Family Court Rules of Civil Procedure

I. Scope of Rules — One Form of Action

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, administered and employed by the Court and the parties to secure the just, speedy and inexpensive determination of every proceeding.

(b) *Definitions.* For the purpose of these Rules, unless the context requires otherwise, any words used herein which are also defined in Title 10 of the Delaware Code shall have the same meaning. "Petitioner" herein shall include "Plaintiff" or "Complainant" where the latter is used in statutes; "Respondent" herein shall similarly include "Defendant"; "Child" herein shall similarly include "Infant" or "Minor". "Child" is as defined by statute.

History.

Amended, Sept. 1, 1987; Sept. 3, 1996; July 18, 2018, effective Dec. 1, 2018.

Rule 2. One form of action.

There shall be one form of action to be known as "civil action".

II. Commencement of Action; Service of Process, Pleadings, Motions and Orders: Deposit and Security for Costs

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 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.

(c) *Deposit of fees and costs.* Except as provided in Civil Rule 112 the Clerk shall not accept for filing any petition until all required fees and costs have been paid. Before any proceeding is instituted in the Family Court, the Clerk shall demand and receive a non-refundable filing fee as set forth in a Schedule of Assessed Costs. Where any statute, Rule or order requires publication of any notice, summons or order, a

payment of the assessed cost thereof shall be required. The Director of Fiscal Services shall maintain and publish a Schedule of Assessed Costs, which shall apply and be computed by the Clerk of the Court. All fees and costs collected by the Clerk shall be held until final disposition or until such time as a good and proper claim against such fees and costs is presented to the Court by such vendors as those engaged by the Court to publish notices and serve process.

At the time of final disposition and order, fees and costs will be assessed against the petitioner unless the Judge or Commissioner waives all or part of the fees and costs and assesses them wholly or in part against the respondent or in some other manner.

(d) *Unnecessary costs.* If at any time during the progress of an action it appears to the Court that the amount claimed is exorbitant or the position taken is unreasonable so that the opposite party is put to unnecessary expense in giving bond, or if any party unnecessarily swells the record or otherwise causes unnecessary expense, the Court may, in its discretion, order such unnecessary expense to be taxed against the party causing the same, without regard for the outcome of the action.

(e) *Application of deposit.* [Deleted].

History.

Amended, effective Sept. 1, 1987; Feb. 13, 1991; Sept. 3, 1996; Aug. 28, 2008; July 18, 2018, effective Dec. 1, 2018.

Rule 4. Process.

(a) *Issuance of summons.* Subject to subsections (d)(6) and (7) of this Rule, upon the commencement of an action, the Clerk shall forthwith issue the summons and shall deliver it together with a copy of the petition for service to the sheriff of the county or counties specified or to a person specially appointed by the Court to serve it. Upon direction of the petitioner, separate or additional process shall issue against any respondents.

(b) *Contents of summons.* The summons shall bear the date of its issuance, be signed by the Clerk or one of the Clerk's deputies, be under the seal of the Court, contain the name of the Court and the names of the parties, state the name of the official or other person to whom it is directed, the name and address of the petitioner's attorney, if any, otherwise the petitioner's address, and the time within which these Rules require the respondent to appear and respond, and shall notify the respondent that in case of the respondent's failure to do so, judgment by default may be rendered for the relief demanded in the complaint.

(c) *By whom served.* Service of process shall be made by the sheriff to whom the writ is directed, by a sheriff's deputy, by a deputy designated and sworn by the Chief Judge, or by some person specially appointed by the Court for that purpose, except that a subpoena may be served as provided in Rule 45.

(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.

(e) *Return of process.* The summons provided in paragraph (a) hereof shall be returnable 20 days after the issuance unless otherwise specially ordered. The person serving the process shall make return of the process to the Court promptly after service and in any event on the indicated return day. Process which cannot be served before the return day 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. 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 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.

History.

Amended, July 18, 2018, effective Dec. 1, 2018; Oct. 20, 2021, effective Jan. 1, 2022.

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

(a) *Service: When required.* Except as otherwise provided in these Rules, every order required by its terms to be served, every pleading subsequent to the original petition unless the Court otherwise orders because of numerous respondents, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(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, including participating virtually, 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. 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.

(3) *Transmittal of petition after appearance.* When a respondent appears in a case without having been personally served a summons and copy of the petition, the respondent waives any right to personal service of the summons and petition. Court staff will, on request, provide a copy of the petition to the respondent either (1) in person at the courthouse, or (2) via electronic mail using an electronic mail address provided by the respondent, or (3) via regular mail using the address provided by the respondent, or (4) by providing a copy to respondent's attorney who has entered an appearance pursuant to subsection (b)(2).

(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 in a manner reasonably calculated to ensure delivery of the copy before or at the time of filing. Service upon the attorney or upon a party shall be made:

(1) by delivering a copy to the party,

(2) by mailing it to the party at the party's last known address,

(3) by electronic mail to the party at the party's last known electronic mail address, or

(4) 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 or electronic mail is complete upon mailing, unless an electronic response is received indicating that the electronic mail is undeliverable, in which case an alternative method of service shall be used, including repeat service by electronic mail until there is no electronic response indicating that the mail is undeliverable.

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

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

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

History.

Amended, effective Sept. 3, 1996; Nov. 3, 1999; Jan. 9, 2017; Sept. 22, 2021, effective Dec. 1, 2021; Oct. 4, 2022, effective Jan. 1, 2023.

Rule 6. Time.

(a) *Computation.* In computing any period of time prescribed or allowed by these Rules, by order of Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Rule, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

(b) *Enlargement.* When by these Rules or by a notice given thereunder or by order of Court an act is required or allowed to be done at or within a specified time, the Court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(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, an order 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 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.

(d) *Additional time after service by mail or electronic mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after being served and service is by mail or electronic mail, 3 days shall be added to the prescribed period unless the time period is prescribed by statute.

History.

Amended, effective Sept. 1, 1987; July 18, 2018, effective Dec. 1, 2018; Oct. 4, 2022, effective Jan. 1, 2023.

III. Pleadings and Motions

Rule 7. Pleadings allowed; motions.

(a) *Pleadings.* There shall be a petition and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is served under the provisions of Rule 14; and a third-party answer, if a third-party

complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third-party answer.

(b) *Motions, affidavits, responses and other papers.*

(1) An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The motion shall be accompanied by a notice and a proposed form of order. Where a motion is based upon particular facts, it should be supported by affidavit(s) or other material.

(2) If any part of a motion is opposed by any party, such party shall, within 10 days after service of the motion, file a written response together with such affidavit(s) or other material as that party may wish and a proposed form of order.

