

IN THE FAMILY COURT OF THE STATE OF DELAWARE

ORDER AMENDING RULE 16

OF THE FAMILY COURT RULES OF CIVIL PROCEDURE

This _____ day of _____, 2011, **IT IS ORDERED THAT:**

1. Section (a) of Rule 16 of the Family Court Rules of Civil Procedure shall be replaced in its entirety by the following:

(a) Support Pleadings; Mediation; Financial Report.

(1) In all proceedings requesting relief in the form of support pursuant to Chapter 5 and 8 of Title 13 of the Delaware Code, including actions for modification of existing orders, a mediation conference(s) with the parties shall be held by a Court staff mediator to identify the specific areas at issue and to attempt amicable settlement of all unresolved issues to avoid the necessity of a hearing or to narrow the issues to be decided at a hearing. Additionally:

- i. Telephonic participation by any party residing more than 100 miles from the courthouse may be allowed upon request conditional upon compliance with subsection (a)(6) of this Rule.
- ii. Unless otherwise provided by statute or rule, no trial in the action shall occur until the completion of the mediation process unless the Court, upon the application of a party, application of the mediator or upon its own motion, orders the proceeding referred for scheduling, in the first instance, before a Judge or Commissioner.
- iii. The scheduling of a trial initially before a judge shall be in accordance with Rule 300(c).

(2) (A) If the mediation process fails to produce a full settlement, the parties may be taken before a Commissioner for an evidentiary hearing on the same day, if appropriate as determined by the Commissioner. Without assessing evidentiary weight, the Court may review the notes and calculations made by the mediator in determining areas of agreement and dispute.

(B) If an evidentiary hearing is not held pursuant to subparagraph (2) and if the matter is not resolved at the mediation conference by a permanent, temporary, or interim agreement of the parties, then, absent good reason otherwise to be stated on the mediator's report, the mediator shall prepare an interim order based upon the documentation provided and the Delaware Child Support Formula which upon review and adjustment by the Court shall issue promptly and may include such order for discovery as the Court deems appropriate.

- (3) A child support enforcement action alleging contempt of court shall be scheduled for a mediation conference only if there have been no previous enforcement orders entered, other than dismissals, in the name of the same petitioner against the same respondent. Petitions to establish medical arrears, other than in Uniform Interstate Family Support Act cases, shall be scheduled for mediation first in every instance.
- (4) Family Court mediation conferences shall be prohibited in any proceeding requesting relief in the form of support where one of the parties has been found by a court to have committed an act of domestic violence against the other party or if either party has been ordered to stay away or have no contact with the other party, unless a victim of domestic violence who is represented by counsel requests such mediation.
- (5) (A) All requests for continuances of support mediation conferences shall be made in a timely manner and in writing to the Court staff mediator assigned to conduct the conference. The written request shall contain:
- (i) a statement of the original filing date of the complaint;
 - (ii) the position of opposing counsel on the request or, if there is no opposing counsel, the position of the opposing party;
 - (iii) the number of times that the case has been scheduled for mediation conference; and
 - (iv) the reason(s) why the request is being made, with any supporting documentation.
- (B) When an emergency or unforeseeable situation prevents full compliance with this subsection, the Court staff mediator assigned to conduct the conference may consider an oral or incomplete request for continuance and may require subsequent submission of appropriate correspondence and/or documentation.
- (C) A Court staff mediator granting a continuance shall make a written entry in the Court record of the reason for the continuance.
- (D) Where the parties intend to submit a stipulation resolving the issues, the executed stipulation must be received by the Court prior to the scheduled mediation conference and be in accord with the requirements of Rule 500(a) or the parties shall appear for the mediation conference. The Court shall not grant any request for a continuance on the basis that a stipulation is forthcoming. Failure to appear for a mediation conference under these circumstances may result in a dismissal of the petition or default judgment.

(6) Prior to the mediation conference on an action for support or for modification of an existing order, each party shall complete a written report in the form approved by the Court to be known as a Rule 16(a) Financial Report, attaching thereto such documents as may be required by the instructions accompanying the Report. Each party shall bring a completed Rule 16(a) Financial Report to the mediation conference where the information contained therein shall be sworn to by the parties, with misrepresentations subject to appropriate sanctions.

(7) In any matter where mediation is bypassed by statute, court rule or otherwise prohibited, each party must complete and exchange with the opposing party or attorney a written report in the form approved by the Court to be known as a Rule 16(a) Financial Report at least seven days prior to the court hearing.

(8) At any hearing conducted under this rule, the Court may consider representations of income for each parent reported by employers to the Department of Labor.

(9) The failure of either party to comply with the requirements of this Rule may result in the imposition of appropriate sanctions, including, but not limited to, the entry of a default order or dismissal of the pending action.

2. Section (b)(2) of Rule 16 shall be amended to read: “The requirements regarding continuances of custody/visitation mediation conferences shall be the same as those for continuances of support mediation conference in Rule 16(a)(5).”

3. This amendment shall be effective after 30 days notice to members of the Bar.

BY THE COURT:

Chandlee Johnson Kuhn
Chief Judge

Jay H. Conner
Judge

Kenneth M. Millman
Judge

William N. Nicholas
Judge

William J. Walls, Jr.
Judge

Mark D. Buckworth
Judge

William L. Chapman, Jr.
Judge

Aida Waserstein
Judge

Barbara D. Crowell
Judge

Peter B. Jones
Judge

Mardi F. Pyott
Judge

John E. Henriksen
Judge

Robert B. Coonin
Judge

Arlene Minus Coppadge
Judge

Michael K. Newell
Judge

Alan N. Cooper
Judge

Joelle P. Hitch
Judge