

**IN THE FAMILY COURT OF THE STATE OF DELAWARE**

**ORDER AMENDING RULES 1-15, 17, AND 302**

**OF THE FAMILY COURT RULES OF CIVIL PROCEDURE**

This 18<sup>th</sup> day of July 2018, **IT IS ORDERED THAT:**

**1. Rule 1 shall be amended as follows:**

Rule 1. Scope and purpose of rules.

- (a) Scope. -- These Rules shall govern the procedure in the Family Court of the State of Delaware with the exceptions stated in Rule 81. They should be construed, ~~and~~ administered and employed by the Court and the parties to secure the just, speedy and inexpensive determination of every proceeding.

**2. Rule 3 shall be amended as follows:**

Rule 3. Commencement of action.

- (a) Petition. -- An action is commenced by filing with the Clerk a petition or, if required by statute, a complaint or statement of claim, all hereafter to be referred to as a "petition". The original plus one copy of the petition shall be filed unless specific rule requires filing of additional copies. Every newly filed petition shall be accompanied by an Information Sheet in the form adopted by the Court and containing information that the Court shall determine is necessary and appropriate.

- (b) Verification. -- Unless a specific statute or rule allows for an unsworn declaration made under penalty of perjury, every Every pleading which is required to be verified by statute or by these Rules shall be under oath or affirmation by the party filing such pleading that the matter contained therein insofar as it concerns the pleader's act and deed is true, and so far as it relates to the act and deed of any other person, is believed by the pleader to be true.

**3. 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 ~~an infant~~ a child or an incompetent person by delivering a copy of the summons and petition to the respondent personally or by leaving copies ~~thereof~~ 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 ~~an infant~~ a child under the age of 18 years, if such ~~infant~~ 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 ~~infant~~ 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 ~~and/or~~ appear, upon filing proof of such appointment in the cause here pending.
- (5) Upon ~~an infant~~ 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, 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, ~~13 Del. C. Section 807(b)~~, 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.

(e) Return of process. -- The summons provided in paragraph (a) hereof shall be returnable 20 days after the issuance ~~thereof~~ unless otherwise specially ordered. The person serving the process shall make return ~~thereof~~ of the process to the Court promptly after service and in any event on the indicated return day ~~thereof~~. Process which cannot be served before the return day ~~thereof~~ shall be returned on the return day and such return shall set forth the reasons why service could not be had. If service is made by a person other than by the officer or the officer's deputy or a deputy appointed by the Chief Judge, that return shall be signed ~~verified~~. A conformed signature may be used on the return. Failure to make a return or proof of service shall not affect the validity of service.

(f) Amendment of process. -- At any time in its discretion and upon such terms as it deems just, the Court may allow any process or return of proof of service to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(g) Notices. -- After a party or attorney has been served with a summons ~~and/or~~ has entered an appearance, notice of the time, date and place of any proceeding may be (1) given in Court, or (2) sent by ordinary first-class mail to the last known address of the parties, or (3) served personally, or (4) communicated in any such other reasonable manner as the Court may direct.

**4. Rule 5 shall be amended as follows:**

Rule 5. Service and filing of pleadings and other papers.

(b)(1) Appearance of party: When; how made. -- Except as otherwise provided by statute, a respondent may appear though not served with a summons. Appearance may be made by the service and filing of notice thereof, or by the service or filing of any motion or pleading purporting to be responsive to or affecting the petition, or by appearing personally at any Court mediation conference, hearing or trial in the action.

(2) Appearance of attorney: When; how made; withdrawal. –

(A) An attorney shall appear for the purpose of representing a party by filing a written notice of appearance a form of which will be provided by Family Court using a Family Court generated form. The notice of appearance shall specify the matter(s) in which the attorney will represent the party. Once an attorney has filed a notice of appearance in a particular matter, copies of all notices given to the party with regard to that matter shall also be given to the party's counsel. No appearance shall be withdrawn except upon application by the attorney and order of the Court for good cause.

(B) Any appearance by an attorney in accordance with subparagraph (A) shall be limited to representation with respect to the specific petition filed and shall terminate when the time for appeal has elapsed from the final order entered by the Court.

