

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 18-04

(Amending Super. Ct. Adop. R.)

WHEREAS, pursuant to D.C. Code § 11-946, the Board of Judges of the Superior Court approved amendments to the Superior Court Rules Governing Adoption Proceedings; and

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

ORDERED, that the Superior Court Rules Governing Adoption Proceedings are hereby amended and enacted as set forth below;¹ and it is further

ORDERED, that the amendments shall take effect January 2, 2019, and shall govern all proceedings thereafter commenced and insofar is just and practicable all pending proceedings.

¹ The attached Superior Court Rules Governing Adoption Proceedings 1-26 replace existing Superior Court Rules Governing Adoption Proceedings 1-201.

INTRODUCTORY NOTE TO 2018 ADOPTION RULES

The Superior Court Rules Governing Adoption Proceedings have been completely reorganized and renumbered to simplify them and to eliminate unnecessary placeholders that were designed to align the numbering of the adoption rules with that of the civil rules. While the renumbered rules retain many of the same concepts and provisions, they are now organized in a manner that generally reflects the progression of an adoption case. The adoption rules also incorporate the stylistic changes to the civil rules.

With recent amendments to other Superior Court rules, the court has retained the older comments for historical purposes. However, because many provisions and rules have moved in the adoption rules, the court has not retained the original comments.

Rule 1. Scope; Title; Applicability of Civil Rules

(a) SCOPE. These rules govern adoption proceedings in the Family Court of the Superior Court of the District of Columbia.

(b) TITLE. These rules may be known as the Superior Court Rules Governing Adoption Proceedings and may be cited as “Super. Ct. Adop. R. ___.”

(c) APPLICABILITY OF CIVIL RULES. Except when inconsistent with or modified by these rules, the following Superior Court Rules of Civil Procedure are applicable to adoption proceedings:

5-I, 5.1, 5.1-I, 6, 7-I, 10, 10-I, 11, 12-I(d)-(f) and (h), 26-37 (subject to Rule 15), 43, 44, 44-I, 44.1, 45 (subject to Rule 15), 54-II, 61, 63, 63-I, 79, 80, 101(a)-(d), 201(c)-(e)

COMMENT

The citation for the Superior Court Rules Governing Adoption Proceedings conforms to the District of Columbia Court of Appeals Citation and Style Guide. The adoption rules incorporate appropriate concepts and provisions from the civil rules by making specified civil rules applicable except when they are inconsistent with or modified by the adoption rules.

Rule 2. Definitions

The following definitions apply to these rules:

(1) “Affidavit” means a written declaration or statement of facts signed under oath or affirmation of the person making it.

(2) “Child” means any person under the age of 18.

(3) “Contested adoption” means a case in which:

(A) two or more parties have filed competing actions for the adoption, permanent guardianship, or custody of the same child; or

(B) the case has been certified as contested under Rule 9.

(4) “Court-appointed guardian” means the person who has been appointed guardian of the prospective adoptee under D.C. Code § 21-103 or -2044 (2012 Repl. & 2018 Supp.) or a comparable statute in another jurisdiction.

(5) “Final Report” means the report and recommendation submitted to the court by the reporting agency in accordance with D.C. Code § 16-307 (2012 Repl.).

(6) “Parent” means a parent whose parental rights have not been terminated or who has not relinquished parental rights under D.C. Code § 4-1406 (2018 Supp.).

(7) “Putative parent” means a person who claims to be or is identified as a possible parent but whose parentage has not been established.

(8) “Reporting agency” means the Mayor or the child-placing agency, designated by the court under Rule 3(c)(1) to investigate and prepare the Final Report.

(9) “Section-304 Hearing” means a hearing to determine whether, under D.C. Code § 16-304 (d) (2012 Repl.), a parent’s consent is no longer required or whether, under D.C. Code § 16-304 (e) (2012 Repl.), consent is being withheld contrary to the best interests of the prospective adoptee.

COMMENT

“Court-appointed guardian” does not include a permanent guardian appointed under D.C. Code §§ 16-2381 to -2399 (2012 Repl. & 2018 Supp.).

Rule 3. Petition for Adoption; Related Cases; Initial Court Order

(a) PETITION FOR ADOPTION.

(1) *Filing.* Unless the court directs otherwise, for each prospective adoptee, a petitioner must file a separate petition for adoption accompanied by the documents listed in Rule 3(a)(3).

(2) *Format and Content.* The petition for adoption must be filed on the form maintained by the court or on a form that is substantially similar in format and content. The petition must be signed under oath or affirmation by the petitioner. If there is more than one petitioner, the petition must include the required information for each petitioner. If any of the required information is unknown, the petitioner must state that on the petition.

(3) *Required Documents.* A petitioner must file the following documents with the petition:

- (A) one additional copy of the petition;
- (B) a completed Adoption Information Form;
- (C) a completed District of Columbia Vital Records Form;
- (D) an executed copy of the Mother's Affidavit Concerning Paternity, if available;
- (E) in cases in which there is a related neglect case, a list of the names and addresses

of:

(i) counsel for the petitioner (or the name and address of the petitioner, if self-represented);

(ii) the social worker; and

(iii) all attorneys of record in the neglect case; and

(F) in cases in which there is not a related neglect case, a list of the names and addresses of:

(i) counsel for the petitioner (or the name and address of the petitioner, if self-represented);

(ii) the agency that petitioner requests prepare a Final Report required by the court; and

(iii) any custodian of the prospective adoptee other than the petitioner.

(4) *Copy to the Reporting Agency.* The clerk must provide a copy of the petition to the reporting agency designated in Rule 3(c)(1).

