

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RULE PROMULGATION ORDER 22-05

(Amending Super. Ct. Civ. R. 5, 12-I, 56, 64-I, 64-II)

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the Board of Judges of the Superior Court approved amendments to Superior Court Rule of Civil Procedure 12-I and conforming amendments to Superior Court Rules of Civil Procedure 5, 56, 64-I, and 64-II; and

WHEREAS, pursuant to D.C. Code § 11-946 (2012 Repl.), the amendments to these rules, to the extent that they modify the federal rules, have been approved by the District of Columbia Court of Appeals; it is

ORDERED, that Superior Court Rules of Civil Procedure 5, 12-I, 56, 64-I, and 64-II are hereby amended as set forth below; and it is further

ORDERED, that the amendments shall take effect April 25, 2022, and shall govern all proceedings thereafter commenced and insofar as just and practicable all pending proceedings.

Rule 12-I. Motions Practice

(a) EFFORTS TO OBTAIN CONSENT; CONSENT MOTIONS.

(1) *In General*. Before filing any nondispositive motion, except motions filed pursuant to Rule 11, the moving party must make a good faith effort to discuss the anticipated motion with other parties in an effort to determine whether there is any opposition to the relief sought and, if there is, to narrow the areas of disagreement~~first ascertain whether other affected parties will consent to the relief sought.~~

(2) *Rule 11 Motions*. For motions filed pursuant to Rule 11, the moving party must make a good faith efforts to resolve or dispose of the issues in dispute before the motion is served pursuant to Rule 11(c)(2).

(3) *No Resolution or Consent*.

(A) In General. The court must consider the motion as a contested matter if the movant certifies in writing that:

(i) in the case of a Rule 11 motions, resolution of the disputed issues is not possible; or

(ii) for a motion other than a Rule 11 motion, that despite diligent efforts the movant consent made a good faith effort to discuss the motion as required by Rule 12-I(a)(1) and could not be obtained consent.

(B) Contents of Certification. The certification required by Rule 12-I(a)(3)(A)(ii) must set out specific facts describing the good faith effort, including a statement of the date, time, and method of each communication made to another party and whether any response has been received.

(4) *Consent Obtained*. If consent is obtained, and if the relief does not require court approval, the party seeking the relief may memorialize the other parties' consent in a letter to the parties (which should not be filed) or in a praecipe filed and served as provided in Rule 5. If the relief sought is consented to but requires court approval, the moving party must file, serve, and provide to the assigned judge a courtesy copy of a motion which includes the word "consent" in its title and states that all affected parties have consented to the relief sought. No response to a consent motion is required.

(d) ~~FORM OF~~ MOTIONS.

~~(1) In General~~. With the exception of motions made in open court during hearing or trial when opposing counsel is present and motions made under emergent conditions, every petition or motion to the court must be made in writing and filed with the clerk. Every motion must state clearly its object and the grounds on which it is based or the reasons for the relief sought. If a motion is consented to by all affected parties, that fact must be indicated in the title of the motion, e.g., "Consent Motion to Extend Time for Filing Plaintiff's Witness List." The caption must contain the parties' next court date (e.g. case mediation, pretrial conference, or trial) if one has been set.

~~(2) Points and Authorities~~. Each motion must include or be accompanied by a statement of the specific points and authorities that support the motion, including, where appropriate, a concise statement of material facts. The statement of points and authorities must be a part of the record. The points and authorities must be labeled as

~~such and placed either on a separate paper or below all other material, including signatures, on the last page of the motion.~~

(e) ~~OPPOSITIONS~~~~OPPOSING POINTS AND AUTHORITIES~~. Within 14 days after service of the motion or at such other time as the court may direct, an opposing party must file and serve an opposition statement of opposing points and authorities in opposition to the motion. If an opposition statement of opposing points and authorities is not filed within the prescribed time, the court may treat the motion as conceded.