(c) Service of pleadings and paper: How made. -- Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to the party or by mailing it to the party at the party's last known address or, if no address is known, by leaving it with the Clerk. "Delivery of a copy" within this Rule means handing it to the attorney or to the party; or leaving it at the attorney's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the dwelling or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(d) Filing. -- All papers after the petition required to be served upon a party shall be filed with the Court within a reasonable time after service thereof, except that filing of discovery and its product after service shall be governed by Rule 26(e).

(e) Filing with the Court defined. -- The filing of pleadings and other papers with the Court as required by these Rules shall be made by filing them with the Clerk, except that the Judge may permit the papers to be filed with the Judge, in which event the Judge shall note thereon the filing date and transmit them to the office of the Clerk.

(f) Proof of service of papers. -- Unless otherwise ordered, no pleading or other paper, required by these Rules to be served by the party filing the paper, shall be filed unless the original

(1) ~~thereof~~ shall have endorsed thereon a receipt of service of a copy thereof by all parties required to be served, or

(2) ~~it~~ shall be accompanied by affidavit showing that service has been made and how made, or

(3) ~~it~~ shall be accompanied by a certificate of an attorney of record showing service has been made and how.

**5. Rule 6 shall be amended as follows:**

Rule 6. Time.

(c) For motions -- Affidavits. -- A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served in a timely manner. For cause shown, ~~such~~ an order ~~thereon~~ may be made on an ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), a response ~~and/or~~

opposing affidavits shall be served in accordance with Rule 7(b)(2) unless the Court permits them to be served at some other time.

**6. Rule 8 shall be amended as follows:**

Rule 8. General rules of pleading.

(b) Answers; when required. -- An answer shall be required in all civil actions except that, Rule 12 notwithstanding, an answer shall not be required to those petitions in which child support, parentage, or protection from abuse is the sole issue. The requirement to file an answer in any other civil action may otherwise be waived by the judge or commissioner.

(e) Effect of failure to deny. -- Averments in a pleading to which a responsive pleading is required, ~~other than those as to the amount of damage,~~ are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be ~~taken as~~ presumed denied. ~~or avoided.~~

**7. Rule 10 shall be amended as follows:**

Rule 10. Form of pleadings.

(a) Caption: Names of parties. -- Every pleading shall contain a caption setting forth the name of the Court, the title of the action, a title of the pleading as set forth in Rule 7(a) and, if known, the file number and the petition number, ~~and a designation as in Rule 7(a).~~ In the complaint petition the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. This requirement may be met by using Family Court created forms and filling them out completely.

**8. Rule 11 shall be amended as follows:**

Rule 11. Signing of pleadings, motions and other papers: Representations to court, sanctions.

(c) Sanctions. -- If, after notice and a reasonable opportunity to respond, the Court determines that subdivision (b) has been violated, the Court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the Court unless, within 21 days after service of the motion (or such other period as the Court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the Court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the Court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) ~~with respect thereto~~.

**9. Rule 17 shall be replaced as follows:**

Rule 17. Parties; capacity.

(a) Real party in interest.

(1) Every action shall be pursued in the name of the real party in interest. The real party in interest is the party who actually possesses the right being asserted and has a legal right to enforce the claim.

(2) The following may sue in their own names without joining the person for whose benefit the action is brought:

- (A) An executor of an estate;
- (B) An administrator of an estate;
- (C) A guardian;
- (D) A bailee;
- (E) A trustee of an express trust;
- (F) A party with whom or in whose name a contract has been made for another's benefit; or
- (G) A party authorized by statute.

(3) No action shall be dismissed on the ground that it is not pursued in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Children as parties. --

(1) Except as otherwise provided by statute or rule, every child properly named as a petitioner or respondent shall be appointed a guardian ad litem.

(2) A person proposing himself or herself as a guardian ad litem for a child petitioner may sign and file a petition conditional upon subsequent appointment. However, only a custodial parent, legal guardian or duly appointed guardian ad litem may seek ex parte or expedited relief on behalf of a child. A person filing a petition against a child as a respondent has the burden of initiating the appointment of a guardian ad litem for that child.