(b) **RELATED CASES.** On the filing of a petition, the clerk must identify and list on the docket all Superior Court cases involving the prospective adoptee or the petitioner.

(c) **INITIAL COURT ORDER.** On the filing of a petition, the court must issue an initial order that:

(1) includes an order of reference, referring the petition to a child-placing agency or the Mayor for an investigation and Final Report, or dispenses with the requirement of an investigation and Final Report;

(2) establishes deadlines for providing information to the court;

(3) if applicable, consolidates the adoption case with any pending neglect case;

(4) if applicable, schedules a Section-304 Hearing and indicates that if the person whose consent is required fails to appear at the Section-304 Hearing, the court may determine that consent is being withheld contrary to the best interests of the child; and

(5) if the petition does not include the identity and address of a person whose consent is being withheld, requires the reporting agency to submit to the court, within 21 days after receiving the order, an expedited response that includes:

(A) the name and address of each person whose consent is being withheld and the reasons for withholding consent (if known); or

(B) if the name or address of a person whose consent is being withheld is still unknown, the status of efforts to identify and locate the person.

COMMENT

This rule memorializes the current practice of issuing a single, initial order that includes the order of reference, order for expedited response, consolidation order, and Section-304 order (formerly show cause order). The substance of and procedures for issuing these orders were previously found throughout Rule 4.

Rule 4. Notice of Adoption Proceeding; Serving the Notice and Initial Court Order; Serving Other Filings

(a) NOTICE OF ADOPTION PROCEEDING.

(1) *In General.* On the filing of a petition, the clerk must issue a notice of adoption proceeding.

(2) *Contents.* A notice of adoption proceeding must be directed to the person to be served and must state:

(A) the name of the court;

(B) that a petition for adoption has been filed;

(C) the initials and birthdate of the child who is the subject of the petition;

(D) that the person has the right to seek custody or challenge the adoption;

(E) the time and date when the person must appear;

(F) the date by which the person must file a written objection;

(G) that the person may consent to the adoption or relinquish the child to a licensed child-placing agency;

(H) that counsel has been appointed for the person or the person may retain counsel to represent him or her in the proceedings; and

(I) that if an adoption is granted, a parent's legal rights, responsibilities, and obligations with respect to the child will be terminated.

(b) **ISSUANCE OF COPY TO THE REPORTING AGENCY.** The court must issue a copy of the notice of adoption proceeding and the initial court order to the reporting agency designated in Rule 3(c)(1).

(c) SERVING THE NOTICE AND INITIAL COURT ORDER.

(1) *In General.* Copies of the notice of adoption proceeding and initial court order, redacted in accordance with Rule 4.1, must be served on:

(A) each party;

(B) any person whose consent is required, unless the person has executed a written consent or relinquishment of parental rights or the person's parental rights have been terminated; and

(C) any putative parent.

(2) *By Whom.*

(A) *When Consolidated with Neglect Case.* When the adoption case has been consolidated with a pending neglect case under Rule 3(c)(3), the Mayor is responsible for serving the persons listed in Rule 4(c)(1).

(B) *Private Adoption: Service on Known Person.* When the identity of a person to be served is known to the petitioner, the petitioner is responsible for serving that person.

(C) *Private Adoption: Service on Unknown Person.* When the identity of a person to be served is unknown to the petitioner, the clerk is responsible for serving that person, but when service is made under Rule 4(c)(7), the petitioner is responsible for any associated service costs.

(3) *Method of Service.* The notice of adoption proceeding and initial court order may be served on a person—other than a minor or an incompetent person—by:

(A) registered mail, restricted delivery to the addressee only, return receipt requested;

(B) personal delivery to the person, by an individual who is at least 18 years of age and not a party;

(C) delivery to an agency authorized to receive service;

(D) when authorized by the court, leaving a copy of each at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(E) when authorized by the court under Rule 4(c)(7)(A), posting or publishing the notice as described in Rule 4(c)(7)(B) or (C); or

(F) when authorized by the court after diligent efforts to serve a known person in a manner prescribed in Rule 4(c)(3)(A)-(D), using any alternative method of service reasonably calculated to give actual notice of the proceedings to the person.

(4) *Concurrent or Successive Attempts.* Service under Rule 4(c)(3)(A)-(D) may be attempted either concurrently or successively.

(5) *Serving a Minor or an Incompetent Person.* A minor or an incompetent person must be served by following District of Columbia law (D.C. Code §§ 13-332 and -333 (2012 Repl.)) or the state law for serving like process on such an individual in an action brought in the courts of general jurisdiction of the state where service is made.

(6) *Serving Outside the District of Columbia.* An individual who cannot be served in the District of Columbia may be served outside of the District of Columbia by following District of Columbia law or the state law for serving a summons in an action brought in the courts of general jurisdiction of the state where service is made.

(7) *Serving by Posting or Publication.*

(A) *In General.* The court may order service of the notice of adoption proceeding by posting or publication if:

(i) a person, whose identity is known, cannot be found after diligent efforts; or

(ii) the person is unknown and the reporting agency is not able to identify the person.

(B) *Manner of Posting.* The notice must be posted by the clerk in the clerk's office for not less than 3 weeks or for a period otherwise ordered by the court.

(C) *Manner of Publication.* On a showing that publication in a specified area may be effective to serve notice, the court may order publication of the notice in the specified area. The notice must be published in at least one newspaper or periodical that serves the specified area, at least once a week for 3 successive weeks or as otherwise ordered by the court.

(8) *Person Later Identified by the Reporting Agency.* If, as required by Rule 3(c)(5), the reporting agency identifies a person whose consent is required, the notice of adoption proceeding and initial order must be served on that person in the manner required by Rule 4(c).

