

SUMMARY

The Superior Court Rules Committee has recently recommended amendments to Superior Court Criminal Rule 117, to reflect the expanded authority conferred upon hearing commissioners. SCR-Crim 117(b)(1) provides for determination of pretrial detention or conditions of release, and for review of the hearing commissioner's determination by a judge. The rule contains no limitation on the time for ruling on a motion for review.

The Section on Courts, Lawyers, and the Administration of Justice proposes that the rule provide that a motion for review be decided within five days. This limit recognizes the importance of the liberty interest for persons who have been accused but not convicted of crime, and thus are presumed innocent; and is consistent with the practice of the Superior Court in juvenile cases, where a motion for review is to be decided within five days, see SCR-Juvenile 107(c).

BEFORE THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

COMMENTS OF THE SECTION ON COURTS,
LAWYERS, AND THE ADMINISTRATION OF JUSTICE
OF THE DISTRICT OF COLUMBIA BAR
REGARDING PROPOSED AMENDMENTS TO
SUPERIOR COURT CRIMINAL RULE 117

Cornish F. Hitchcock, Co-Chair
Robert N. Weiner, Co-Chair
Richard Hoffman
Randell Hunt Norton
Thomas C. Papson
Jay A. Resnick
Arthur B. Spitzer

Gregg H. S. Golden, Co-Chair
Richard B. Nettler, Co-Chair
David A. Reiser

Members of the Committee
on Court Rules Who
Participated in this Report

Steering Committee of the
Section on Courts, Lawyers
and the Administration
of Justice

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STANDARD DISCLAIMER

"The views expressed herein represent only those of the
Section on Courts, Lawyers and the Administration of Justice of
the District of Columbia Bar and not those of the District of
Columbia Bar or of its Board of Governors."
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The Superior Court Rules Committee has recently recommended the amendment of SCR-Crim 117 to reflect the expanded authority conferred upon hearing commissioners by the "District of Columbia Judicial Efficiency and Improvement Act of 1986," D.C. Code § 11-1732. The Section on Courts, Lawyers, and the Administration of Justice of the District of Columbia Bar generally supports the proposed changes. There is some concern, however, that Criminal Rule 117(b)(1), which provides for determination of pretrial release or detention, contains no time limit for judicial review of a hearing commissioner's determination. To meet this concern, the Section proposes that amended Rule 117 be modified to read as follows:

DETERMINING PRETRIAL RELEASE OR DETENTION. A person accused of committing a criminal offense in the District of Columbia may be brought before a hearing commissioner. The commissioner shall determine conditions of release and pretrial detention pursuant to these Rules and Title 23 of the District of Columbia Code. Review of the hearing commissioner's determination of conditions of release 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. The judge shall render a decision within 5 days after presentation of the motion to the Court, and state his or her reasons therefor in writing.

The D.C. Code contemplates prompt review of orders to detain criminal defendants or to hold them in lieu of bond. D.C. Code § 23-1321(d) (1981) (right to review after 24 hours); cf. D.C. Code § 23-1324(a) (motion for review to be determined promptly). Nevertheless, many recent motions to review conditions of release have waited weeks, even months, before any judicial action. In part, this delay may have been attributable to the practice, abandoned in the amended Rule, of requiring defendants to apply to commissioners for review of conditions of release. These motions are then referred to a judge, usually the Presiding Judge of the Criminal Division. Elimination of the intermediate review by the commissioner and distribution of the responsibility for reviewing motions to review conditions of release among a number of judges should reduce the amount of time it frequently takes to obtain a ruling.

The proposed five-day limit within which the judge must act on a motion for review is modeled on Juvenile Rule 107(c), which governs applications for reconsideration of conditions of release. Rule 107 states, in relevant part:

A juvenile who has been placed in detention, shelter care, or released under conditions pursuant to D.C. Code § 16-2312 may, at any time thereafter upon written application to the Family Division have the order reviewed by the judge who entered the order, and a decision rendered within 5 days of presentation to the judge who will state his reasons therefor in writing.

If the Court believes that a longer period of time is necessary in order to permit thoughtful and judicious review of a motion for modification of conditions of release, the Section and its Committee on Court Rules stress that the most important aspect of this proposal is that some definite time limit be imposed. The liberty of persons accused of crimes, but presumed innocent under our law, deserves a very high priority in our system of criminal justice. Motions to modify conditions of release are rarely lengthy, almost never involve significant legal argument, and infrequently require resolution of factual disputes by the Court. They are principally used to inform the Court of changed circumstances, new programs designed to assure the defendant's appearance or the safety of the community which were not available on the day of arraignment, or errors in the representations before the Court at arraignment or presentment. Accordingly, it is the expectation of the Section and the Committee on Court Rules that such motions, including any responsive pleadings submitted by the United States, may be resolved promptly, consistent with the objectives of the 1970 Bail Reform Act.

The proposed modification also requires a written statement of the reasons for the Court's disposition of the motion. Such a statement is necessary for appellate review, and is required by statute. D.C. Code § 23-1321(d).