

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Notice of Proposed Amendments to Superior Court Rule of Civil Procedure 9-I and Civil Action Form 101

The District of Columbia Superior Court Rules Committee has recently completed review of the proposed amendments to Superior Court Rule of Civil Procedure 9-I and Civil Action Form 101. The Rules Committee will recommend approval of the amendments to the Superior Court Board of Judges unless after consideration of comments received from the Bar and the general public they are withdrawn or modified.

Written comments in respect to these amendments may be submitted within 60 days of the publication of this notice in the Daily Washington Law Reporter to:

Ryan K. Mullady
Assistant General Counsel
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 5400
Washington, D.C. 20001

All comments submitted in respect to this notice will be available to the general public. The proposed amendments are set forth below. New language is underlined and deleted language is stricken through.

PROPOSED AMENDMENTS TO SCR Civil 9-I

Rule 9-I. Verifications, and ~~a~~ Affidavits, and Declarations.

(a) ~~SUFFICIENCY~~efficiency. When verification of a pleading is required, it ~~will~~shall be sufficient for the person verifying to swear or affirm that the person verily believes the facts stated in the pleading to be true. Verification by an individual party ~~may~~must be in ~~the form set out in CA Form 101~~supported as set forth in Rule 9-I(e). Civil Action Form 101 satisfies this requirement.

(b) ~~ONE PARTY MAY VERIFY~~no party may verify. If several parties are united in interest and plead together, the verification may be made by ~~any one of those parties~~any one of those parties.

(c) ~~BY OFFICER, AGENT, ATTORNEY~~y-officer, agent, attorney.

(1) When Allowed. A verification, ~~or~~or affidavit, or declaration may be made by an officer, agent or attorney only when:

~~___(1A) when~~ a corporation is a party;

~~___(2B) when~~ the facts are within the personal knowledge of the attorney or agent;

~~___(3C) when~~ the party is an infant, or of unsound mind, or in prison; or;

~~___(4D) when~~ the party is absent from the District of Columbia.

(2) Requirements. Where verification of a pleading, ~~or~~or an affidavit, or a declaration is made on behalf of a party to an action, it ~~shall~~must set forth the representative capacity and, in the case of a corporation, the title of a person so verifying or making the affidavit or declaration, and ~~shall~~must contain a statement that the person has authority to verify the particular pleading or make the affidavit or declaration on behalf of the person's principal.

(d) ~~FORM OF AFFIDAVITS AND DECLARATIONS~~Form of affidavits. Affidavits and declarations, other than verifications, shall ~~must~~ be separate and distinct from a pleading, verification, motion or other paper filed in the action. All facts contained in any affidavit or declaration submitted to ~~the~~the Court ~~shall~~must be expressly stated in detail in separately numbered paragraphs and ~~shall~~must not be incorporated ~~therein~~ by reference.

(e) UNSWORN DECLARATIONS.

(1) When Allowed. Unless otherwise provided by law, whenever any matter is required or permitted by these rules to be supported by the sworn written declaration, verification, certificate, statement, oath, or affidavit of a person, the matter may, with the same force and effect, be supported by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed as true under penalty of perjury, and dated, in substantially the following form, which must appear directly above the person's signature:

(A) If executed inside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States:

I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(B) If executed outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States:

I declare under penalty of perjury under the law of the District of Columbia that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. Executed on _____ day of _____, _____, at
_____ (date) _____ (month) _____ (year)

_____ (city or other locations, and state) _____ (country)

(2) Exclusions. Rule 9-I(e)(1) does not apply to:

- (A) a deposition;
- (B) an oath of office;
- (C) an oath required to be given before a specified official other than a notary public;

or

(D) a declaration to be recorded with the Recorder of Deeds of the District of Columbia.

COMMENT TO THE 2010 AMENDMENT

Rule 9 identical to *Federal Rule of Civil Procedure 9* except for deletion of section (h) thereof dealing with claims for relief "within the admiralty and maritime jurisdiction" which are within the exclusive jurisdiction of federal District Courts. See *28 U.S.C. § 1333(1)*. This rule was amended as a result of the passage of the Uniform Unsworn Foreign Declaration Act of 2010, D.C. Code § 16-5301 *et seq.* and D.C. Code § 22-2402 (a)(1)-(3), which post-dates the decision of the District of Columbia Court of Appeals in *Cormier v. D.C. Water & Sewer Auth.*, 959 A.2d 658 (D.C. 2008). Consistent with federal court and the District of Columbia Court of Appeals practice, the new section (e) allows parties to file declarations that have not been notarized. D.C. Code § 22-2402 (a)(3) provides that, "[a] person commits the offense of perjury if . . . [i]n any declaration, certificate, verification, or statement made under the penalty of perjury in the form specified in D.C. Code § 16-5306 or 28 U.S.C. § 1746(2), the person willfully states or subscribes as true any material matter that the person does not believe to be true and that in fact is not true." The rule is patterned after the United States District Court for the District of Columbia's Local Rule 5.1(h); the federal declarations statute, 28 U.S.C. § 1746; and D.C. Code § 16-5306.



**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

VERIFICATION FORMS

- (a) *Executed Inside the United States.* The verification by an individual party mentioned in these rules should be in the following form if it is executed *inside* the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States:

I declare (certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on ____ day of _____, _____.
(date) (month) (year)

Printed Name

Signature

City and State, or Other Location

See D.C. CODE § 22-2402 (a)(3) (2010).

- (b) *Executed Outside the United States.* The verification by an individual party mentioned in these rules should be in the following form if it is executed *outside* the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States:

I declare under penalty of perjury under the law of the District of Columbia that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. Executed on ____ day of _____, _____, at
(date) (month) (year)

_____, _____.
(city or other locations, and state) (country)

Printed Name

Signature

See D.C. CODE § 16-5306 (2010).