(d) **SERVING AND FILING PLEADINGS AND OTHER PAPERS.** Unless a statute or these rules provide otherwise, each of the following papers must be filed and served on every party, in accordance with Civil Rule 5:

(1) an order stating that service is required;

(2) a pleading filed after the original petition, unless the court orders otherwise;

(3) a discovery paper required to be served on a party, unless the court orders otherwise;

(4) a written motion, except one that may be heard *ex parte*;

(5) a report filed with the court, other than the Final Report; and

(6) a written notice, appearance, or similar paper.

(e) **PROVING SERVICE.**

(1) *Service by Registered Mail.* If service is made by registered mail, the signed return receipt must be attached to an affidavit which must specifically state:

- (A) the caption and number of the case;
 - (B) the name of the person who posted the registered letter;
 - (C) the fact that the letter contained the notice of adoption proceeding and the initial order; and
 - (D) the date when the notice was mailed.
- (2) *Service by Delivery*. If service is made by delivery, the return of service must be made under oath (unless service was made by the United States marshal or deputy United States marshal) and must specifically state:
- (A) the caption and number of the case;
 - (B) the process server's name, residential or business address, and the fact that he or she is 18 years of age or older;
 - (C) the date, time, and place when service was made;
 - (D) the fact that the notice of adoption proceeding and the initial order were delivered; and
 - (E) if service was made by delivery to a person other than the person named in the notice, then specific facts from which the court can determine that the person to whom process was delivered meets the appropriate qualifications for receipt of process set out in Rule 4(c)(3)(C) or (D).
- (3) *Service by Posting or Publication*. Proof of service by posting must be made by a docket entry stating the dates of posting. Proof of service by publication must be made by affidavit of an officer or agent of the publisher stating the dates of publication with an attached copy of the document as published.
- (4) *Service Outside the District of Columbia*. If service is made outside the District of Columbia, proof of service may be made by affidavit of the server or in the manner required by court order or the law of the place where service was made.
- (5) *Service Under Civil Rule 5*. If, under Rule 4(d), service is made in accordance with Civil Rule 5, proof of service may be made by:
- (A) written acknowledgment;
 - (B) affidavit of the server;
 - (C) certificate of a D.C. Bar member; or
 - (D) other proof satisfactory to the court.

COMMENT

The provisions addressing the order of reference, order for expedited response, consolidation order, and Section-304 order (formerly show cause order) have been moved to Rule 3(c). Rule 4 is now limited to service provisions. The rule has been expanded to include provisions for service on minors and incompetent persons under D.C. Code §§ 13-332 and -333 (2012 Repl.) and to permit court authorization of an alternative method of service after a showing of diligent efforts to serve by the other methods.

Rule 4.1. Privacy Protections

(a) REDACTION BEFORE SERVICE. Unless the court orders otherwise, before a notice of adoption proceeding and initial order are served, the clerk must redact the names and addresses of every person except:

- (1) the person who is to be served with that copy; and
- (2) the initials of the prospective adoptee.

(b) REDACTED FILINGS. Unless the court orders otherwise, a party or nonparty filing any paper, except the petition and Final Report, must identify the parties and other persons only by initials or generic titles (e.g., “Adoptive Father” or “Birth Father”).

COMMENT

This rule combines redaction provisions previously found in Rules 4, 5, and 10.

Rule 5. Revoking Relinquishment of Parental Rights

(a) **AUTOMATIC REVOCATION.** In accordance with D.C. Code § 4-1406 (2018 Supp.), a parent may revoke a relinquishment of parental rights once without a court order by executing and submitting a verified writing to the child-placing agency within 14 days of executing a legal relinquishment.

(b) **BY COURT ORDER.**

(1) *Motion to Revoke Relinquishment of Parental Rights.* Except as provided in Rule 5(a), a parent may revoke a relinquishment of parental rights only if a judge or magistrate judge determines that the relinquishment was not voluntarily given. The parent must file a motion stating the basis for the claim that the relinquishment was not voluntarily given.

(2) *Hearing Required.* The court must hold a hearing on the motion to revoke relinquishment of parental rights.

(3) *No Pending Adoption Petition.* If no adoption petition is pending, the motion must be:

(A) served in accordance with Civil Rule 5, on the child-placing agency that accepted the relinquishment; and

(B) assigned to a judge or magistrate judge as directed by the Presiding Judge.

(c) **EFFECT OF REVOCATION.** If a relinquishment of parental rights is revoked and an adoption petition is pending, the court must proceed on an expedited basis to determine whether the parent's consent is no longer required under D.C. Code § 16-304 (d) (2012 Repl.) or whether the parent is withholding consent contrary to the best interests of the child under D.C. Code § 16-304 (e) (2012 Repl.).

COMMENT

Under Rule 13, the court must grant permission to intervene to a birth parent, who is not an original party to the adoption proceeding, for the limited purpose of addressing a motion to revoke relinquishment of parental rights.

While section (c) focuses on the court's determination under D.C. Code § 16-304 (d) or (e) (2012 Repl.), the court must first determine whether the parent is fit if no fitness determination was previously made. See *In re Ta. L.*, 149 A.3d 1060, 1081-84 (D.C. 2016) (en banc).

Rule 6. Revoking Consent

(a) MOTION TO REVOKE CONSENT. A person may revoke or withdraw consent to an adoption only if a judge or magistrate judge determines that the consent was not voluntarily given. The person seeking to revoke consent must file a motion stating the basis for the claim that consent was not voluntarily given.

(b) HEARING REQUIRED. The court must hold a hearing on the motion to revoke consent.