(3) While either party may request, in moving papers, oral argument of a motion or an evidentiary hearing thereon, the Judge to whom the motion is presented may decide the motion on the moving papers submitted to the Court without further notice to either party unless the interests of justice required otherwise, or may enter an interim order based on the moving papers subject to modification at a later hearing if requested.

(4) If the affidavits and other material submitted with the original moving papers do not make out a prima facie case for the relief requested, the motion may be denied by the Court. If no affidavits or other materials are filed in opposition to the motion within the time allowed therefor, it may be granted by the Court.

(5) A motion or other paper shall contain a caption setting forth the name of this Court, the caption of the case, the file number, the relevant petition number, the date of filing, and a brief descriptive title indicating the purpose of the paper.

(6) Rule 107(c)(5) and Rule 107(f) shall apply to citations in motions and other papers.

(7) All motions shall be signed in accordance with Rule 11.

(c) *Size of pleadings, motions and other papers.* Pleadings, motions and other papers may be typewritten or handwritten upon opaque, unglazed white paper, shall have papers not exceeding 81/2 by 11 inches and shall be filed without backer. It is permissible for a motion or other paper to include material printed, typed, or handwritten on one side or both sides of the page, provided legibility is maintained. This requirement may be waived for filings made pursuant to 13 Del. C., Chapter 6.

Rule 8. General rules of pleading.

(a) *Claims for relief.* A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the pleader claims entitlement. Relief in the alternative or of several different types may be demanded.

(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.

(c) *Defenses; form of denials.* A party shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truths of an averment, the party shall so state and this has the effect of a denial. When a pleader intends in good faith to deny only a part or a qualification of an averment, the party shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the party may make the denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as

expressly admitted; but, when the party does so intend to controvert all its averments, the party may do so by general denial subject to the obligations set forth in Rule 11.

(d) *Affirmative defenses.* In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(e) *Effect of failure to deny.* Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be presumed denied.

(f) *Allegations admitted unless denied by affidavit.* The existence of a corporation or of a partnership and the signatures on an instrument upon which an action is brought and a copy of which is filed with the complaint in conformity with the statute shall in all cases be taken to be admitted unless the same is or are denied by affidavit, served with the answer as provided by statute.

(g) *Pleading to be concise and direct; consistency.*

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth 2 or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When 2 or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state multiple separate claims or defenses regardless of consistency. All statements shall be made subject to the obligations set forth in Rule 11.

(h) *Construction of pleadings.* All pleadings shall be so construed as to do substantial justice.

History.

Amended, July 18, 2018, effective Dec. 1, 2018.

Rule 9. Pleading special matters.

(a) *Capacity.* It is not necessary to allege the capacity of a party to bring an action or have an action brought against that party or the authority of a party to bring an action or have an action brought against that party in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, that party shall do so by specific negative averment, supported by affidavit when required by Rule 8(f), which negative averment shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) *Fraud, negligence, mistake, condition of mind.* In all averments of fraud, negligence or mistake, the circumstances constituting fraud, negligence or mistakes shall be stated with particularity. Malice, intent, knowledge and other conditions of mind of a person may be averred generally.

(c) *Conditions precedent.* In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) *Official document or act.* In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) *Judgment.* In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) *Time and place.* For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

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. In the 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.

(b) *Paragraphs: Separate statements.* All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) *Adoption by reference: Exhibits.* Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) *Form of papers and citations.* The form of papers and citations shall be in accordance with Rule 7(c) and Rule 7(b)(6).

History.

Amended, July 18, 2018, effective Dec. 1, 2018.

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

(a) *Signature.* Every pleading, motion, and other paper shall be signed by at least 1 attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by statute or rule, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless it is corrected promptly after the omission of the signature is called to the attention of the attorney or party.

(b) *Representations to Court.* By representing to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(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).

(2) Nature of Sanction: Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into Court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the Court's initiative unless the Court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the Court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanctions imposed.

(d) *Inapplicability to discovery.* Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

History.

Amended effective Sept. 3, 1996; July 18, 2018, effective Dec. 1, 2018.

Rule 12. Defenses and objections — When and how presented — By pleading or motion — Motion for judgment on pleadings.

(a) *When presented.* A respondent shall serve an answer within 20 days after service of the summons and petition unless the Court directs otherwise. If a respondent appears before being served, respondent shall serve the answer within 20 days after entering an appearance. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The

petitioner shall serve the reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the Court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this Rule alters these periods as follows, unless a different time is fixed by order of the Court:

(1) If the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleadings shall be served within 10 days after notice of the Court's action.

(2) If the Court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) *How presented.* Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) *Motion for judgment on the pleadings.* After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) *Preliminary hearings.* The defenses specifically enumerated (1)-(7) in subdivision (b) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this Rule, shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) *Motion for more definite statement.* If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 10 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) *Motion to strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 20 days after being served with the pleading or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) *Consolidation of defenses in motion.* A party who makes a motion under the Rule may join with it any other motions herein provided for and then available. If a party makes a motion under this Rule but omits therefrom any defense or objection then available which this Rule permits to be raised by motion, that party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) *Waiver or preservation of certain defenses.*

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this Rule nor included in a

responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

Rule 13. Counterclaim and cross-claim.

(a) *Compulsory counterclaims.* A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action.

(b) *Permissive counterclaims.* A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) *Counterclaim exceeding opposing claim.* A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) *Counterclaim maturing or acquired after pleading.* A claim which either matured or was acquired by the pleader after service of that party's pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

(e) *Omitted counterclaim.* When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of Court set up the counterclaim by amendment.

(f) *Cross-claim against coparty.* A pleading may state as a cross-claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein, or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(g) *Joinder of additional parties.* Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(h) *Separate trials; separate judgments.* If the Court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered when the Court has jurisdiction to do so, even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 14. Third-party practice.

(a) *When respondent may bring in third party.* When permitted by law, at any time after commencement of the action a responding party, as a third-party petitioner, may cause a summons and petition to be served upon a person not a party to the action who is or may be liable to the third-party petitioner for all or part of the petitioner's claim. The third-party petitioner need not obtain leave to make the service if the third-party petition is filed not later than 10 days after service of the original answer. Otherwise the third-party petitioner must obtain leave on motion upon notice to all parties to the action. The person served

with the summons and third-party petition, hereinafter called the third-party respondent, shall make defenses to the third-party petitioner's claim as provided in Rule 12 and counterclaims against the third-party petitioner and cross-claims against other third-party respondents as provided in Rule 13. The third-party respondent may assert against the petitioner any defenses which the third-party petitioner has to the petitioner's claim. The third-party respondent may also assert any claim against the petitioner arising out of the transaction or occurrence that is the subject matter of the petitioner's claim against the third-party petitioner. The petitioner may assert any claim against the third-party respondent arising out of the transaction or occurrence that is the subject matter of the petitioner's claim against the third-party respondent, and the third-party respondent thereupon shall assert defenses as provided in Rule 12 and counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party respondent may proceed under this Rule against any person not a party to the action who is or may be liable to that party for all or part of the claim made in the action against the third-party respondent.

