assigned to the case pursuant to subparagraph (g)(1) of this Rule may, before or after the time prescribed by ~~subparagraph~~ Rule 117(fg)(1)(A) has expired, with or without motion, extend the time for filing ~~and serving~~ a motion for review of a magistrate judge's order or judgment for a period not to exceed 210 days from the expiration of the time otherwise prescribed by ~~subparagraph~~ Rule 117(fg)(1)(A).

(5) *Appeal.* An appeal to the District of Columbia Court of Appeals may be made only after a Superior Court judge ~~of the Superior Court~~ has reviewed the magistrate judge's judgment or order ~~pursuant to paragraph in accordance with Rule 117(fg) of this Rule.~~

(gh) Contempt of Court CONTEMPT. A magistrate judge may cite an individual for contempt committed in the presence of the magistrate judge. The magistrate judge ~~shall thereafter~~ must certify the contempt proceeding for hearing and disposition before a judge ~~pursuant to SCR Grim under Rule 42(ab).~~

**Rule 119. Custody of ~~p~~Property and ~~e~~Exhibits in ~~e~~Criminal ~~e~~Cases.**

~~(a) Prior to verdict~~PRIOR TO VERDICT. The prosecutor, the attorney for the defendant, or a defendant when acting pro se in a criminal proceeding shall Unless otherwise ordered by the court, a party must retain its~~any~~ exhibits and property until a verdict or final order is entered~~they are marked for identification and received in evidence~~. All such property and exhibits shall thereafter be retained by the Clerk until verdict, except that exhibits consisting of weapons, money, controlled substances, or articles of high monetary value shall be retained by the parties during adjournments.

~~(b) After verdict~~AFTER VERDICT OR ORDER. In cases in which a verdict of not guilty or a judgment of acquittal is entered or a mistrial declared, each party shall immediately retake its exhibits from the Clerk u

(1) Filing Copies of Exhibits. After a verdict or final order is entered, a party must file a copy of each exhibit in the time, manner, and form prescribed by the court or administrative order of the Chief Judge.

(2) Retaining Original; Inspection or Transmission. Unless otherwise ordered by the Court. In cases in which a verdict of guilty is entered, the Clerk shall retain all exhibitsIt is the responsibility of the party who submitted the exhibit to preserve and maintain the original exhibit until the time prescribed by administrative order of the Chief Judge. On request by another party or the court, the party having custody of the exhibits must make them available for inspection. On request, the party must transmit the exhibits to the appellate court,~~except exhibits consisting of controlled substances, weapons, money, or articles of high monetary value, which shall be transmitted by the Clerk to the parties, who shall receipt for them~~. Exhibits offered by a party which are large and unwieldy, such as diagrams, models, physical displays, etc., shall also be so transmitted unless otherwise ordered by the Court.

If no appeal is perfected, each party shall retake its exhibits from the Clerk 90 days after the date of final disposition of the case in this Court. If an appeal is perfected, each party shall retake its exhibits from the clerk 30 days after final disposition of the case by the appellate court.

~~(c) Preservation of exhibits~~. The parties shall preserve and maintain in custody all exhibits so transmitted to them for the periods of time specified in paragraph (b) of this rule.

~~(d) Destruction of exhibits~~. If any party, having received notice from the Clerk to retake its exhibits as provided in paragraph (b) of this rule, fails to do so within 30 days of the date of such notice, the Clerk may destroy or otherwise dispose of those exhibits.

COMMENT TO 2019 AMENDMENTS

This rule has been amended consistent with the general restyling of the federal rules in 2002. In order to accommodate technological changes, the rule has also been amended to provide for filing of exhibits in accordance with an administrative order or other court order. Subsection (b)(2), which addresses retention of exhibits, does not impact a party's or attorney's responsibilities imposed by other statutes, regulations, or rules, such as the D.C. Rules of Professional Conduct.