(g) REPLY. Within 7 calendar days after service of ~~an~~the oppositioning statement, the moving party may file and serve a ~~statement of points and authorities in reply to the following types of motions only:~~

- ~~— (1) motions for summary judgment;~~
- ~~— (2) motions to dismiss for failure to state a claim;~~
- ~~— (3) motions to strike expert testimony; and~~
- ~~— (4) motions for judgment on the pleadings.~~

COMMENT TO 2022 AMENDMENTS

The requirement in section (a) to seek consent to the relief sought in a motion was limited to nondispositive motions, and parties must attempt to narrow any area of disagreement. This requirement does not apply to a motion to dismiss, a motion for summary judgment, a motion for judgment on the pleadings, or any other motion seeking to dispose of a claim or defense.

The option in section (d) to file separate points and authorities was eliminated, and consistent with Rule 7(b)(1)(B), the motion itself must state with particularity the grounds for seeking the order. Motions practice under the amended rule includes motions, oppositions, and replies.

Section (g) was amended to permit replies in support of any motion, not only the four types of motions previously specified in section (g).

COMMENT TO THE 2021 AMENDMENTS

Section (b) concerning judge in chambers and section (c) concerning the judge on emergency assignment were deleted. The court will make publicly available information concerning the matters that must be presented to the judge in chambers, and it will continue to maintain a roster of judges to handle matters requiring immediate judicial attention at a time outside regular business hours. It is not necessary to include these provisions in the civil rules, and deleting these provisions from Rule 12-I gives the Chief Judge more flexibility to assign judges and magistrate judges and arrange and divide

the business of the court. See D.C. Code §§ 11-906, -908, -1732, and -1732A (2012 Repl. & 2020 Supp.).

Rule 5. Serving and Filing Pleadings and Other Papers

(d) FILING.

(1) *Required Filings.* Any paper after the complaint that is required to be served, other than those referred to in Rule 12-I(d)(2) and (e), must be filed no later than 7 days after service. The following discovery requests and responses must not be filed except as provided in Rule 5(d)(2) or until they are used in the proceeding: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(4) *Chambers Copy Required for Non-Electronic Filing.* When a party files, by non-electronic means, a motion, papers related to the motion (e.g., an opposition, ~~a memorandum of points and authorities~~, exhibits, or a proposed order), pretrial statements, or other papers described in Rule 16(d) and (e), the party must deliver a chambers copy to a depository designated by the clerk's office for receipt of such papers by the assigned judge.

COMMENT TO 2022 AMENDMENTS

Consistent with the 2022 amendment to Rule 12-I, the reference to a memorandum of points and authorities was deleted from Rule 5(d)(4).

COMMENT TO THE 2021 AMENDMENTS

Subsection (d)(4)(A) was amended to eliminate the requirement that the moving party provide an addressed envelope or mailing label with the chambers copy of a motion.

Subsection (d)(7)(A) was amended to require electronic filing and service not only of motions to file documents under seal but also of the documents to be filed under seal.

Rule 56. Summary Judgment

(b) TIME TO FILE A MOTION; FORMAT.

(1) *Time to File*. Unless the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(2) *Format: Parties' Statements of Fact*.

(A) *Movant's Statement*. ~~In addition to the points and authorities required by Rule 12-I(d)(2), t~~Ihe movant must file a statement of the material facts that the movant contends are not genuinely disputed. Each material fact must be stated in a separate numbered paragraph.

COMMENT TO 2022 AMENDMENTS

Consistent with the 2022 amendment to Rule 12-I, the reference to a memorandum of points and authorities was deleted from Rule 56(b)(2)(A).

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 56*, as amended in 2010, except that 1) a reference to local district court rules is omitted from the language in subsection (b)(1) and 2) subsection (b)(2), which is unique to the Superior Court rule, requires parties to submit statements of material facts with each material fact stated in a separate, numbered paragraph (a requirement previously found in Rule 12-I(k)). In 2010, the federal rule underwent substantial revisions in order to improve the procedures for presenting and deciding summary judgment motions, but the standard for granting summary judgment remained unchanged. Parties and counsel should refer to the Federal Rules of Civil Procedure Advisory Committee Notes for a detailed explanation of these amendments.

Rule 64-I. Attachment Before Judgment

(b) ISSUANCE. An application for a writ of attachment before judgment must be submitted ~~as provided in Rule 12-I(b)~~ to the judgecourt—~~whiche~~ may approve or deny issuance or direct further hearings before issuance as deemed appropriate.