(b) *When petitioner may bring in third party.* When permitted by law, when a counterclaim is asserted against a petitioner, the petitioner may cause a third party to be brought in under the circumstances which under this Rule would entitle a respondent to do so.

Rule 15. Amended and supplemental pleadings.

(a) *Amendments.* A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is required or permitted and the action has not been placed upon the trial calendar, that party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the Court otherwise orders.

(aa) *Form of amendments.* A party serving an amended pleading shall indicate plainly in the amended pleading in what respect the amendment differs from the pleading which it amends.

(b) *Amendments to conform to the evidence.* When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice the party in maintaining the action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence.

(c) *Relation back of amendments.* An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the laws that provide the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provisions of subdivision (2) of this paragraph are satisfied and, within the period provided by law for commencing the action against the party, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits; and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) *Supplemental pleadings.* Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the Court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

History.

Amended, effective Sept. 3, 1996.

Rule 16. Required reports.

(a) *Child Support Financial Disclosure Report.*

(1) Prior to a 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 Child Support Financial Disclosure Report, attaching thereto such documents as may be required by the instructions accompanying the Report. Each party shall bring a completed Child Support Financial Disclosure Report to the mediation conference where the information contained therein shall be notarized by the parties, with misrepresentations subject to appropriate sanctions.

(2) In any matter in which a mediation conference does not occur, 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 Child Support Financial Disclosure Report at least 7 calendar days prior to the first court appearance. Each party shall bring a copy of the completed report to their first court appearance where the information contained therein shall be notarized with misrepresentations subject to appropriate sanctions.

(3) The requirement for filing the Child Support Financial Disclosure Report may be waived by the Court upon written application by either or both parties for good cause shown, but only under such conditions as the Court may impose.

(4) Failure of a party to submit the Child Support Disclosure Report with attachments or to exchange with the opposing party shall subject the offending party to appropriate sanctions.

(b) *Custody, visitation and guardianship disclosure report.*

(1) Prior to a mediation conference on an action for custody, visitation or guardianship, each party shall complete a written report in the form approved by the Court to be known as a Custody, Visitation, and Guardianship Disclosure Report, attaching thereto such documents as may be required by the instructions accompanying the report. Unless already submitted to the Court in advance, each party shall bring a completed report to the mediation conference where the information contained therein shall be notarized with misrepresentations or omissions subject to appropriate sanctions.

(2) In any matter where a mediation conference does not occur, each party must complete and exchange with the opposing party or attorney a Custody, Visitation, and Guardianship Disclosure Report at least 7 calendar days prior to the first court appearance. The Custody, Visitation, and Guardianship Disclosure Report must also be filed with the Court at least 7 calendar days prior to the first court appearance. The information contained in the report shall be notarized at the first court appearance with misrepresentations subject to appropriate sanctions.

(3) The requirement for filing the Custody, Visitation and Guardianship Disclosure Report may be waived by the Court upon written application by either or both parties for good cause shown, but only under such conditions as the Court may impose.

(4) Failure of a party to submit the Custody, Visitation and Guardianship Disclosure Report shall subject the offending party to appropriate sanctions.

(c) *Ancillary Financial Disclosure Report.*

(1) After the entry of a divorce decree, a petitioner requesting ancillary relief shall complete a written report in the form approved by the Court known as an Ancillary Financial Disclosure Report and shall forward an original notarized copy to the respondent or attorney for respondent within 30 days of the granting of the final decree of divorce and advise the Court in writing that the report has been sent to respondent or respondent's attorney. Respondent shall then complete the form filing the original notarized document with the Court and forwarding a copy to the petitioner or petitioner's attorney within 30 days of receipt.

(2) Where a petitioner does not seek ancillary relief, a respondent requesting such relief shall complete the Ancillary Financial Disclosure Report and forward an original notarized copy to petitioner or petitioner's attorney within 30 days of the granting of the final decree of divorce and advise the Court in writing that the report has been sent to petitioner or petitioner's attorney. Petitioner shall then complete the form filing the original notarized document with the Court and forwarding a copy to respondent or respondent's attorney within 30 days of receipt.

(3) The requirement for filing the Ancillary Financial Disclosure Report may be waived by the Court upon written application by either or both parties for good cause shown, but only under such conditions as the Court may impose.

(4) Failure of a party to submit the Ancillary Financial Disclosure Report shall subject the offending party to appropriate sanctions.

(d) *Ancillary Pretrial Stipulation.*

(1) Unless there exists a no contact order between unrepresented parties, at least 30 days prior to a pretrial conference, the parties shall meet or confer in an effort to resolve all outstanding issues. This requirement may be waived by the Court upon motion by either or both parties for good cause shown.

(2) If the parties are unable to reach an agreement regarding their ancillary matters, an Ancillary Pretrial Stipulation shall be completed in the following manner:

i. The petitioner seeking ancillary relief shall complete the Ancillary Pretrial Stipulation and forward an original notarized copy to the respondent or the respondent's attorney at least 20 days prior to the pretrial conference.

ii. The respondent shall then complete the document, file the original document with the Court and forward a copy to the petitioner 7 calendar days prior to the pretrial conference. Each party's respective submissions shall be contained on one form.

iii. Petitioner after receiving from the respondent the completed form shall be entitled to supplement or file with the Court any objections. The objections or supplement should be filed prior to or at the pretrial conference. A copy of any objections shall also be provided to the respondent or respondent's attorney.

(3) If the petitioner fails to complete the Ancillary Pretrial Stipulation, the respondent must complete his or her portion of the Ancillary Pretrial Stipulation and file it with the Court at least 7 calendar days prior to the pretrial conference.

(4) If there exists a no contact order between unrepresented parties whether in a criminal proceeding or a Protection From Abuse Order, each party shall complete his or her portion of the Ancillary Pretrial Stipulation and file it with the Court at least 20 calendar days prior to the pretrial conference. The Court will forward a copy of the Ancillary Pretrial Stipulation to the opposing party.

(5) The requirement for filing the Ancillary Pretrial Stipulation may be waived by the Court upon motion by either or both parties for good cause shown, but only under such conditions as the Court may impose.

(6) Failure to submit the Ancillary Pretrial Stipulation shall be subject to appropriate sanctions.

