

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Notice of Proposed Amendments to Superior Court Rules Governing Juvenile Proceedings

The Rules Committee of the Superior Court of the District of Columbia recently completed review of proposed amendments to Rules 9 and 43 of the Superior Court Rules Governing Juvenile Proceedings. The Rules Committee will recommend to the Superior Court Board of Judges that the amendments be approved and adopted unless, after consideration of comments from the Bar and the general public, the proposed amendments are withdrawn or modified.

Written comments must be received by November 2, 2022. Comments may be emailed to Pedro.Briones@dccsystem.gov or may be mailed to:

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

[Juvenile] Rule 9. Summonses and Other Notices of Hearing

(c) Service and return.

(1) By whom. A summons or notice of the initial appearance may be served by a United States Marshal, by an officer of any police department of the District of Columbia, by a representative of the Superior Court Social Services Division, by a representative of any other public or private organization providing supervision or treatment of the respondent or the respondent's family, by a representative of any public or private organization having custody of the respondent, or by any other person so authorized by the Court.

(2) Territorial limits. A summons or notice of the initial appearance may be served at any place in the District of Columbia and, pursuant to the Interstate Compact on Juveniles, D.C. Code § 32-1101 et seq., at any place within the jurisdiction of the United States.

(3) Manner. Upon the respondent's release from custody, a representative of the Superior Court Social Services Division shall personally serve the respondent and the respondent's parent, guardian, or custodian with a summons or notice of the initial appearance. The summons or notice of the initial appearance shall be served upon the respondent and the respondent's parent, guardian, or custodian by delivering a copy to them personally, or by leaving it at their dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons or notice to their last known address. Service of the summons or notice of the initial appearance shall be completed sufficiently in advance of the hearing (not less than 48 hours before) so that reasonable opportunity to prepare to plead is afforded.

(4) Alternative Methods of Service. If the court determines, upon motion, that after diligent effort, service cannot be accomplished by a method prescribed in Rule 9(c)(3), the court may permit an alternative method of service reasonably calculated to give actual notice of the action to the respondent and the respondent's parent, guardian, or custodian. The court may specify how service must be proved if accomplished by an alternative method. Alternative methods of service include, but are not limited to:

(A) delivering a copy to the individual's employer by leaving it at the individual's place of employment with a clerk or person in charge;

(B) mailing a copy to the individual by registered or certified mail, return receipt requested;

(C) transmitting a copy to the individual by electronic means; or

(D) any other manner that the court deems just and reasonable.

(5) Return. On or before the return day, if service has been effected, the person to whom a summons or notice of the initial appearance was delivered for service shall make a return thereof to the Family Court. At the request of the Office of the Attorney General made at any time while the petition is pending, a summons or notice of the initial appearance returned unserved or a duplicate thereof may be delivered to an authorized person for service. At the request of the Office of the Attorney General any

unserved summons or notice of the initial appearance may be returned and cancelled by the Family Court.

COMMENT TO 2022 AMENDMENTS

Rule 9 has been amended to authorize alternative methods of service if, upon motion, the court makes the appropriate determination. New subsection (c)(4) also provides a non-exhaustive list of methods of alternative service. Prior subsection (c)(4) was redesignated as (c)(5) accordingly.

[Juvenile] Rule 43. Presence of the Respondent

(a) IN GENERAL. The respondent must be physically present at the initial hearing, at the factfinding hearing, and at the entry of a dispositional order, except as otherwise provided by Rule 43(b) or D.C. Code § 16-2316(f) (2012 Repl.).

~~(b) WAIVING PRESENCE.~~

~~—(1) Voluntary Absence. A respondent who was initially present at the factfinding hearing waives the right to be present when the respondent is voluntarily absent after the factfinding hearing has begun, regardless of whether the court informed the respondent of an obligation to remain during the factfinding hearing.~~

~~—(2) Waiver's Effect. If the respondent waives the right to be present, the factfinding hearing may proceed to completion, including the adjudication, during the respondent's absence.~~

~~(c) EMERGENCY AUTHORITY FOR VIDEO TELECONFERENCING OR TELEPHONE CONFERENCING.~~

~~—(1) In General. Subject to Rule 43(c)(2)-(3), t~~he court may permit any initial, emergency, status, plea, factfinding, or disposition hearingproceeding to occur by video teleconferencing or by telephone conferencing if:

(A) the respondent consents after consultation with counsel;

(B) the government consents;

(C) the court makes an inquiry on the record to ensure that the respondent's consent is knowing, voluntary, and intelligent; and

(D) the respondent has an adequate opportunity to consult confidentially with counsel immediately before, during, and at the conclusion of the proceeding.

~~—(A) the Chief Judge, with the consent of the Joint Committee on Judicial Administration, has issued an order under D.C. Code § 11-947 (2019 Supp.) to delay, toll, or otherwise grant relief from deadlines imposed by law or rules, based on the Coronavirus Disease 2019 (COVID-19); and~~

~~—(B) in a particular case, the court finds for specific reasons that the hearing in that case cannot be further delayed without serious harm to the interests of justice.~~

~~—(2) Consent. Video teleconferencing or telephone conferencing authorized under Rule 43(c)(1) may take place only with the consent of the respondent after consultation with counsel.~~

~~—(3) Termination of Emergency Authority. The authority under Rule 43(c)(1) terminates on the earlier of:~~

~~—(A) 30 days after an order referenced in Rule 43(c)(1)(A) expires without issuance of a further order; or~~

~~—(B) the date on which the Chief Judge issues an order terminating the authority granted by Rule 43(c)(1).~~

(c) WAIVING PRESENCE.

(1) Voluntary Absence. A respondent who was initially present at the factfinding hearing waives the right to be present where the respondent is voluntarily absent after the factfinding hearing has begun, regardless of whether the court informed the respondent of an obligation to remain during the factfinding hearing. The factfinding hearing may proceed to completion, including the adjudication, during the respondent's absence.

(2) Upon motion by the respondent, the court may grant a respondent's waiver of the right to be present at any proceeding.

COMMENT TO 2022 AMENDMENTS

Rule 43 has been amended to expand the Superior Court's authority to permit a respondent to appear by video teleconferencing or telephone conferencing, i.e., remotely. The amended rule is modeled on [pending] 2022 amendments to Criminal Rule 43. It largely tracks, and makes permanent, temporary emergency authority the court exercised during the COVID-19 pandemic to hold remote hearings. The court's experience during COVID-19 has shown that remote juvenile proceedings function well.

COMMENT TO 2020 TEMPORARY AMENDMENTS

New section (c) provides explicit authority for the court to conduct proceedings by video teleconference or telephone conference if the Chief Judge has issued an order under D.C. Code § 11-947 (2019 Supp.) based on COVID-19 and there is a case specific finding. The section is modeled after provisions in the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (CARES Act), § 15002 (2020), and resulting district court orders. The CARES Act permitted the Judicial Conference of the United States to find that emergency conditions materially affected the functioning of the federal courts or a particular district court of the United States. The Chief Judge of a covered district court could then authorize the use of video teleconferencing or telephone conferencing for additional proceedings with certain conditions.