COMMENT TO 2022 AMENDMENTS

Consistent with the April 2021 amendment to Rule 12-I, the reference to Rule 12-I(b) has been eliminated.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Also, some time periods were adjusted to reflect the new time computation method in Rule 6. However, the garnishee's time for filing answers to the interrogatories was not increased because it is statutory.

Rule 64-II. Replevin Actions

(a) NOTIFYING THE JUDGE. On filing any action in replevin and before process is placed in the hands of the United States marshal or deputy marshal or other process server, the plaintiff, personally or by his attorney, will bring the action to the attention of the assigned judge ~~to whom the case is assigned under Rule 12-I(b)~~.

COMMENT TO 2022 AMENDMENTS

Consistent with the April 2021 amendment to Rule 12-I, the reference to Rule 12-I(b) has been eliminated.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

See Fuentes v. Shevin, 407 U.S. 67 (1972).

Rule 12-I. Motions Practice

(a) EFFORTS TO OBTAIN CONSENT; CONSENT MOTIONS.

(1) *In General*. Before filing any nondispositive motion, except motions filed pursuant to Rule 11, the moving party must make a good faith effort to discuss the anticipated motion with other parties in an effort to determine whether there is any opposition to the relief sought and, if there is, to narrow the areas of disagreement.

(2) *Rule 11 Motions*. For motions filed pursuant to Rule 11, the moving party must make a good faith effort to resolve or dispose of the issues in dispute before the motion is served pursuant to Rule 11(c)(2).

(3) *No Resolution or Consent*.

(A) *In General*. The court must consider the motion as a contested matter if the movant certifies in writing that:

- (i) for a Rule 11 motion, resolution of the disputed issues is not possible; or
- (ii) for a motion other than a Rule 11 motion, the movant made a good faith effort to discuss the motion as required by Rule 12-I(a)(1) and could not obtain consent.

(B) *Contents of Certification*. The certification required by Rule 12-I(a)(3)(A)(ii) must set out specific facts describing the good faith effort, including a statement of the date, time, and method of each communication made to another party and whether any response has been received.

(4) *Consent Obtained*. If consent is obtained, and if the relief does not require court approval, the party seeking the relief may memorialize the other parties' consent in a letter to the parties (which should not be filed) or in a praecipe filed and served as provided in Rule 5. If the relief sought is consented to but requires court approval, the moving party must file, serve, and provide to the assigned judge a courtesy copy of a motion which includes the word "consent" in its title and states that all affected parties have consented to the relief sought. No response to a consent motion is required.

(d) MOTIONS.

If a motion is consented to by all affected parties, that fact must be indicated in the title of the motion, e.g., "Consent Motion to Extend Time for Filing Plaintiff's Witness List." The caption must contain the parties' next court date (e.g. case mediation, pretrial conference, or trial) if one has been set.

(e) **OPPOSITIONS**. Within 14 days after service of the motion or at such other time as the court may direct, an opposing party must file and serve an opposition. If an opposition is not filed within the prescribed time, the court may treat the motion as conceded.

(g) **REPLY**. Within 7 calendar days after service of an opposition, the moving party may file and serve a reply.

COMMENT TO 2022 AMENDMENTS

The requirement in section (a) to seek consent to the relief sought in a motion was limited to nondispositive motions, and parties must attempt to narrow any area of disagreement. This requirement does not apply to a motion to dismiss, a motion for summary judgment, a motion for judgment on the pleadings, or any other motion seeking to dispose of a claim or defense.

The option in section (d) to file separate points and authorities was eliminated, and consistent with Rule 7(b)(1)(B), the motion itself must state with particularity the grounds for seeking the order. Motions practice under the amended rule includes motions, oppositions, and replies.

Section (g) was amended to permit replies in support of any motion, not only the four types of motions previously specified in section (g).