(e) *Failure to comply.* Failure of either party to comply with the requirements of this Rule may result in the imposition of appropriate sanctions which may include but are not limited to the following: the Court's sua sponte continuing the proceeding, acceptance of properly submitted information to the

exclusion of contrary evidence by the party in non-compliance; assessment of attorney's fees against the non-complying party or default judgment for the relief requested. Failure of both parties to comply with this Rule as it relates to the Ancillary Financial Disclosure Report may result in dismissal, with prejudice, of all applications for ancillary relief. As it relates to submissions required by the Ancillary Pretrial Stipulation, failure of a party to file may result in the adoption of the findings, conclusions and order submitted by the other party as the decision and order of the Court or cancellation of the ancillary hearing.

History.

Added, Oct. 5, 2017, effective Jan. 1, 2018.

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).

History.

Added, Oct. 5, 2017, effective Jan. 1, 2018; amended Dec. 6, 2022, effective Feb. 1, 2023; Feb. 16, 2023, effective May 1, 2023.

Rule 16.2. Case management conferences, scheduling orders and pretrial conferences.

(a) *Case management conferences and scheduling orders.*

(1) In all actions, except in any action for good cause shown, divorce cases where ancillary jurisdiction is not requested and actions related to child support, child protection registry, and protection from abuse, an initial case management conference shall be held as soon as practicable for such purposes as: expediting disposition of the action; entering appropriate interim orders, establishing early and continuing control so that the case will not be protracted because of lack of management; discouraging wasteful pretrial activities; improving the quality of the trial through more thorough preparation; and facilitating settlement. Upon motion and order of the Court, a case management conference may be held in any case.

(2) After consulting with the parties' attorneys and any unrepresented parties at the initial case management conference, the judicial officer shall, unless the judicial officer finds good cause for delay, issue a scheduling order within the later of 90 days after any respondent has been served with the petition or 60 days after mediation, but in no event shall the scheduling order be issued later than 120 days from service.

(3) The Court shall enter a scheduling order that either establishes or limits the time:

(A) To amend the pleadings;

(B) To file and hear motions; and

(C) To complete discovery.

(4) The scheduling order may:

(A) Modify the extent of discovery;

(B) Establish or limit the time to engage in compulsory alternative dispute resolution pursuant to Rule 16.3;

(C) Provide for disclosure, including the use of expert witnesses, discovery, or preservation of electronically stored information;

(D) Include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(E) Provide the date by which any required reports are to be filed with the Court;

(F) Set the dates for pretrial conferences and trial; and

(G) Include other appropriate matters.

(5) A scheduling order may be modified only for good cause and with the judicial officer's consent.

(b) *Pretrial conferences.*

(1) Unless otherwise ordered, attorneys of record and parties, whether represented or unrepresented, are required to appear at a pretrial conference. Upon the filing of a motion and for good cause shown, a judicial officer may permit a party to appear telephonically.

(2) For any matter in which alternative dispute resolution is required, alternative dispute resolution shall be completed prior to the pretrial conference.

(3) At any pretrial conference, the Court may consider and take appropriate action on the following matters:

(A) Formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) Amending the pleadings if necessary or desirable

(C) Obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) Avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Delaware Uniform Rule of Evidence 702;

(E) Determining the appropriateness and timing of summary adjudication under Rule 56;

(F) Controlling and scheduling discovery, including orders affecting disclosures and discovery under Rule 26 and Rules 29 through 37;

(G) Identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for any further conferences and for trial;

(H) Settling the case and otherwise assisting in resolving the dispute;

(I) Determining the form and content of the pretrial order;

(J) Disposing of pending motions;

(K) Adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(L) Ordering a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim, or particular issue;

(M) Establishing a reasonable limit on the time allowed to present evidence;

(N) Facilitating in other ways the just, speedy, and inexpensive disposition of the action; and

(O) Any other appropriate action.

(4) After any conference under this rule, the Court may issue an order reciting the action taken. This order controls the course of the action unless the Court modifies it.

(5) Upon motion of either party or at the Court's discretion, the Court may hold an additional pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. If an additional pretrial conference is held, attorneys of record and parties, whether represented or unrepresented, are required to appear.

(c) *Continuances.* Requirements regarding continuances of case management conferences and pretrial conferences shall be the same as those for continuances of trial in Rule 40.

(d) *Sanctions.*

(1) *In general.* On motion or on its own, the Court may issue any just orders, including those authorized by Rule 37, if a party or his or her attorney:

(A) Fails to appear at a case management conference or pretrial conference;

(B) Is substantially unprepared to participate — or does not participate in good faith — in the conference; or

(C) Fails to obey a scheduling or pretrial order.

(2) *Imposing fees and costs.* Instead of or in addition to any other sanction, the Court shall order the party, his or her attorney, or both to pay the reasonable expenses — including attorney's fees — incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

History.

Added, Oct. 5, 2017, effective Jan. 1, 2018.

Rule 16.3. Alternative dispute resolution.

(a) In any proceeding, the Court may upon motion by either party or sua sponte enter a scheduling order that either establishes or limits the time to engage in compulsory alternative dispute resolution ("ADR"), the format of which is to be agreed upon by the parties. Such ADR may include, but shall not be limited to, non-binding or, if agreed to by the parties, binding arbitration, mediation or neutral case assessment. If the parties cannot agree on the format of ADR, the default format shall be mediation unless otherwise ordered by the Court. Mediation as referred to in this rule is a separate process from the mediation required in Family Court Civil Rule 16.1. Therefore, the provisions contained in this rule, including those related to confidentiality, shall not apply to Rule 16.1 mediations.

(b) In the event the parties cannot agree on an ADR Practitioner, they shall file a joint motion with the Court within thirty (30) days of the issuance of the scheduling order requesting that the Court appoint an ADR Practitioner for the parties. The Court may impose sanctions upon a party or both parties if it determines that the parties have not attempted to agree upon an ADR Practitioner in good faith.

(c) The parties shall pay the ADR Practitioner in accordance with the allocation and amount of fees established by the ADR Practitioner and agreed to by the parties or ordered by the Court. The ADR Practitioner may apply to the Court for sanctions against any party who fails to comply with the terms of engagement established by the ADR Practitioner and agreed to by the parties. Sanctions may include, but shall not be limited to, dismissal of the action or default judgment.

(d) The ADR Practitioner may not be called as a witness in any aspect of the litigation, or in any proceeding relating to the litigation in which the ADR Practitioner served, unless ordered by the Court. In addition, all ADR Practitioners, when serving as an arbitrator, mediator or neutral assessor, shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in ADR, unless an act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another. Each ADR Practitioner shall remain bound by any confidentiality agreement signed by the parties and the ADR Practitioner as part of the ADR.

