

IN THE FAMILY COURT OF THE STATE OF DELAWARE

ORDER AMENDING RULES 4, 221, AND 501

OF THE FAMILY COURT RULES OF CIVIL PROCEDURE

This 20th day of October 2021, **IT IS ORDERED THAT:**

1. Rule 4 shall be amended as follows:

Rule 4. Process.

(d) Service of process; how made. -- The summons and petition shall be served together. The Clerk shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than a child or an incompetent person by delivering a copy of the summons and petition to the respondent personally or by leaving copies at the respondent's dwelling or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering copies thereof to an agent authorized by appointment or by law to receive service of process.

(2) Upon a child under the age of 18 years, if such child has a parent, custodian or guardian in this State, by service upon such parent, custodian or guardian in the same manner as upon an individual, if the parent, custodian or guardian is an individual, or in the same manner as upon a corporation, if the parent, custodian or guardian is a corporation; and if there is no such parent, custodian or guardian, by service in the same manner as upon an individual, upon an adult person with whom such child resides or has place of abode.

(3) Upon an incompetent person, if such person has a trustee or guardian in this State, by service upon such trustee or guardian, in the same manner as upon an individual, if the trustee or guardian is an individual; or in the same manner as upon a corporation, if such trustee or guardian is a corporation; and if there is no such trustee or guardian, by service in the same manner as upon an individual, upon an adult person with whom such incompetent person resides or has place of abode.

(4) As used herein, "trustee" or "guardian" refers to one appointed by the Court of competent jurisdiction in this State; provided, however, that a trustee or guardian duly appointed by a court of competent jurisdiction of another state may accept service or appear, upon filing proof of such appointment in the cause here pending.

(5) Upon a child or incompetent person, not a resident of the State, in the same manner as upon a competent adult person who is not an inhabitant of or found within the State.

(6) Whenever a statute, Rule or Order provides for service of summons or of a notice or of an order in lieu of summons upon a party not an inhabitant of or found within the State, service shall be made under the circumstances in the manner prescribed by the statute, Rule or Order.

(7) Whenever, by statute or other Rule or Order some other method or methods of service of process is required for a particular action, including service by publication in print or on the Court's legal notices website, then the statute or other Rule or Order of this Court shall control and supersede the method(s) of service provided herein and, whenever by statute (10 Del. C. Section 1065, 10 Del. C. Section 3104, or other) or other Rule or Order of this Court, some other method(s) of service of process may be permitted which is not in contravention of a specific statute or Rule or Order of this Court, then the Clerk is authorized and empowered to utilize such alternative method(s) of service.

2. Rule 221 shall be amended as follows:

Rule 221. Missing and out-of-state parents.

Personal service of process shall be done in accordance with Civil Rule 4(d)(1) through (5) and 4(e) of this Court. In the event that personal service cannot be accomplished on the respondent or DSCYF files an affidavit alleging that personal service cannot be accomplished on the respondent in this state for the reasons set forth in the affidavit, DSCYF shall then cause to be published notice of the action informing the respondent they shall have twenty (20) days to file an answer, move or otherwise plead in the action. This notice shall be published on a legal notices website established by the Court or in a newspaper in the locality in which the respondent is or was believed to last be located. Failure to obtain service of process over one party by the time any hearing occurs shall not prevent the Court from proceeding to a hearing as to any other party over whom jurisdiction has been obtained. DSCYF shall make continuing, diligent efforts to locate and notify the parents who have not been personally served.

3. Rule 501 shall be amended as follows:

Rule 501. Reasonable Earning Capacity.

(f) Minimum income. – In any instance not governed by subsections (b) or (c) of this Rule, every parent will be presumed to have a reasonable earning capacity of not less than the greater of the Federal or State statutory minimum wage at ~~40~~ 35 hours per week (~~473.33~~ 151.66 hours per month). As related to this subsection,

when using the State statutory minimum wage, the Court will not utilize the statutory training wage or youth wage.

4. These amendments shall be effective January 1, 2022, which is at least 30 days after notice to members of the Bar.

BY THE COURT:

/s/ Michael K. Newell 10/7/21
Michael K. Newell
Chief Judge

/s/ Kenneth M. Millman 10/7/21
Kenneth M. Millman
Judge

/s/ Peter B. Jones 10/7/21
Peter B. Jones
Judge

/s/ Robert B. Coonin 10/7/21
Robert B. Coonin
Judge

/s/ Joelle P. Hitch 10/13/21
Joelle P. Hitch
Judge

/s/ Felice G. Kerr 10/7/21
Felice G. Kerr
Judge

/s/ Mark D. Buckworth 10/7/21
Mark D. Buckworth
Judge

/s/ Mardi F. Pyott 10/7/21
Mardi F. Pyott
Judge

/s/ Arlene Minus Coppadge 10/7/21
Arlene Minus Coppadge
Judge

/s/ Paula T. Ryan 10/7/21
Paula T. Ryan
Judge

/s/ Jennifer B. Ranji 10/7/21
Jennifer B. Ranji
Judge

/s/ Natalie J. Haskins 10/7/21
Natalie J. Haskins
Judge

/s/ Janell S. Ostroski 10/7/21
Janell S. Ostroski
Judge

/s/ Louann Vari 10/7/21
Louann Vari
Judge

/s/ James G. McGiffin, Jr. 10/7/21
James G. McGiffin, Jr.
Judge

/s/ Mary S. Much 10/20/21
Mary S. Much
Judge

/s/ Michael W. Arrington 10/7/21
Michael W. Arrington
Judge