

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

**ORDER AMENDING RULE 16.1 OF THE**

**FAMILY COURT RULES OF CIVIL PROCEDURE**

This 16<sup>th</sup> day of February 2023, **IT IS ORDERED THAT:**

**1. Rule 16.1 shall be amended as follows:**

Rule 16.1. Mediation

(a) Support proceedings. –

(1) In all proceedings requesting relief pursuant to Chapters 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. Petitions filed pursuant to the Uniform Interstate Family Support Act shall not be eligible for mediation.

Additionally:

- i. Telephonic participation may be allowed for any party residing more than 100 miles from the courthouse or for good cause shown 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, unless both parties agree otherwise, 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)(A) and if the matter is not resolved at the mediation conference by a permanent or interim agreement of the parties, then, absent good cause 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.

(4) Petitions to establish medical arrears or seeking reimbursement of shared incidental expenses, other than in Uniform Interstate Family Support Act cases, shall be scheduled for mediation first in every instance.

(5) 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.

(6) Requests to Appear Telephonically or for Continuances -

(A) All requests to appear telephonically or 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. A copy of any such request shall be provided to the opposing party or, if represented, the opposing attorney. The written request shall be made using the Court approved form and 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 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.

(7) 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.

(b) Custody, visitation and guardianship proceedings; mediation. --

(1) Unless service has been made through publication for any respondent, in all custody, visitation and guardianship proceedings seeking initial, modification or rescission decrees, 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 or, in the alternative, to limit those issues which must be submitted to the Court for determination. Attorneys of the parties may attend and participate in the conference(s) at their election. Additionally:

(i) Telephonic participation may be allowed for any party residing more than 100 miles from the courthouse or for good cause shown upon request, conditional upon compliance with subsection (b)(2)(A) of this Rule.

(ii) No trial shall be scheduled before a Judge until the completion of the mediation process unless the Court, upon the application of either party or the Court staff mediator or upon its own motion, orders the proceeding referred to judicial scheduling.

(2) Requests to Appear Telephonically or for Continuances -

(A) All requests to appear telephonically and for continuances of custody, visitation and guardianship mediation conferences shall be made in a timely manner and in writing to the Court staff mediator assigned to conduct the conference. A copy of any such request shall be provided to the opposing party or, if represented, the opposing attorney. All requests for a continuance shall be made using the Court approved form and 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 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 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.

(3) Prior to a mediation conference, the mediator shall review the parties' criminal and Protection from Abuse histories to confirm that the case should not bypass mediation and to enhance his or her general familiarity with the parties.

(4) If the matter is not resolved at the mediation conference by a permanent or interim agreement of the parties, the mediator may recommend an interim contact schedule based on information received at the mediation conference and in the best interest of the child(ren). The mediator's recommendation shall be

reviewed by a judicial officer and if the recommendation is approved, it shall become an interim order, without prejudice to any party. In the event that the mediator's recommendation is not approved, the Court shall enter an appropriate interim order.

- (5) If the matter is resolved at the mediation conference in the form of a proposed consent agreement, a judicial officer will review the proposed consent agreement as well as the criminal histories of the parties and the occupants of each household in which each child will reside or visit.
  - (6) The Court may decline to approve any proposed consent or interim order, including stipulations submitted pursuant to subsection (b)(2)(D), for any relevant reason but shall decline to approve any such order if:
    - (A) Any person residing in the household of any party in which the child will reside or visit is a registered sex offender or a perpetrator of domestic violence as those terms are defined in Chapter 7A of Title 13; or
    - (B) Any person in the household has been convicted or adjudicated delinquent of domestic violence against the child or any person residing in a household wherein the child will reside or visit; or
    - (C) The petition should have been otherwise ineligible for a mediation conference pursuant to subsection (b)(7) of this Rule.
    - (D) The impediments recited in subsections (A) and (B) may be disregarded if there exists a written court order wherein a Judge specifically considered the underlying circumstances and, nevertheless, found placement, visitation or contact to be appropriate.
    - (E) If the Court declines to approve the proposed consent agreement or interim order, either party may request a hearing on the proposed consent agreement or interim order. The Court shall address the matter at or before the Case Management Conference.
  - (7) Family Court mediation conferences shall be prohibited in any proceeding 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 one party has been ordered to stay away or have no contact with another party, unless a victim of domestic violence who is represented by counsel requests such mediation.
- (c) Failure to comply. -- Failure of both parties to comply with this Rule may result in dismissal, with prejudice, of the matter before the Court. Non-compliance by either party, including a failure to complete a report required pursuant to Rule 16, may result in sanctions including, but not limited to, dismissal of the petition,

entry of a default judgment, attorney's fees, and being prohibited from accessing the other side's documents or from taking a position at trial.

(d) A screening tool may be used to determine whether mediation can safely proceed, the appropriate mediation method, and any necessary safety precautions.

(1) The screening responses and detailed results are confidential, undiscoverable, and inadmissible.

(2) However, screening responses that threaten imminent harm, admit the commission of a crime, or reveal child abuse shall constitute an exception to confidentiality and may be reported to appropriate authorities.

(3) Except as allowed by subsection (d)(2), all screening responses shall be destroyed upon conclusion of the underlying petition.

(4) The screening results may be securely retained for future use but will be stored separately from case files.

(5) The screening can play no part in the recommendation of an interim order under Rule 16.1(b)(4).

**2. These amendments shall be effective May 1, 2023, which is at least 30 days after notice to members of the Bar.**

BY THE COURT:

/s/ Michael K. Newell 2/9/23  
Michael K. Newell  
Chief Judge

/s/ Mark D. Buckworth 2/9/23  
Mark D. Buckworth  
Judge

/s/ Peter B. Jones 2/9/23  
Peter B. Jones  
Judge

/s/ Mardi F. Pyott 2/9/23  
Mardi F. Pyott  
Judge

/s/ Robert B. Coonin 2/9/23  
Robert B. Coonin  
Judge

/s/ Arlene Minus Coppadge 2/16/23  
Arlene Minus Coppadge  
Judge

/s/ Joelle P. Hitch 2/16/23  
Joelle P. Hitch  
Judge

/s/ Paula T. Ryan 2/9/23  
Paula T. Ryan  
Judge

/s/ Felice G. Kerr 2/9/23  
Felice G. Kerr  
Judge

/s/ Jennifer B. Ranji 2/9/23  
Jennifer B. Ranji  
Judge

/s/ Natalie J. Haskins 2/9/23  
Natalie J. Haskins  
Judge

/s/ Janell S. Ostroski 2/9/23  
Janell S. Ostroski  
Judge

/s/ Louann Vari 2/9/23  
Louann Vari  
Judge

/s/ James G. McGiffin, Jr. 2/9/23  
James G. McGiffin, Jr.  
Judge

/s/ Mary S. Much 2/9/23  
Mary S. Much  
Judge

/s/ Michael W. Arrington 2/9/23  
Michael W. Arrington  
Judge

/s/ Theresa M. Hayes 2/9/23  
Theresa M. Hayes  
Judge