(c) EFFECT OF REVOCATION. If consent to adoption is revoked and an adoption petition is pending, the court must proceed on an expedited basis to determine whether the person's consent is no longer required under D.C. Code § 16-304 (d) (2012 Repl.) or whether the person is withholding consent contrary to the best interests of the child under D.C. Code § 16-304 (e) (2012 Repl.).

COMMENT

Under Rule 13, the court must grant permission to intervene to a birth parent, who is not an original party to the adoption proceeding, for the limited purpose of addressing a motion to revoke consent.

As with Rule 5, section (c) focuses on the court's determination under D.C. Code § 16-304 (d) or (e) (2012 Repl.), but the court must first determine whether the parent is fit if no fitness determination was previously made. See *In re Ta. L.*, 149 A.3d 1060, 1081-84 (D.C. 2016) (en banc).

Rule 7. Opposition to Adoption

(a) IN GENERAL. Unless excused by the court, a parent or court-appointed guardian who opposes an adoption must appear at the time and date specified in the notice of adoption proceeding. If the person is unable to appear at the time and date specified in the notice of adoption proceeding, the person must file a written opposition, described in Rule 7(b), by the date specified in the notice of adoption proceeding.

(b) WRITTEN OPPOSITION. Any written opposition must state:

- (1) the basis for the opposition; and
- (2) if the person is unable to appear at the time and date specified in the notice of adoption proceeding, good cause for the person's failure to appear.

COMMENT

A parent or court-appointed guardian who is unable to appear at the time and date specified in the notice of adoption proceeding must file a written opposition by the date specified in the notice. A parent or court-appointed guardian who will appear may also file a written opposition.

Rule 8. Investigation and Final Report

(a) **IN GENERAL.** The reporting agency must investigate and file the Final Report required by D.C. Code § 16-307 (2012 Repl.) within 90 days after the petition and initial order are provided to the reporting agency or within the time frame specified by the court.

(b) **FORMAT AND CONTENT OF FINAL REPORT.**

(1) *In General.* The Final Report must be filed on the form maintained by the court or on a form that is substantially similar in format and content.

(2) *Unknown or Missing Information.* If any information required by the form is not reasonably available, the court may waive the requirement for that information. If the court waives the requirement, the court may enter an adoption decree without that information.

(3) *Certification and Signatures.* The social worker who prepared the Final Report and the supervisor who approved it must sign the Final Report and certify that the information contained in the Final Report is true and correct to the best of their knowledge.

(c) **SUPPLEMENTAL REPORT.** If the reporting agency learns about material facts or material changes in circumstances after submitting the Final Report, the reporting agency must immediately file a supplemental report that states:

(1) the newly discovered material facts or material changes in circumstances; and

(2) whether the recommendation remains the same.

(d) **MOTION TO DISPENSE WITH INVESTIGATION AND FINAL REPORT.** If the petitioner files a motion to dispense with the investigation and the Final Report under D.C. Code § 16-308 (2012 Repl.), the court may decide the motion without waiting the 14-day period for an opposition to be filed.

COMMENT

This rule includes provisions previously found in Rule 7. The content of the Final Report was removed from the rules to allow more flexibility to amend it. The form maintained by the court requests the information required by D.C. Code § 16-307 (2012 Repl.).

Rule 9. Section-304 Hearing

(a) IN GENERAL. If a person whose consent is required has not consented to the adoption, the court must conduct a hearing to determine whether:

- (1) under D.C. Code § 16-304 (d) (2012 Repl.), consent is no longer required; or
- (2) under D.C. Code § 16-304 (e) (2012 Repl.), consent is being withheld contrary to the best interests of the prospective adoptee.

(b) ATTENDANCE. Unless excused by the court, the following individuals must appear at the Section-304 Hearing:

- (1) the petitioner;
- (2) the person whose consent is at issue;
- (3) if applicable, the prospective adoptee's guardian ad litem; and
- (4) if there is a neglect case, the prospective adoptee's social worker.

(c) FAILURE TO APPEAR. If the person whose consent is required fails to appear after being served with the Notice of Adoption Proceeding and initial court order, the court may:

- (1) proceed with an evidentiary hearing;
- (2) schedule the evidentiary hearing for a later date; or
- (3) schedule a status hearing.

(d) CERTIFICATION OF CONTESTED ADOPTION. If the person whose consent is required appears and opposes the adoption or files a written opposition in accordance with Rule 7, the court must certify the case as a contested adoption and issue a scheduling order under Rule 11.

COMMENT

This rule contains provisions previously found in Rule 39. The hearing and rule were previously entitled "show cause hearing." This was changed to "Section-304 Hearing" to distinguish between hearings held under D.C. Code § 16-304 (d)-(e) (2012 Repl.) and other types of show cause hearings, such as those for failure to comply with a previous court order.

Rule 10. Amended and Supplemental Pleadings

(a) AMENDMENTS BEFORE TRIAL.

(1) *Court's Leave Required.* A party may amend its pleading only with the court's leave. The court should freely give leave when justice requires it.

(2) *Amending Dismissed or Stricken Pleading.* If a pleading is dismissed or stricken with leave to amend, an amended pleading must be filed within 21 days unless otherwise ordered by the court.

(b) AMENDMENTS DURING AND AFTER TRIAL.

(1) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time before the decree is issued—to amend the pleadings to conform to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) **SUPPLEMENTAL PLEADINGS.** On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.

COMMENT

This rule includes provisions previously found in Rule 15. Other than issues tried by consent under subsection (b)(2), a party may only amend or supplement a pleading with the court's permission.