(e) All memoranda, work products, and other materials contained in the case files of an ADR Practitioner or the Court related to the mediation are confidential. Any communication made in or in connection with the mediation which relates to the controversy being mediated, whether made to the ADR Practitioner or a party, or to any person made at a mediation conference, is confidential. The mediation agreement shall be confidential unless the parties otherwise agree in writing. Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

(1) Where all parties to the mediation agree in writing to waive confidentiality;

(2) In any action between the ADR Practitioner and a party to the mediation for damages arising out of mediation; or

(3) Statements, memoranda, materials, or other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use and actually used in the mediation conference.

(f) If a mediation is not successful, no party may use statements made during the mediation or memoranda, materials or other tangible evidence prepared for mediation at any point in the litigation in any way, including, without limitation, to impeach the testimony of any witness.

(g) The following definitions apply to this rule:

(1) "Arbitration" is a process by which a neutral arbitrator hears both sides of a controversy and renders a fair decision based on the facts and the law. If the parties stipulate in writing that the decision shall be binding, the case shall be removed from the Court's docket.

(2) "Mediation" is a process by which a mediator facilitates the parties in reaching a mutually acceptable resolution of a controversy. It includes all contacts between the mediator and any party or parties until a resolution is agreed to, the parties discharge the mediator, or the mediator determines that the parties cannot agree.

(3) "Neutral case assessment" is a process by which an experienced neutral assessor gives a non-binding, reasoned oral or written evaluation of a controversy, on its merits, to the parties. The neutral assessor may use mediation or arbitration techniques to aid the parties in reaching a settlement.

(4) "ADR Practitioner" shall include the arbitrator, mediator, neutral case assessor or any other person engaged by the parties to facilitate ADR.

History.

Added, Mar. 20, 1996, effective May 1, 1996; amended, effective May 24, 2009; amended, Oct. 5, 2017, effective Jan. 1, 2018.

IV. Parties

Rule 16.4. Divorcing and separating parents' education program.

(a) *Parent education program.* There shall be a Department of Services for Children, Youth, and Their Families (DSCYF) certified parent education program required for parents in custody and visitation proceedings.

(1) *Parents.* Both parties to a custody or visitation proceeding shall participate in a DSCYF certified education program. Each party shall pay the provider of the parent education program, according to a DSCYF approved schedule of fees, for their individual participation. The DSCYF approved fees shall have a "sliding scale" provision.

(2) *Scheduling and attendance.* Each party shall be provided with a list of DSCYF certified education program providers, and shall be responsible for arranging enrollment in a particular course.

(3) *Completion of program.* All participants completing a DSCYF certified program shall be given a certificate of completion verified by the provider. The petitioner, by the filing of a custody petition, voluntarily submits to the jurisdiction of the Court, and shall complete the education program. The petitioner and respondent shall each submit his or her original copy of the certificate of completion prior to the final hearing.

(4) *Waiver.* The requirement under this Rule may be waived by Court order upon a showing of good cause. Parties seeking a waiver shall file a motion consistent with Family Court Civil Rule 7(b). A party may also file a motion requesting the Court recognize a comparable education program. Such motion shall attach the program's curriculum and shall be filed consistent with Family Court Civil Rule 7(b).

(5) *Previous completion of program.* A litigant having previously completed a DSCYF certified education program may request from the Court a copy of the certificate if it was filed with the Court in a prior matter. The copy may then be filed in the pending action. If the certificate of completion was not previously filed with the Court, the litigant shall submit a copy of the original certificate, certified by the provider, in satisfaction of the requirement under this Rule.

(b) *Failure to comply.* Failure to comply with the Rule may result in dismissal of the petition before the Court.

History.

Added, effective Sept. 3, 1996; amended, Mar. 1, 2006; Aug. 1, 2006; Nov. 28, 2007; amended, Oct. 5, 2017, effective Jan. 1, 2018.

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.

History.

Amended, July 18, 2018, effective Dec. 1, 2018.

Rule 18. Joinder of claims and remedies.

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims as that party has against an opposing party.

Rule 19. Joinder of persons needed for just adjudication.

(a) *Persons to be joined if feasible.* A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if

(1) in that person's absence complete relief cannot be accorded among those already parties, or

(2) that person claims an interest relating to the subject of the action and is so situated that the disposition of the action, in the absence of that person may

(i) as a practical matter impair or impede that person's ability to protect that interest or

(ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

If a person as described in subdivisions (a)(1)-(2) has not been so joined, the Court shall order joinder as a party. If that person should join as a petitioner but refuses to do so, that person may be made a respondent, or, in a proper case, an involuntary petitioner. If the joined party objects to venue and that joinder would render the venue of the action improper, that person shall be dismissed from the action.

(b) *Determination by Court whenever joinder not feasible.* If a person as described in subdivision (a)(1)-(2) hereof cannot be made party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court include:

(1) to what extent a judgment rendered in the person's absence might be prejudicial to that person or those already parties;

(2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

(3) whether a judgment rendered in the person's absence will be adequate; and

(4) whether the petitioner will have an adequate remedy if the action is dismissed for nonjoinder.

(c) *Pleading reasons for nonjoinder.* A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

History.

Amended July 14, 2020, effective Sept. 1, 2020.

Rule 20. Permissive joinder of parties.

(a) *Permissive joinder.* All persons may join in one action as petitioners if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as respondents if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all respondents will arise in the action. A petitioner or respondent need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the petitioners according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

(b) *Separate trials.* The Court may make such orders as will prevent one party from being embarrassed, delayed, or put to expense by the inclusion of an additional party against whom the original party asserts no claim and who asserts no claim against the original party, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 21. Misjoinder and nonjoinder of parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

Rule 22. Interpleader.

(a) *When applicable.* Persons having claims against the petitioner may be joined as respondents and required to interplead when their claims are such that the petitioner is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the petitioner avers no liability in whole or in part to any or all of the claimants. A respondent exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(b) *Additional remedy.* The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by the statute but actions thereunder shall be conducted in accordance with these Rules.

Rule 23. Class actions.

Omitted.

Rule 24. Intervention.

(a) *Intervention of right.* Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute confers an unconditional right to intervene; or (2) when an applicant claims an interest

relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) *Permissive intervention.* Upon timely application anyone may be permitted to intervene in an action: (1) When a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) *Procedure.* A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

Rule 25. Substitution of parties.

(a) *Death.*

(1) If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any county. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the petitioners or of one or more of the respondents in an action in which the right sought to be enforced survives only to the surviving petitioners or only against the surviving respondents the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) *Incompetency.* If a party becomes incompetent, the Court upon motion served as provided in subdivision (a) of this Rule may allow the action to be continued by or against that party's representative.

(c) *Transfer of interest.* In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this Rule.

(d) *Public officers; death or separation from office.*

(1) When an officer of the State of Delaware, a county, city or other governmental agency is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the situation.

