

IN THE FAMILY COURT OF THE STATE OF DELAWARE
ORDER AMENDING RULES 41, 64, 65, 65.2, 67, 69, 70 AND 500
OF THE FAMILY COURT RULES OF CIVIL PROCEDURE

This 10th day of July 2020, **IT IS ORDERED THAT:**

1. Rule 41 shall be amended as follows:

Rule 41. Dismissal of actions.

(a) Voluntary dismissal; effect thereof. –

(1) By petitioner; by stipulation. -- An action may be dismissed by the petitioner without order of court (i) by filing a notice of dismissal at any time before entry of appearance by the adverse party or (ii) by filing a stipulation of dismissal signed by all the parties who have appeared in the action.

(2) By order of Court. -- Except as provided in paragraph (1) of this subdivision of this Rule, an action shall not be dismissed at the petitioner's instance ~~save~~ except upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a respondent prior to the service upon respondent of the petitioner's motion to dismiss, the action shall not be dismissed against the respondent's objections unless the counterclaim can remain pending for independent adjudication by the Court. ~~Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.~~

(3) A dismissal under either paragraph (1) or (2) is without prejudice unless the parties otherwise agree or the Court determines after a hearing that the intent behind the filing of the action was to harass or annoy.

(b) Involuntary dismissal; ~~effect;~~ ~~Effect~~ thereof. –

(1) For failure of the petitioner to prosecute or to comply with these Rules or any order of court, a respondent may move for dismissal of an action or of any claim against that respondent. Dismissals under this subsection shall be without prejudice unless the Court determines after a hearing that the intent behind the filing of an action was to harass or annoy or for other good cause shown.

(2) After the petitioner has completed the presentation of evidence, the respondent, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the petitioner has shown no right to relief. The Court as trier of the facts may then determine them and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of counterclaim, cross-claim or third-party claim. -- The provisions of this Rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this Rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of previously dismissed action. -- If a petitioner who has once dismissed an action in any court commences an action based upon or including the same claim against the same respondent, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the petitioner has complied with the order.

(e) ~~Dismissal~~ Sua sponte dismissal for failure to prosecute. -- In the case of any action which has been pending in this Court for more than ~~1 year~~ 6 months without any proceedings having been taken therein during that ~~6 month period~~ year, the Clerk may, after the expiration of the ~~1-year~~ 6 month period, mail to the parties a notice notifying them that the action will be dismissed by the Court for want of prosecution if no proceedings are taken therein within 30 days. If no proceedings are taken in the action within a period of 30 days after the mailing of such notice, it shall thereupon be dismissed by the Court as of course for want of prosecution. Such actions may also be dismissed for want of prosecution at any time by motion of any party or by the Court on its own motion.

2. Rule 64 shall be amended as follows:

Rule 64. Seizure of persons or property.

(b) ~~Bench Capias warrant~~. -- If a person subject to the jurisdiction of the Court has failed to appear for a scheduled hearing, it is made to appear that a respondent is evading service of process, ~~or may~~ leaves the jurisdiction of the Court, or for any other just cause, a ~~bench capias warrant~~ for the apprehension of such ~~respondent~~ person may issue out of the Court.

(c) Capias. -- When a capias is issued out of this Court, the ~~respondent~~ person shall be brought before the Court immediately if in session; otherwise, in default of specified bond, the ~~respondent shall~~ person can be detained in a facility of the Department of Corrections/Department of Services to ~~for~~ Children, Youth and Their Families for appearance in this Court at its next session.

3. Rule 65 shall be amended as follows:

Rule 65. Injunctions.

(a) Preliminary injunction. -- (1) Except as otherwise provided in 13 *Del. C.* Section 1509 and 13 Del. C. Section 721(d), no preliminary injunction shall be issued without notice to the adverse party, and without a ~~prayer therefor~~ request appearing in a verified complaint, or a motion ~~therefor~~ for injunctive relief filed and supported by affidavit. (2) Before or after the commencement of the hearing of an application for a preliminary injunction, the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. ~~Even when this consolidation is not ordered,~~ (3) Any ~~any~~ evidence received upon application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial.

(b) Security. ~~Except for injunctions issued pursuant to 13 Del. C. Section 1509, no preliminary injunction shall issue except upon~~ The Court may require the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined.

4. Rule 65.2 shall be amended as follows:

Rule 65.2. Emergency and interim orders.

(b) Interim relief. -- Applications for interim relief ~~financial relief or temporary custody~~, not of an emergency nature, shall be made by motion after service of process has been accomplished. The motion shall be ~~and~~ determined by the Court on affidavits or verified pleadings, or after hearing if the Court requires it. ~~After the entry of an interim order,~~ If interim relief is granted or denied without a hearing, either party may request an evidentiary hearing.

(c) Priority scheduling requests. -- Applications for early scheduling of a hearing shall be made by motion and may be considered by the Court, in chambers, and without the participation of the parties, or their counsel, after ~~service of process has been accomplished~~ respondent has been served with the related petition, notice of the motion given, and the time for response to the motion has expired. The motion shall

be considered on affidavits and verified pleadings, which must set forth: (1) the nature of the controversy; (2) the relief sought at a priority hearing; and (3) the facts under which the Court may conclude that unless the priority scheduling request is granted, substantial and irreparable harm will result.