Rule 11. Initial Scheduling and Status Conference

(a) APPLICABILITY. This rule only applies to a contested adoption.

(b) INITIAL SCHEDULING AND STATUS CONFERENCE.

(1) *In General*. The court must hold an initial scheduling and status conference no later than 45 days after the case becomes contested.

(2) *Scheduling Order: In General*. At the conference, the judge or magistrate judge will ascertain the status of the case and determine a reasonable time frame for bringing the case to conclusion. After consulting with the attorneys for the parties and with any unrepresented parties, the judge or magistrate judge will enter a scheduling order which will set dates for future events in the case.

(3) *Scheduling Order: Deadlines*. Where applicable, the order will specify dates for the following events:

(A) *Discovery Requests; Depositions*.

(i) No interrogatories, requests for admission, requests for production or inspection, or motions for physical or mental examinations may be served less than 30 days before the date set for the end of discovery.

(ii) Party depositions ad testificandum and nonparty depositions duces tecum or ad testificandum must be noticed not less than 5 days before the date scheduled for the deposition and no deposition may be noticed to take place after the date set for the conclusion of discovery.

(B) *Exchange Lists of Fact Witnesses*. On or before this date, each party must file and serve a listing, by name and address, of all fact witnesses known to that party, including experts who participated in and will testify about pertinent events. The list must be redacted as required by Rule 4.1(b). No witness may be called at trial, except for rebuttal or impeachment purposes, unless he or she was named on the list filed by one of the parties on or before this date or the calling party can establish that it did not learn of the witness until after this date.

(C) *Proponent's Rule 26(a)(2)(B) Report*. By this date, a report required by Civil Rule 26(a)(2)(B) must be filed and served by any proponent of an issue who will offer an expert opinion on such an issue.

(D) *Opponent's Rule 26(a)(2)(B) Report*. By this date, a report required by Civil Rule 26(a)(2)(B) must be filed and served by any opponent who will offer an expert opinion on such an issue.

(E) *Close of Discovery*. After this date, no deposition or other discovery may be had, nor motion relating to discovery filed, except by leave of court.

(F) *Filing Motions*. All motions must be filed by this date, except by leave of court.

(G) *Exhibits*. On or before this date, each party must:

(i) provide a copy of all documentary exhibits that the party may offer at trial—redacted to exclude information that would identify the birth parents, the petitioner, or the petitioner's family; and

(ii) make all non-documentary exhibits available for examination.

(H) *Trial Date*. On this date, the parties and their counsel must be prepared to present witnesses and exhibits.

(4) *Obligations of Parties*. All counsel and parties must take the necessary steps to complete discovery and prepare for trial within the time limits established by the scheduling order.

(5) *Modification.* The scheduling order may not be modified except by leave of court on a showing of good cause. Stipulations between counsel will not be effective to change any deadlines in the order without court approval.

(c) SANCTIONS.

(1) *In General.* On motion or on its own, the court may issue any just orders, including those authorized by Civil Rule 37(b)(2)(A)(ii)-(vii), if a party or a party's attorney:

(A) fails to appear at a scheduling conference;

(B) is substantially unprepared to participate—or does not participate in good faith—in the conference; or

(C) fails to obey a scheduling or pretrial order.

(2) *Imposing Fees and Costs.* Instead of or in addition to any other sanction, the court must order the party, its attorney, or both, to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this rule unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

COMMENT

This rule includes provisions previously found in Rule 16.

Rule 12. Parties

The parties to an adoption proceeding include:

- (1) the petitioner;
- (2) the parents who have not consented to the adoption or relinquished parental rights, or whose parental rights have not been otherwise terminated;
- (3) the Mayor, if the Mayor's consent is required under D.C. Code § 16-304 (b)(2)(D) or (E) (2012 Repl.);
- (4) a District of Columbia licensed child-placing agency to whom the child has been relinquished under D.C. Code § 4-1406 (2018 Supp.);
- (5) a prospective adult adoptee; and
- (6) any person permitted to join or intervene under Rule 13.

COMMENT

A birth parent, who is not included as an original party, may file a motion to join or intervene under Rule 13.

Rule 13. Joinder or Intervention

(a) PERMISSION TO JOIN OR INTERVENE.

(1) *Birth Parents.*

(A) *In General.* The court must grant permission to join to a birth parent:

(i) whose parental rights have not been previously terminated by a court of competent jurisdiction;

(ii) who has not consented to adoption;

(iii) who has not relinquished the child to a licensed child-placing agency or the Mayor; and

(iv) who has not failed to timely respond to the notice of adoption proceeding and whose consent to the adoption has not been waived or found not to be required under D.C. Code § 16-304 (d) or (e) (2012 Repl.).

(B) *To Address a Motion to Revoke Relinquishment of Parental Rights or a Motion to Revoke Consent.* The court must grant permission to intervene to a birth parent, for the limited purpose of addressing a motion to revoke relinquishment of parental rights under Rule 5 or a motion to revoke consent under Rule 6. If a birth parent's consent or relinquishment is revoked, the court must grant the birth parent permission to join the adoption proceeding.

(2) *Mayor or a Licensed Child-Placing Agency.* The court must grant permission to intervene to the Mayor or a licensed child-placing agency that has legal control, care, and custody of the prospective adoptee and that is not otherwise a party to the adoption proceeding.

(b) PROCEDURE FOR JOINDER OR INTERVENTION. Requests to join or intervene must be made by motion. The motion must be accompanied by a pleading under oath setting out the basis on which joinder or intervention is sought.