(2) When an officer of the State of Delaware, county, city or other governmental agency files an action or an action is filed against the official in the official capacity, the official may be described as a party by the official title rather than by name; but the Court may require the name to be added.

V. Depositions and Discovery

Rule 26. General provisions governing discovery.

(a) *Motion required.* While the Court encourages the prompt and voluntary exchange of information and documents by parties before trial, no formal discovery shall be conducted without Court order following a motion therefor except for depositions of the parties in the case or any third parties and Requests for Production to the parties in the case or any third party. Notice of depositions and Requests for Production must be served on each party.

(b) *Procedure upon motion.* A motion for discovery shall specify with particularity the need therefor. The party from whom discovery is sought may within 10 days after service of the motion file written objection to the allowance of such discovery. The Court shall then rule upon the motion without briefing or oral argument unless ordered by the Court.

(c) *Relation to other rules.* A party conducting or seeking to conduct discovery with respect to financial matters shall promptly and fully comply with Rules 16(a) and 16(c) and shall file with the Court, in a timely fashion, the required portion of the forms promulgated under such rules. Failure of the party from whom discovery is sought to comply with discovery, while subject to other sanctions by the Court, shall not excuse the party seeking discovery from timely compliance with Rule 16(a) and 16(c).

(d) *Contents of order.* An order authorizing discovery may prescribe the manner, time, conditions and any restrictions respecting the same.

(e) *Retain discovery.* Discovery, when permitted, shall accord with Rules 26(a) through 37, inclusive, except that the discovery and its product, after service, shall be retained by the parties and shall not be filed with the Court without further Court order.

(f) *Discovery methods.* When discovery is permitted by the Court, parties may obtain discovery by one or more of the following methods: Deposition upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. Unless the Court orders otherwise under subdivisions (d) and (h) of this Rule, the frequency of use of these methods is not limited.

(g) *Scope of discovery.* Unless otherwise limited by order of the Court in accordance with these Rules, the scope of discovery is as follows:

(1) *In general.* Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. Consideration shall be given to the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) *Trial preparation: Materials.* Subject to the provisions of subdivision (g)(3) of this Rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (g)(1) of this Rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative, including an attorney, consultant, surety, indemnitor, insurer, or agent, only upon a showing that the party seeking discovery has substantial need of the materials in case preparation and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering the discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that

person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(3) *Trial preparation: Experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (g)(1) of this Rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the ground for each opinion. (ii) Upon motion, the Court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (g)(3)(C) of this Rule, concerning fees and expenses as the Court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the Court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivision (g)(3)(A)(ii) and (g)(3)(B) of this Rule; and (ii) with respect to discovery obtained under subdivision (g)(3)(A)(ii) of this Rule the Court may require, and with respect to discovery obtained under subdivision (g)(3)(B) of this Rule the Court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(h) *Protective orders.* Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court or alternatively, on matters relating to a deposition taken outside the State of Delaware, a court in the state where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the Court;

(6) that a deposition after being sealed be opened only by order of the Court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

A motion filed pursuant to this subdivision must include a certification or affidavit that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.

(i) *Sequence and timing of discovery.* Unless the Court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(j) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement a response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert witness is expected to testify, and the substance of the testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

History.

Amended, effective Sept. 1, 1987; Sept. 3, 1996; July 14, 2020, effective Sept. 1, 2020.

Rule 27. Deposition before action or pending appeal.

Omitted.

Rule 28. Persons before whom depositions may be taken.

(a) *Within the United States.* Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken (1) before an officer authorized to administer oaths by the laws of the place where the examination is held, or (2) before a person appointed by the Court in which the action is pending. The term "officer" as used in Rules 30, 31 and 32 includes a person appointed by the Court or designated by the parties under Rule 29.

(b) *In foreign countries.* In a foreign country, depositions may be taken (1) pursuant to an applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the Court, and a person so commissioned shall have the power by virtue of that commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter request may be addressed "To the Appropriate Authority in (here name the country)." When a letter of

request or any other devise is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript because testimony was not taken under oath or because of any similar departure from the requirements for depositions taken within the United States under these Rules.

(c) *Disqualification for interest.* No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

(d) *Designation of officers.* The officers referred to in paragraphs (a) and (b) hereof may be designated in notices or commission either by name or descriptive title and letters of request may be addressed "To the Appropriate Judicial Authority in (here name the state or country)."

History.

Amended, effective Sept. 3, 1996.

Rule 29. Stipulations regarding discovery procedure.

When discovery is permitted by the Court, unless the Court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these Rules for other methods of discovery, except that stipulations extending the time provided in Rules 33, 34 and 36 for responses to discovery may be made only with the approval of the Court.

Rule 30. Depositions upon oral examination.

(a) *When depositions may be taken.* When discovery is permitted by the Court, after commencement of the action, any party may take the testimony of any person, including a party, by depositions upon oral examination. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the Court prescribes.

(b) *Notice of examination: General requirements; special notice; method of recording; production of documents and things; depositions of organization.*

(1) A party desiring to take the deposition of a person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which that person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the Court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.

(2) Omitted.

(3) Omitted.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time, and place of the

deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit or recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or the persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these Rules.

(7) The parties may stipulate in writing or the Court may upon motion order that deposition be taken by telephone or other remote electronic means. For the purposes of this Rule and Rules 28(a), 37(a)(1), 37(b)(1) (omitted) and 45(d), a deposition taken by such means is taken in the jurisdiction and at the place where the deponent is to answer questions.

(c) *Examination and cross-examination; record of examination; oath; objections.* Examination and cross-examination of witnesses may proceed as permitted at the trial under the provision of Delaware Uniform Rules of Evidence except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness under oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(4) of this Rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualification of the officer taking the deposition, to the manner of taking it, to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the record of the deposition. Evidence objected to shall be taken subject to the objections; but the evidence shall proceed with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) *Schedule and duration; motion to terminate or limit examination.*

(1) From the commencement until the conclusion of a deposition, including any recesses or continuances thereof of less than five calendar days, the attorney(s) for the deponent shall not: (A) consult or confer with the deponent regarding the substance of the testimony already given or anticipated to be given, except for the purpose of conferring on whether to assert a privilege against testifying or on how to comply with a court order, or (B) suggest to the deponent the manner in which any question should be answered. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Court, or to present a motion under paragraph (d)(3).

(2) By order, the Court may limit the time permitted for the conduct of a deposition, but shall allow additional time consistent with paragraph (b)(3) if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the Court finds such an impediment, delay or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any party as a result thereof.