(d) Interim visitation order. -- Applications for issuance of an interim visitation order shall be made by motion ~~and may be considered by the Court~~ after service of process has been accomplished, ~~notice of motion given, and the time for response to the motion has expired.~~ The motion shall be ruled on after a hearing., which The motion must set forth: 1) personal jurisdiction has been established over the responding party; 2) there is no existing enforceable contact schedule; and 3) a parent is experiencing less contact with his/her child(ren) than that which is routinely awarded by the Court. ~~This hearing will be before a Judge or Commissioner as assigned.~~ At the Court's discretion, these matters can be placed on a special temporary visitation calendar, scheduled for a hearing before the assigned judge, or ruled upon on the papers.

5. Rule 67 shall be amended as follows:

Rule 67. Deposit in Court. Omitted.

~~In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money, a party, upon notice to every other party, may deposit with the Court all or any part of such sum. In an action in which any part of the relief sought is a judgment for the disposition of any other thing capable of delivery, a party, upon notice to every other party and by leave of court, may deposit with the Court all or any part of such thing or things.~~

6. Rule 69 shall be amended as follows:

Rule 69. Execution writ for payment of money: Transcription to Superior Court.

(a) In general. -- If a final judgment or order ~~be is entered~~ for the payment of ~~past due liquidated amount of money, it may contain in addition to other methods of enforcement of the order, a provision for recording, docketing, indexing and/or filing of the judgment with Superior Court where permitted by statute.~~ a specific amount of past due money, the judgment or order may contain a provision permitting the recording of the judgment or order as a judgment in Superior Court for collection, if permitted by statute. The recording of the judgment or order in Superior Court does not preclude other remedies in Family Court.

7. Rule 70 shall be amended as follows:

Rule 70. Judgment for specific acts; vesting title; contempt.

(a) Performance by substitute and other methods of procuring compliance. -- If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the Court may direct the act to be done at the cost of the ~~disobedient noncompliant~~ party by the Clerk of Court or by some other person appointed by the Court if permitted by law and the act when so done has ~~like the same~~ effect as if done by the party. On application of the party entitled to performance, the Clerk shall issue a writ of attachment or sequestration against the property of the ~~disobedient noncompliant~~ party to compel ~~obedience~~ compliance to the judgment if permitted by law. The Court may also in proper cases adjudge the party in contempt. If real or personal property is within the jurisdiction of the Court and if permitted by law, the Court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. The provisions of this paragraph shall not be construed to replace any statutory authority granted this Court to compel performance by a substitute.

(b) Contempt and other remedies for ~~disobedience noncompliance~~ of Court order. -- Except as otherwise provided by law, for failure to obey a restraining or injunctive order, or to obey or to perform any order, an attachment may be ordered by the Court upon the filing in the cause of an affidavit showing service on the respondent, or that the respondent has knowledge of the order and setting forth the facts constituting the ~~disobedience noncompliance~~. At the hearing of the attachment, the examination of the respondent and also of witnesses shall be oral before the Court, unless it be otherwise ordered by the Court. In other proceedings taken in the name of the State to punish contempt, the attachment may be ordered upon the filing of an affidavit setting forth the facts constituting the contempt and thereupon the proceedings shall be as set forth in the preceding paragraph of this Rule.

8. Rule 500 is amended as follows:

Rule 500. Delaware child support formula; general principles.

(c) The rules in effect at the time of a hearing or mediation apply to all prospective and retroactive determinations of support. However, if a hearing commences prior to an amendment of these rules but is not completed until after the amendment, then the prior rules shall apply up until the effective date of the amendment.

9. These amendments shall be effective November 1, 2020, which is at least 30 days after notice to members of the Bar.

BY THE COURT:

/s/ Michael K. Newell 6/27/20
Michael K. Newell
Chief Judge

/s/ Kenneth M. Millman 6/26/20
Kenneth M. Millman
Judge

/s/ Peter B. Jones 6/26/20
Peter B. Jones
Judge

/s/ Robert B. Coonin 6/26/20
Robert B. Coonin
Judge

/s/ Joelle P. Hitch 7/10/20
Joelle P. Hitch
Judge

/s/ Felice G. Kerr 6/26/20
Felice G. Kerr
Judge

/s/ Natalie J. Haskins 6/26/20
Natalie J. Haskins
Judge

/s/ Mark D. Buckworth 6/29/20
Mark D. Buckworth
Judge

/s/ Mardi F. Pyott 6/29/20
Mardi F. Pyott
Judge

/s/ Arlene Minus Coppadge 6/26/20
Arlene Minus Coppadge
Judge

/s/ Paula T. Ryan 6/26/20
Paula T. Ryan
Judge

/s/ Jennifer B. Ranji 6/26/20
Jennifer B. Ranji
Judge

/s/ Janell S. Ostroski 6/26/20
Janell S. Ostroski
Judge

/s/ Louann Vari 6/26/20
Louann Vari
Judge

/s/ James G. McGiffin, Jr. 6/26/20
James G. McGiffin, Jr.
Judge

/s/ Mary S. Much 6/26/20
Mary S. Much
Judge

/s/ Michael W. Arrington 6/26/20
Michael W. Arrington
Judge