COMMENT

This rule includes intervention provisions previously found in Rule 24. The concept of joinder was added to reflect the fact that a birth parent, who has not consented to the adoption or relinquished parental rights or whose parental rights have not been otherwise terminated, is a required party under Rule 12. Civil Rules 5.1 and 5.1-I, which are made applicable by Rule 1, address notice of and intervention for challenges to the validity or constitutionality of a federal or state statute.

Rule 14. Substitution of Parties

(a) DEATH.

(1) *Remaining Petitioner.* If a petitioner dies during the pendency of the proceedings and the petition is brought in the name of the deceased petitioner and a spouse or co-petitioner, the remaining petitioner must file a notice of death with the court and mail a copy to the reporting agency. The court may order any further investigation it deems necessary to promote or protect the welfare of the adoptee.

(2) *Sole Petitioner.* If a sole petitioner dies during the pendency of the proceedings, the court may allow substitution of petitions on motion, accompanied by a notice of death, filed by a member of the deceased petitioner's household or extended family. The court may order any further investigation it deems necessary to promote or protect the welfare of the adoptee.

(3) *Other Cases.* Except as provided in Rule 14(a)(1) and (2), the court must dismiss the case if the petitioner dies.

(b) INCOMPETENCY.

(1) *Non-parent.* If a party—other than a parent—becomes incompetent, the court may:

(A) permit the action to continue if a guardian has been appointed in a separate proceeding to act on behalf of the incompetent party; or

(B) strike the party from the proceedings.

(2) *Parent.* If a parent becomes incompetent, the court must ensure that the parent is appropriately represented before proceeding with the petition.

COMMENT

If a parent becomes incompetent, the court must proceed with the adoption petition after ensuring that the parent is appropriately represented. The parent's mental health may be a factor in determining the parent's fitness. *See In re S.L.G.*, 110 A.3d 1275, 1287 (D.C. 2015) (“[A] natural parent’s unfitness may be evidenced by a variety of behaviors, conditions, and circumstances, including . . . mental health issues or impairments that demonstrably interfere with the parent’s ability to care for the child or that expose the child to undue risk of harm.”). The court must also consider the parent’s competence when determining whether the parent is able to designate a preferred caregiver. *In re J.O.*, 174 A.3d 870, 882 (D.C. 2017) (explaining that “competence is a lower standard than fitness” and “an individual may be competent to designate a preferred caregiver yet unfit to parent their child”).

Rule 15. Court Authorization for Discovery or Subpoena

(a) DISCOVERY. On request or on its own, the court may authorize discovery in a contested adoption. If the court authorizes discovery, the court must specify the extent of discovery permitted.

(b) SUBPOENA. A subpoena may only be issued by court order.

COMMENT

When authorized by the court, discovery and subpoenas are governed by Civil Rules 26-37 and 45, which are made applicable by Rule 1.

Rule 16. Assignment of Cases

(a) IN GENERAL. Except as provided in Rule 16(b), the clerk will assign new adoption cases to the adoptions calendar.

(b) ONE FAMILY, ONE JUDGE. To the greatest extent practicable, feasible, and lawful, actions or proceedings, which are assigned to the Family Court and in which immediate family or household members are parties, will be assigned to the same judge or magistrate judge.

(c) SPECIAL ASSIGNMENTS. The Chief Judge may specially assign an adoption case for all purposes to a specific calendar or a single judge or magistrate judge. The Chief Judge may delegate to the Presiding Judge of the Family Court the authority to make special assignment of cases to a judge or magistrate judge currently assigned to the Family Court.

(d) PROCEEDINGS AFTER ASSIGNMENT. All proceedings in a case after its assignment, including trial, will be scheduled and conducted by the assigned judge or magistrate judge.

(e) REASSIGNMENT. When a judge's or magistrate judge's assignment to the Family Court is concluded, the Chief Judge or the Presiding Judge may designate the judge or magistrate judge to whom the case on the calendar of the previous judge or magistrate judge will be reassigned.

Rule 17. Dismissal of Actions

(a) VOLUNTARY DISMISSAL.

(1) *In General.* The petitioner may dismiss an action without a court order by filing a notice of dismissal. The notice must be served on all parties in accordance with Rule 4.

(2) *Effect.* Unless the notice states otherwise, the dismissal is without prejudice.

(b) INVOLUNTARY DISMISSAL.

(1) *In General.* If the petitioner fails to prosecute or to comply with these rules or a court order, any party may move to dismiss the petition, or the court may, on its own initiative, enter an order dismissing the petition.

(2) *Effect.* Any order of dismissal entered by the court under this rule does not take effect until 14 days after the date on which it is docketed and must be vacated on the granting of a motion filed by the petitioner within the 14-day period showing good cause why the case should not be dismissed. Unless a court order specifies otherwise, an order of dismissal is without prejudice.

Rule 18. Consolidation; Separate Trials

(a) CONSOLIDATION. When two or more cases are pending for the adoption, termination of parental rights, permanent guardianship, or custody of the same child, the court may consolidate them and, if the court deems appropriate, order that they be tried together.

(b) SEPARATE TRIALS. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues or claims.

COMMENT

This rule includes provisions previously found in Rule 42.

Rule 19. Findings of Fact and Conclusions of Law; Adoption Decree

(a) FINDINGS AND CONCLUSIONS. Except when dismissal is appropriate under Rule 14 or 17, the court must grant or deny a petition and must make written findings of fact and conclusions of law.

(b) ADOPTION DECREE.

(1) *Multiple Adoptees*. The court must enter a separate decree for each adoptee.