(3) At any time during the taking of a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted or defended in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Court in which the action is pending or a Court of competent jurisdiction in the state where the deposition is being taken may order: (A) that examination cease forthwith; (B) that the scope and manner of the taking of the deposition be limited as provided in Rule 26(h); or (C) such other relief as the Court reasonably deems to be appropriate. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the Court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) *Submission to witness; changes; signing.* When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days after the date when the reporter notifies the witness and counsel by mail of the availability for examination by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reasons, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d) the Court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) *Certification and filing by officer; exhibits, copies; notice of filing.*

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The certification shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the Court, the officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (insert here name of witness)" and shall promptly transmit it to the attorney who arranged for the transcript of the recording, who shall store it under the conditions that will protect it against loss, destruction, tampering or deterioration.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them, the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition pending final disposition of the case.

(2) Unless otherwise ordered by the Court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges thereof, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) *Failure to attend or to serve subpoena; expenses.*

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon that witness and the witness because of such failure does not attend, and if another party attends

in person or by attorney because that party expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expense incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(h) *Counsel fees on taking depositions; depositions more than 150 miles distant.* In the case of a proposed deposition upon oral examination at a place more than 150 miles from the courthouse where the action was commenced, the Court may order or impose as a condition of denying a motion to vacate notice thereof, that the applicant shall pay the expense of the attendance of one attorney for the adversary party or parties, at the place where the deposition is to be taken, including reasonable counsel fees, which amounts shall be paid or secured prior to such examination. The amount paid by such applicant to the applicant's adversary on account of attorney's fees and expenses may be taxable disbursement in the event that the applicant recovers costs of the action.

(i) *Deposition of Court employees.* The deposition of employees of the Family Court, in which inquiry is to be made concerning the performance of their official duties, may be taken only by leave of court on such terms as the Court prescribes.

History.

Amended, effective Sept. 3, 1996; July 14, 2020, effective Sept. 1, 2020.

Rule 31. Depositions upon written questions.

(a) *Serving questions; notice.* When discovery is permitted by the Court, after commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the Court prescribes.

A party desiring to take deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which that person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The Court may for cause shown enlarge or shorten the time.

(b) *Officer to take responses and prepare record.* A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in manner provided by Rule 30(c), (e), and (f), to take testimony of the witness in response to the questions and to prepare, certify and file, with a party and/or the Court if required, the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) *Notice of filing.* When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.

History.

Amended, effective Sept. 3, 1996.

Rule 32. Use of depositions in court proceedings.

(a) *Use of depositions.* At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness where then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness, or for any other purposes permitted by the Delaware Uniform Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds: (A) That the witness is dead; or (B) that the witness is out of the State of Delaware, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken pursuant to a notice under Rule 30(b)(2) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of the deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(h) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) If only part of a deposition is offered in evidence by a party, and [an] adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Delaware Uniform Rules of Evidence.

(b) *Objections to admissibility.* Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) *Effect of taking or using depositions.* A party does not make a person the party's own witness for any purpose by taking that person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision (a)(2) of this Rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

(d) *Effect of errors and irregularities in depositions.*

(1) *As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins

or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to taking of deposition.*

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) *As to completion and return of depositions.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(e) *Form of presentation.* Except as otherwise directed by the Court, a party offering deposition testimony pursuant to this Rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the Court with a transcript of the portions so offered.

History.

Amended, effective Sept. 3, 1996.

Rule 33. Interrogatories to parties.

(a) *Availability; procedures for use.* When discovery is permitted by the Court, any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party.

(b) *Answers and objections.* (1) Each interrogatory shall be restated as numbered and shall be answered separately and fully in writing under oath, unless it is objected to, in which even [event] the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a respondent may serve answers or objections within 45 days after service of the summons and complaint upon that respondent. The Court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party’s failure to object is excused by the Court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) *Scope; use at trial.* Interrogatories may relate to any matters which can be inquired into under Rule 26(g), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to the fact or the application of law to fact, but the Court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

History.

Amended, effective Sept. 3, 1996.

Rule 34. Production of documents and things and entry upon land for inspection and other purposes.

(a) *Scope.* Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on that party's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records [telephone records], and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(g) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(g).

(b) *Procedure.* The request may be served upon the petitioner after commencement of the action and upon any other party with or after service of the summons and petition upon that party. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after service of th [the] request, except that a respondent may serve a response within 45 days after service of the summons and petition upon that respondent. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) *Persons not parties.* When discovery is permitted by the Court, a person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

History.

Amended, effective Sept. 3, 1996.

Rule 35. Physical, mental and other examination of persons.

(a) *Order for examination.* When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the Court in which the action is pending may order the party to submit to a physical or mental examination by a psychologist suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) *Report of examiner.*

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined subject to such restrictions or conditions as the Court may impose, the party causing the examination to be made shall deliver to the party against whom an order is made, a copy of a detailed written report of the examiner setting out the findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that such party is unable to obtain it. The Court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the Court may exclude the examiner's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This paragraph applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This paragraph does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

(c) *Examination fees.* The Court may, after affording an opportunity to be heard to either an examined person or any person legally liable for the support of the person examined, assess against such person or any person legally liable for the support of the person examined, the costs, or any portion thereof, of such examination in any case where it has been ordered by the Court. Assessment of examination costs may include costs of any psychological or psychiatric evaluations and medical or other examinations including but not limited to blood tests conducted.

History.

Amended, effective Sept. 3, 1996.

Rule 36. Requests for admission.

(a) *Request for admission.* When discovery is permitted by the Court, a party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(g)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the

request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the petitioner after commencement of the action and upon any other party with or after service of the summons and petition upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by counsel, but, unless the Court shortens the time, a respondent shall not be required to serve answers of objections before the expiration of 45 days after service of the summons and petition. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, that party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless stating that reasonable inquiry has been made and that the information known or readily obtainable by the party is insufficient to enable that party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; that party may, subject to the provision of Rule 37(c), deny the matter or set forth reasons for the inability to admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an object is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) *Effect of admission.* Any matter admitted under this Rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16.2 governing amendment of a pretrial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the Court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against that party in any other proceeding.

History.

Amended, Oct. 5, 2017, effective Jan. 1, 2018.

Rule 37. Failure to make discovery: Sanctions; failure or neglect to file discovery material.

(a) *Motion for order compelling discovery.* When discovery has been permitted by the Court, or by these rules, a party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) *Appropriate court.* A Motion for an order to a party may be made to the Court or, alternatively, on matters relating to a deposition taken outside the State of Delaware, to a court in the state where the deposition is being taken. A Motion for an order to a deponent who is not a party shall be made to a court in the state where the deposition is being taken. The motion must include a certification or affidavit that the movant has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without court action.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for

inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) *Evasive or incomplete answer or response.* For purposes of this paragraph an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

(4) *Expenses and sanctions.*

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the Court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including the attorney's fees, unless the Court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the Court may enter any protective order authorized under Rule 26(h) and shall, after an opportunity to be heard, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the Court may enter any protective order authorized under Rule 26(h) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) *Failure to comply with order.*

(1) Omitted.