(3) A parent of a child who holds joint or sole custody or a child's court ordered guardian of the person shall be presumed a qualified guardian ad litem unless such person has an interest in the case which is inconsistent with the child's interests. If the child's custodial status is unknown, joint natural custody by both parents shall be presumed.

(4) If no disinterested custodial parent or legal guardian is available, then another person known to the child may be appointed. However, if such person is not a noncustodial parent, grandparent, great-grandparent, or adult sibling of the child, then appointment may only occur after a hearing.

(5) The appointment of a guardian ad litem may be sought by motion of:

- (A) The person seeking appointment;
- (B) Another party to the action;
- (C) The child;
- (D) A custodial parent or legal guardian; or

(E) The Department of Services for Children, Youth and their Families.

(6) The motion shall set out:

(A) The child's minority;

(B) The identity of all persons holding parental or custodial rights or guardianship, and whether each is available for appointment or has an interest in the case; and

(C) A proposed guardian ad litem or explanation why a guardian ad litem should be selected by the court.

(7) (A) The motion may be served with the underlying petition and shall be served upon:

(i) All persons or entities holding parental or custodial rights or guardianship, and

(ii) The child, if age 14 or older, but otherwise, upon the adult with whom the child resides; and

(iii) All other parties to the action.

(B) If the motion is served with the underlying petition, any written response must be filed and served within the time permitted for an answer as provided in Rule 12.

(8) (A) If no appropriate guardian ad litem can be identified, the Court may:

(i) Appoint an attorney to represent the child;

(ii) Permit the child to proceed on his or her own; or

(iii) Dismiss the action.

(B) Whether an attorney can adequately represent a child's interests with or without a separately appointed guardian ad litem will be determined on a case by case basis. Attorney's fees may be assessed against any or all parties.

(9) In a Protection from Abuse action, a parent seeking protection of his or her own minor child need only seek to be appointed guardian ad litem of his or her child if the parent does not have a qualifying jurisdictional relationship with the respondent.

(10) In any case affecting the interests of a child in which the Court finds that the appearing parties are not adequately representing the interests of the child, the Court may add the child as a party and appoint a guardian ad litem.



(c) Incompetent persons as parties. -- Whenever an incompetent person has a representative, such as a legal guardian, trustee, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the incompetent person. An incompetent person who does not have a duly appointed representative may sue or defend by a guardian ad litem.

(1) The appointment of a guardian ad litem may be done by the Court sua sponte or may be sought by motion of:

- (A) The person seeking appointment;
- (B) Another party to the action;
- (C) The incompetent person; or
- (D) A legal guardian or person holding a Power of Attorney if the Power of Attorney authorizes the holder to bring suit or to prosecute or defend against a legal action.

(2) The motion shall set out:

- (A) The factual basis for believing the individual is incompetent;
- (B) The identity of all known persons or entities who have been appointed legal guardian, who hold a Power of Attorney, or who otherwise have the care of the incompetent person and whether each is available for appointment or has an interest in the case; and
- (C) A proposed guardian ad litem or explanation why a guardian ad litem should be selected by the court.

(3) (A) The motion may be served with the underlying petition and shall be served upon:

- (i) All known persons or entities who have been appointed legal guardian, who hold a Power of Attorney, or who otherwise have the care of the incompetent person, and
- (ii) The incompetent person, unless the condition of the incompetent person is such as to render service or notice useless; and
- (iii) All other parties to the action.

(B) If the motion is served with the underlying petition, any written response must be filed and served within the time permitted for an answer as provided in Rule 12.

(4) (A) If no appropriate guardian ad litem can be identified, the Court may:

- (i) Appoint an attorney to represent the incompetent person; or
- (ii) Dismiss the action.

(B) Whether an attorney can adequately represent an incompetent person's interests with or without a separately appointed guardian ad litem will be determined on a case by case basis. Attorney's fees may be assessed against any or all parties.

**10. Rule 302 shall be amended as follows:**

Rule 302. Income attachment; operation of law adjustment; change of payee.