(2) *Content*. An interlocutory or final adoption decree must be set out in a separate document and must state:

(A) the full name of the petitioner;

(B) the adoptee's proposed name;

(C) the adoptee's birth date and birth place;

(D) the date that the adoptee began to continuously reside with the petitioner;

(E) that the adoptee is mentally and physically suitable for adoption;

(F) that each petitioner is fit and able to give the adoptee a proper home and education;

(G) that the adoption will be in the best interests of the adoptee; and

(H) that a District of Columbia Vital Records Form has been completed.

(3) *Certified Copy*.

(A) *In General*. The court must issue a certified copy of the interlocutory or final decree to the petitioner, the petitioner's counsel, and the reporting agency.

(B) *Additional Copies*. Within 5 years of the entry of the decree, the petitioner, the petitioner's counsel, and the reporting agency may request additional certified copies of the decree without filing a petition to break the seal of adoption. A request for an additional certified copy must be accompanied by the appropriate fee.

(c) NOTICE OF DECISION. The clerk must serve, on all contesting parties, notice that the petition has been granted or denied. The notice must not include the final or interlocutory decree.

COMMENT

Subsection (b)(3) recognizes that petitioners may need more than one certified copy of an interlocutory or final decree (for birth certificates, military benefits, health insurance benefits, education, etc.).

Rule 20. Admission to Proceedings

Adoption proceedings are sealed. Only the parties and others whom the judge or magistrate judge deems to have an interest in a particular case may be admitted to adoption proceedings.

Rule 21. Costs

Unless a statute or court order provides otherwise, a party is responsible for their own costs of action. A prevailing party may not file a motion for award of costs. A party noticing a deposition is responsible for the costs of the deposition. A person requesting a copy of a deposition or trial transcript must pay the cost of producing the copy.

COMMENT

Civil Rule 54-II, which is made applicable by Rule 1, addresses the waiver of prepayment of costs and fees.

Rule 22. Relief from a Decree or Order

(a) **CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a decree, order, or other part of the record. The court may do so on motion or on its own initiative, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) **GROUND FOR AMENDING OR ENTERING NEW DECREE OR ORDERING NEW TRIAL.** On motion and just terms, the court may enter or amend a decree, or order a new trial for the following reasons:

- (1) fraud (whether previously called intrinsic or extrinsic) or misrepresentation;
- (2) newly discovered evidence; or
- (3) any other reason that justifies relief, consistent with the best interests of the child.

(c) **TIMING AND EFFECT OF THE MOTION.**

(1) *Timing.* A motion under Rule 22(b)(1) or (2) must be filed no later than 30 days after the entry or denial of a decree. A motion under Rule 22(b)(3) must be filed within 7 days after the entry or denial of the decree.

(2) *Effect on Finality.* The motion does not affect the decree's finality or suspend its operation.

(d) **REVOCATION OF INTERLOCUTORY DECREE.** On motion or its own initiative, the court, for good cause, may revoke an interlocutory decree of adoption at any time before it becomes a final decree. Before revoking the interlocutory decree, the court must give notice and an opportunity to be heard to each person and party, who was required to receive the notice of adoption proceeding.

(e) **JURISDICTIONAL OR PROCEDURAL DEFECT.** A motion seeking to invalidate an adoption decree based on a jurisdictional or procedural defect must be filed within one year after the final decree became effective.

COMMENT

This rule promotes finality in adoption proceedings. Sections (b) and (c) limit the bases and time frame for a party to file a motion to enter or amend a decree or for a new trial. D.C. Code § 16-310 (2012 Repl.) and, correspondingly, section (e) require a party to file a motion seeking to invalidate a final decree based on a jurisdictional or procedural defect, within one year after the decree becomes effective, but this requirement may give way to due process considerations. See *In re M.N.M.*, 605 A.2d 921 (D.C. 1992) (reversing and remanding to give father an opportunity to challenge adoption where he did not receive pre-adoption notice and, though he asserted his paternity "early on, and continually," he failed to file within the one year required by D.C. Code § 16-310).

Rule 23. Stay of Proceedings to Enforce a Judgment

(a) AUTOMATIC STAY. Unless the court orders otherwise, no order or decree may be enforced until 14 days have passed after its entry.

(b) STAY PENDING THE DISPOSITION OF A MOTION. Consistent with the best interests of the child, the court may stay enforcement of an order or decree pending the disposition of a motion for relief from the decree or order filed under Rule 22.

(c) STAY PENDING AN APPEAL. If an appeal is taken, the appellant may, on motion, obtain a stay of a decree or order pending disposition of the appeal.

(d) APPELLATE COURT'S POWER NOT LIMITED. This rule does not limit the power of the appellate court or one of its judges:

- (1) to stay a decree or order while an appeal is pending; or
- (2) to issue any other order with respect to the decree or order.

Rule 24. Copies and Custody of Filed Papers; Confidentiality of Records

(a) COPIES AND CUSTODY OF FILED PAPERS.

(1) *Certified Copies.* When a paper is received and filed, the clerk must stamp the date of filing on the face of the paper next to the title of the case and must also stamp the date of filing separately on any exhibit. If a person filing a paper requests a certification of the filing, the clerk must mark a copy of the paper to show the time and date of filing and initials of the person with whom the paper was filed. The certified copy is prima facie evidence in any proceeding that the original of the paper was filed as shown by the certification.

(2) *Custody of Documents.* The clerk or his or her designee is the custodian of all papers filed in adoption matters.

(b) CONFIDENTIALITY OF RECORDS.

(1) *Sealing and Inspection of Records.* In accordance with D.C. Code § 16-311 (2012 Repl.), adoption records must remain sealed and may not be inspected by any person, including the parties, except on order of the court.

(2) Case Summary.