COMMENT TO THE 2021 AMENDMENTS

Section (b) concerning judge in chambers and section (c) concerning the judge on emergency assignment were deleted. The court will make publicly available information concerning the matters that must be presented to the judge in chambers, and it will continue to maintain a roster of judges to handle matters requiring immediate judicial attention at a time outside regular business hours. It is not necessary to include these provisions in the civil rules, and deleting these provisions from Rule 12-I gives the Chief Judge more flexibility to assign judges and magistrate judges and arrange and divide the business of the court. See D.C. Code §§ 11-906, -908, -1732, and -1732A (2012 Repl. & 2020 Supp.).

Rule 5. Serving and Filing Pleadings and Other Papers

(d) FILING.

(1) *Required Filings.* Any paper after the complaint that is required to be served, other than those referred to in Rule 12-I(d) and (e), must be filed no later than 7 days after service. The following discovery requests and responses must not be filed except as provided in Rule 5(d)(2) or until they are used in the proceeding: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(4) *Chambers Copy Required for Non-Electronic Filing.* When a party files, by non-electronic means, a motion, papers related to the motion (e.g., an opposition, exhibits, or a proposed order), pretrial statements, or other papers described in Rule 16(d) and (e), the party must deliver a chambers copy to a depository designated by the clerk's office for receipt of such papers by the assigned judge.

COMMENT TO 2022 AMENDMENTS

Consistent with the 2022 amendment to Rule 12-I, the reference to a memorandum of points and authorities was deleted from Rule 5(d)(4).

COMMENT TO THE 2021 AMENDMENTS

Subsection (d)(4)(A) was amended to eliminate the requirement that the moving party provide an addressed envelope or mailing label with the chambers copy of a motion.

Subsection (d)(7)(A) was amended to require electronic filing and service not only of motions to file documents under seal but also of the documents to be filed under seal.

Rule 56. Summary Judgment

(b) TIME TO FILE A MOTION; FORMAT.

(1) *Time to File*. Unless the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(2) *Format: Parties' Statements of Fact*.

(A) *Movant's Statement*. The movant must file a statement of the material facts that the movant contends are not genuinely disputed. Each material fact must be stated in a separate numbered paragraph.

COMMENT TO 2022 AMENDMENTS

Consistent with the 2022 amendment to Rule 12-I, the reference to a memorandum of points and authorities was deleted from Rule 56(b)(2)(A).

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 56*, as amended in 2010, except that 1) a reference to local district court rules is omitted from the language in subsection (b)(1) and 2) subsection (b)(2), which is unique to the Superior Court rule, requires parties to submit statements of material facts with each material fact stated in a separate, numbered paragraph (a requirement previously found in Rule 12-I(k)). In 2010, the federal rule underwent substantial revisions in order to improve the procedures for presenting and deciding summary judgment motions, but the standard for granting summary judgment remained unchanged. Parties and counsel should refer to the Federal Rules of Civil Procedure Advisory Committee Notes for a detailed explanation of these amendments.

Rule 64-I. Attachment Before Judgment

(b) ISSUANCE. An application for a writ of attachment before judgment must be submitted to the court—which may approve or deny issuance or direct further hearings before issuance as deemed appropriate.

COMMENT TO 2022 AMENDMENTS

Consistent with the April 2021 amendment to Rule 12-I, the reference to Rule 12-I(b) has been eliminated.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Also, some time periods were adjusted to reflect the new time computation method in Rule 6. However, the garnishee's time for filing answers to the interrogatories was not increased because it is statutory.

Rule 64-II. Replevin Actions

(a) NOTIFYING THE JUDGE. On filing any action in replevin and before process is placed in the hands of the United States marshal or deputy marshal or other process server, the plaintiff, personally or by his attorney, will bring the action to the attention of the assigned judge.

COMMENT TO 2022 AMENDMENTS

Consistent with the April 2021 amendment to Rule 12-I, the reference to Rule 12-I(b) has been eliminated.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

See Fuentes v. Shevin, 407 U.S. 67 (1972).

* * *

By the Court:

Date: March 24, 2022



Anita M. Josey-Herring
Chief Judge

Copies to:

All Judges
All Magistrate Judges
All Senior Judges
Lynn Magee, Director, Civil Division
Library
Daily Washington Law Reporter
Laura Wait, Associate General Counsel
Pedro Briones, Associate General Counsel