(a) Child Support payments shall be payable to the Division of Child Support Services (DCSS) unless an alternative payment arrangement is Ordered by the Court for good cause shown. DCSS is authorized to issue income attachments for any obligation payable to the agency unless specifically stayed by the Court. Income attachment will not be available to enforce a child support obligation unless it is payable through DCSS. A spousal support or alimony obligation may be ordered payable through DCSS but only if there is a concurrent child support obligation.

(b) ~~All Family Court child support orders are subject to the operation of law provisions of sections 516(f) and 517 of Title 13 of the Delaware Code.~~ Whenever DCSS has cause to believe that a current or past due support obligation has terminated or been modified by operation of law or requires other administrative action, ~~the Court recognizes the authority of DCSS~~ may, pursuant to this rule, to adjust its accounts and terminate or modify any outstanding income attachment without further Order of the Court. Operation of law and other administrative adjustments shall include:

(1) Whenever a past due balance arises and no payments are received for at least one calendar month, an arrears payment may be imposed or, if there already is an arrears payment, increased to an amount equal to 20% of current support (rounded to the nearest dollar) until the past due balance is paid in full.

(2) Whenever past due support has been paid in full and current support continues the periodic payment shall decrease to the amount of current support only.

(3) Upon the termination of a current support obligation ~~pursuant to section 517(a) of Title 13~~ due to a termination of parental rights or the emancipation or death of the only remaining child of an order, the total amount previously ordered shall presumptively continue until any past due balance is paid in full.

(4) When current support has terminated and all past due balances have been paid in full, all enforcement shall cease.

(5) When custody of all children who are the subject of a child support order is transferred by Court Order or written agreement to the obligated parent, current support shall terminate. If a past due support balance remains, any previously ordered past due support payment remains in effect or if there is none, 20% of the terminated current support payment will be the periodic payment. This paragraph shall not apply to interim orders incident to pending custody actions except as the Court may by order direct.

(6) Upon the death of an obligated parent, current support shall terminate and any past due support balance shall become a liability to the estate of the decedent. Upon the death of a person to whom child support was due and except as provided in subsection (c), current support shall terminate and any past due support shall become a judgment in favor of the estate of the decedent.

(7) This rule may be utilized to facilitate the transfer of the administration of obligations between States, the redirection of payments, the voluntary termination of obligations and forgiveness of balances, the closure of accounts, and other acts in furtherance of Title IV, Part D of the Social Security Act.

(c) The child is the real party in interest in any child support action. Whenever placement of a child changes to a person or government agency other than the current support recipient and that person or agency has either requested child support collection services or assigned rights of support to the State pursuant to 31 Del. C. § 504(a), DCSS may administratively redirect payments to that person to the extent allowed by applicable federal regulations. A determination that a change of placement has occurred must be supported by a Court order, written agreement signed by the obligated parent or a successful application for government sponsored cash or medical benefits on behalf of the child. Obligations regarding more than one child in more than one home may be subdivided per capita.

(d) Within 120 days prior to or 30 days after adjusting its accounts as described in subsection (b) or (c), DCSS shall file with the Court a Notice of Administrative Adjustment (NOAA) indicating the action taken. The Notice shall be mailed to all parties at their last known address and advise that a Motion to Contest an Administrative Adjustment may be filed with the Court within 30 days of the

mailing date of the Notice. Absent a contest, the contents of the notice shall be presumptive in any subsequent proceeding. DCSS shall send a blank Motion to Contest an Administrative Adjustment to each party with each NOAA.

(e) DCSS may file an amended notice within the 30-day response period provided in subsection (d) to which the recipients will have 30 additional days to respond. Otherwise, corrections may only be addressed pursuant to Family Court Civil Rule 60(b) or by petition.

(f) Recognition of the termination or modification of a current or past due support obligation by operation of law or a change of payee may also be sought by motion by any party other than DCSS, or by DCSS if relief other than that which is authorized by subparagraphs (b) or (c) is sought. Nothing in this rule shall limit the Court's ability to grant appropriate relief in an action to establish, modify or enforce a support obligation. Actions under this rule shall be accomplished only through use of Family Court approved forms.

**11. These amendments shall be effective after 30 days notice to members of the Bar.**