(A) *Persons Entitled to Summary.* On written request, the clerk must provide a summary of the adoption proceedings to:

- (i) the reporting agency to whom the petition was referred under Rule 3(c)(1);
- (ii) the licensed child-placing agency to which relinquishment of the prospective adoptee was made;
- (iii) the Office of Attorney General in a case in which the Mayor is a party;
- (iv) counsel of record; and
- (v) the petitioner, if self-represented.

(B) *Content.* The summary includes the case number and annotations of actions taken and hearings scheduled. The names of parties, addresses, and other confidential information must not be provided.

(C) *Obtaining Summary.* The requesting party may obtain the summary by:

- (i) picking it up at the clerk's office;
- (ii) requesting that the clerk send the summary by certified mail with return receipt requested; or
- (iii) an electronic method approved by the court.

(3) *Duty of Attorney.* When an attorney is provided with or learns of another party's identifying information, which is not known to the attorney's client, the attorney must not knowingly and intentionally reveal the identifying information to the client. For the purposes of this rule, identifying information includes names, addresses, and any information that could reasonably lead to the discovery of a party's identity. If the attorney knowingly and intentionally reveals the identifying information, the court, on motion or its own initiative, may sanction the attorney.

(4) *Obtaining Transcript.* On motion, the court may permit a party to obtain a transcript of all or part of the recorded judicial proceedings. The court may determine a motion for transcript without waiting for a response from another party. When granting a motion, the court may impose any conditions that it deems appropriate.

COMMENT

This rule combines the provisions regarding custody and confidentiality of records, including transcripts. Civil Rule 201(c)-(e), which is made applicable by Rule 1, addresses the endorsement on the transcript, the transcript on appeal, and the security of the original transcript.

Rule 25. Recognition of Foreign Adoption; Elective Petition for Adoption Decree for Foreign Adoption

(a) RECOGNITION OF FOREIGN ADOPTION. In accordance with D.C. Code § 16-317 (2012 Repl.), a final judgment of adoption granted by a judicial, administrative, or executive body of a jurisdiction or country other than the United States has the same effect as an adoption decree entered by this court if:

- (1) the adopting parent is a resident of the District of Columbia; and
- (2) the validity of the foreign adoption has been verified by issuance of an IR-3 visa, or a successor immigrant visa, for the child.

(b) ELECTIVE PETITION FOR ADOPTION DECREE FOR FOREIGN ADOPTION. Even if a final judgment of adoption meets the requirements of Rule 25(a), an adoptive parent may elect to file a petition for a District of Columbia adoption decree.

(1) *Filing.* Unless the court directs otherwise, a petitioner, who elects to file a petition for a District of Columbia adoption decree for a foreign adoption under D.C. Code § 16-317 (2012 Repl.), must file a separate petition for each adoptee. The petition must be accompanied by the documents listed in Rule 25(b)(3).

(2) *Format and Content.* The petition for adoption decree for foreign adoption must be filed on the form maintained by the court or on a form that is substantially similar in format and content. The petition must be signed under oath or affirmation by the petitioner. If there is more than one petitioner, the petition must include the required information for each petitioner. If any of the required information is unknown, the petitioner must state that on the petition.

(3) *Required Documents.* The petitioner must file the following documents with the petition:

- (A) a copy of the final decree of foreign adoption or judgment of foreign adoption;
- (B) a copy of the certified translation of the final decree or judgment if not in English;
- (C) a copy of the adoptee's IR-3 immigrant visa, or a successor immigrant visa, issued by the United States Citizenship and Immigration Services; and
- (D) a completed District of Columbia Vital Records Form.

(4) *Expedited Calendar.* The clerk must assign a petition for adoption decree for foreign adoption to an expedited calendar.

(5) *Adoption Decree Recognizing Foreign Adoption.* An adoption decree recognizing a foreign adoption must state:

- (A) the full name of the petitioner;
- (B) the proposed name of the adoptee;
- (C) the adoptee's birth date;
- (D) the adoptee's birth country;
- (E) the date that the judgment of adoption was issued and the country issuing the judgment;
- (F) the date that the IR-3 immigrant visa, or a successor immigrant visa, was issued; and
- (G) that a District of Columbia Vital Records Form has been completed.

COMMENT

This rule mirrors the provisions in D.C. Code § 16-317 (2012 Repl.). As explained in section (a), a foreign adoption decree is entitled to recognition, but an adoptive parent may file a petition to obtain a District of Columbia adoption decree in accordance with section (b).

Rule 26. Petition to Break the Seal of Adoption

(a) IN GENERAL. A person seeking to inspect records and papers in an adoption proceeding must file a petition to break the seal of adoption.

(b) CONTENTS. The petition must be signed under oath and must state:

(1) the adoptee's birth name, sex, birth date, birth place (if known), and name taken on adoption;

(2) the reason the petitioner seeks to inspect the records and papers; and

(3) if known, the following information:

(A) the birth parents' names and last known addresses;

(B) the adoptive parents' names and last known addresses; and

(C) the name and address of the agency that placed the adoptee and the date of placement.

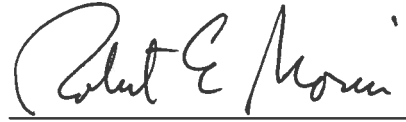
COMMENT

This rule establishes the procedure for a person to request a court order permitting inspection in accordance with D.C. Code § 16-311 (2012 Repl.).

* * *

By the Court:

Date: 11/6/18



Robert E. Morin
Chief Judge

Copies to:

All Judges
All Magistrate Judges
All Senior Judges
Avrom Sickel, Director, Family Court
Library
Daily Washington Law Reporter
Laura Wait, Associate General Counsel