

Rule 4A. Commitment of Individuals Who Are Not Competent to Refuse Commitment

(a) Petition for commitment. In order to place an individual in a facility without the individual's consent, that individual's parent or guardian (the "petitioner") may initiate Court proceedings for the commitment of the individual pursuant to D.C. Code §§ 7-1303.04 or 7-1303.06 (2003 Supp.). The petitioner shall file a petition with the Court, with a copy served upon the allegedly mentally retarded individual (the "respondent"), containing the following information:

- (1) The name, date of birth, and home address of the respondent;
- (2) The name and address of the petitioner and the petitioner's relationship to the respondent;
- (3) The name, address and telephone number of the petitioner's attorney, if any, and the name, address and telephone number of the respondent's attorney, if any;
- (4) A statement that the respondent is or is believed to be at least moderately mentally retarded and in need of habilitation and commitment;
- (5) A statement of facts demonstrating the respondent's need for commitment rather than voluntary admission or non-residential habilitation;
- (6) A statement of whether or not the petitioner believes the respondent is competent to refuse commitment;
- (7) The current placement or legal status, if any, of the respondent, including any prior or current commitments or admissions involving the respondent;
- (8) The financial statement of respondent and any responsible parties, in accordance with D.C. Code §§ 21-1110 and -1111 (2003 Supp.); and
- (9) Any additional identifying information required by administrative orders regarding the Court's case management system.

The date and method of service shall be certified on the petition in the manner prescribed by SCR-M.R. 9(b).

(b) Appointment of guardian ad litem to file petition. A person who is not a parent or guardian of an individual whose commitment is sought may petition the Court to be appointed as guardian ad litem for the sole purpose of filing a petition pursuant to this rule. If this appointment is approved by the Court, the guardian ad litem may proceed as if he or she were a parent or guardian, and the provisions of this rule shall apply.

(c) Commencement of commitment proceedings. Upon the filing of the petition, the Court shall:

- (1) Prepare a case jacket for the action, marked with a mental retardation case number;
- (2) Schedule a date for the commitment hearing, pursuant to D.C. Code § 7-1304.05 (2003 Supp.);
- (3) Send a copy of the petition (and any material accompanying the petition), notice of the hearing date, and the names, addresses, and telephone numbers of the attorneys for the parties and of the advocate to the petitioner, the director of the facility to which commitment is sought, the attorneys, the advocate, and the Office of the Attorney General. The Court shall send, when they are filed, copies of the comprehensive evaluation report and the individual habilitation plan to the respondent's counsel, his or her advocate, and the Office of the Attorney General; and
- (4) Inform the respondent and his or her counsel of the right to have an independent

comprehensive evaluation and individual habilitation plan developed, pursuant to D.C. Code § 7-1304.04 (2003 Supp.).

(d) Time limits for preparation and filing of comprehensive evaluation report and individual habilitation plan.

(1) Comprehensive evaluation report. Unless the petition is accompanied by a comprehensive evaluation report that was prepared no earlier than 6 months before the date of the hearing, the Court shall order the director of the facility to prepare and file this report no later than 10 days before the hearing. If the petitioner has not requested that the respondent be placed in a particular facility, the Court, if it is satisfied that the petitioner, the respondent, or their families are unable to afford the costs, may order the District of Columbia to prepare and file the report within the same time period. If the petition is accompanied by a timely comprehensive evaluation report, the Court shall send to the parties a copy of the report within three days after the report has been filed.

(2) Individual habilitation plan. Unless the petition is accompanied by an individual habilitation plan that was prepared no earlier than 30 days before the date the petition was filed, the Court shall order the director of the facility to prepare and file the plan no later than 10 days before the hearing. If the petitioner has not requested that the respondent be placed in a particular facility, the Court, if it is satisfied that the petitioner, the respondent, or their families are unable to afford the costs, may order the District of Columbia to prepare and file the plan within the same time period. If the petition is accompanied by a timely plan, the Court shall send to the parties a copy of the plan within three days after the plan has been filed.

(e) Commitment hearing.

(1) Hearings for the commitment of a respondent shall be conducted in as informal a manner as may be consistent with orderly procedure. All testimony shall be under oath.

(2) The respondent has the right to be present during the hearing and to testify, but shall not be compelled to testify, and shall be so advised by the Court. The presence of the respondent may be waived only if the Court determines that the respondent has knowingly and voluntarily waived the right to be present, or if the Court determines that the respondent is unable to be present by virtue of a physically handicapping condition.

(3) The parties shall have the right to call witnesses and present evidence, and to cross-examine opposing witnesses.

(4) The hearings shall be closed to the public unless the respondent requests that the hearing be open to the public.

(5) Determination of respondent's competence to refuse commitment. If the respondent is 14 years of age or older, the Court shall determine, pursuant to D.C. Code § 7-1303.04 (2003 Supp.), whether the individual is competent to refuse commitment. The petitioner or the petitioner's counsel shall have the burden of presenting evidence which shows beyond a reasonable doubt that the respondent is not competent to refuse commitment. A respondent 14 years of age or older is presumed competent to refuse commitment, pursuant to D.C. Code § 7-1303.01 (2003 Supp.). If the Court determines that the respondent is competent to refuse commitment and the respondent so refuses, the Court shall dismiss the petition and order that the individual not be committed to a facility. However, the Court may also order, pursuant to D.C. Code § 7-1304.09 (2003 Supp.), that the respondent undergo such non-residential habilitation and care as may be appropriate and necessary, or the Court may order that

no habilitation and care be provided. If the Court determines that the respondent is not competent to refuse commitment, or if the respondent is under 14 years of age, the Court shall determine whether to order the commitment of the respondent, pursuant to paragraph (f) of this rule.

(f) Court order of commitment. If the Court determines beyond a reasonable doubt that the standards for commitment set out in D.C. Code §§ 7-1303.04 or 7-1303.06 (2003 Supp.) have been met, the Court shall order that the respondent be committed. The Court's order shall contain written findings of fact. If the Court determines that the standards for commitment set out in D.C. Code §§ 7-1303.04 or 7-1303.06 (2003 Supp.) have not been met, the Court shall dismiss the petition and may order such other relief as may be provided by law and these rules.

(g) Periodic review of commitment order. Any court order directing the commitment of a mentally retarded individual shall be reviewed in a Court hearing annually. Such hearings shall be conducted in the manner prescribed by SCR-M.R. 7 and D.C. Code § 7-1304.11 (2003 Supp.).

(h) Substitution of petitioner caused by his or her death or incapacity. If a petitioner shall die or become incapacitated during the pendency of the proceedings, the Court may substitute as petitioner the surviving parent or the Court may appoint a guardian ad litem for the sole purpose of proceeding as the petitioner in the commitment proceedings.