(2) *Sanctions by Court.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under paragraph (a) of this Rule or Rule 35, the Court may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply show [sic] that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the Court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including

attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances made an award of expenses unjust.

(c) *Expenses on failure to admit.* When discovery has been permitted by the Court, if a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the Court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to anticipate prevailing on the matter, or (4) there were other good reasons for the failure to admit.

(d) *Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.* When discovery has been permitted by the Court, if a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the Court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraph (A), (B), and (C) of subdivision (b)(2) of this Rule. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising that that [sic] party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this paragraph may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(h).

(e) *Failure or neglect to file discovery material.* If any discovery material required to be filed with the Court or a party is not served and/or filed within the time and in the manner required by these Rules or in accordance with any order of the Court or stipulation of counsel, the Court may, in its discretion, dismiss the proceeding if the petitioner is in default, consider the motion as abandoned, or summarily deny or grant the motion, such as the situation may present itself, or take such other action as it deems necessary to expedite the disposition of the case. Upon the showing of good cause in writing, the Court may permit late filing of such papers and pursuant to a written rule or order.

History.

Amended, effective Sept. 3, 1996; July 14, 2020, effective Sept. 1, 2020.

VI. Trials

Rule 38. Jury trial of right.

Omitted.

Rule 39. Trial by jury or by the Court.

Omitted.

Rule 40. Continuances: Contents of motion or request; absence of material witness.

(a) All motions for continuances must be made in a timely manner and in writing to the judicial officer assigned to hear the case. The written request shall contain:

(1) a statement of the original filing date of the petition;

(2) the position of opposing counsel on the request, or, if there is no opposing counsel, the position of the opposing party;

(3) the number of times that the case has been scheduled for hearing previously;

(4) the reason(s) why the request is being made; and

(5) if the case involves a conflict with a case scheduled before another court:

(i) the name of the other court and the name of the case must be recited;

(ii) the reasons why the conflict cannot be resolved;

(iii) the relative importance of the conflicting cases;

(iv) the relative inconvenience of the parties, witnesses, and other person if a continuance is granted;

(v) the dates on which each court scheduled the case and whether the court which created the scheduling conflict was aware that a conflict was being created; and

(vi) other information which will be helpful to the judicial officer in deciding which of the conflicting matters should take precedence.

(b) When a scheduling conflict exists, the attorney should promptly attempt to resolve it, either by arranging for another attorney to handle one of the conflicting matters, or otherwise resolving the conflict. If the scheduling conflict cannot be resolved, the judicial officer to whom the conflicting cases are assigned (or the Clerk if a judicial officer has not been assigned) should immediately be notified in writing of the existence of the conflict. Any request for a continuance based on a scheduling conflict shall comply with the requirements of subdivision (a) of this Rule.

(c) Priority shall be given to criminal cases over civil cases.

(d) Any request that fails to contain all of the information required by subdivision (a) of this Rule may not be considered.

(e) When an emergency or unforeseeable situation prevents full compliance with Rule 40(a), the judicial officer assigned to the case may consider an oral or incomplete request for continuance and may require subsequent submission of appropriate correspondence or documentation.

(f) Should a continuance be granted by the Court, further notices of any proceeding in the case may be oral, rather than written, directed to counsel or the parties if unrepresented, and it shall be their responsibility to notify witnesses of the date, time and place of the proceeding, and to request subpoenas, if appropriate, to compel the attendance of a witness, at least 5 business days prior to the proceeding.

(g) A judicial officer granting a continuance shall make a written entry in the Court record of the reason for continuance.

(h) Every motion for continuance upon the ground of the absence of or unavailability of a material witness shall be filed as soon as said absence or unavailability becomes known and, in addition to furnishing the information set forth in subdivision (a) above, shall be accompanied by an affidavit on behalf of the party applying therefor, setting forth the facts expected to be proved by such witness, the efforts made to procure the witness' attendance, and the date when the absence or unavailability of the witness became known. If it be stipulated by the opposite party, that the witness if called would testify as set forth in the affidavit, the Court, in its discretion, may refuse the motion, and under such circumstances, the affidavit may be offered in evidence at the trial.

History.

Amended, effective Sept. 1, 1987; July 14, 2020, effective Sept. 1, 2020.

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 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.

(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 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) *Sua sponte dismissal for failure to prosecute.* In the case of any action which has been pending in this Court for more than 6 months without any proceedings having been taken therein during that 6 month period, the Clerk may after the expiration of the 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.

History.

Amended, effective Feb. 3, 1992; amended July 1, 2020, effective Nov. 1, 2020.

Rule 42. Consolidation; separate trials.

(a) *Consolidation.* When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) *Separate trials.* The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

Rule 42.1. Opening statements by attorneys.

Omitted.

Rule 42.2. Type of trial; record.

(a) Unless otherwise required by statute or rule, all hearings or trials shall be conducted privately by the Court without a jury. Only those persons shall be admitted to the courtroom who are parties or attorneys representing parties; the Court may also admit persons having a direct interest in the proceeding or whose presence otherwise accords with the public interest. No person shall be admitted or permitted to remain in the courtroom whose presence is inconsistent with law or proper decorum.

(b) No party shall be excluded from a trial or hearing except for good cause.

(c) Sequestration of witnesses, other than parties, may be allowed upon request of any party or on the Court's own motion.

(d) All hearings or trials shall be recorded by stenographic notes, stenotype machine or by electronic, mechanical or other appropriate means; however, children may be interviewed by the Court in accordance with 13 Del. C. Section 724(a).

(e) All sidebar conferences and chambers conferences during trial shall be recorded unless the judicial officer determines, in advance, that neither evidentiary nor substantive issues are involved.

History.

Amended July 14, 2020, effective Sept. 1, 2020.

Rule 43. Evidence.

(a) *Form and admissibility.* In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these Rules, by statute or by order for cause. All evidence shall be admitted which is admissible under statute or under the rules of evidence applied in the courts of the State of Delaware. In any case, the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

(b) *Scope of examination and cross-examination.* A party to the record in any action or judicial proceeding may interrogate any unwilling or hostile witness by leading questions. Such party may call an

adverse party or person for whose immediate benefit any action or judicial proceeding is prosecuted or defended, or an officer, director or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate that person by leading questions and contradict and impeach that person in all respects as though called by the adverse party and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also and may be cross-examined by the adverse party only upon the subject matter of the examination in chief.

(c) *Record of excluded evidence.* If an objection to a question propounded to a witness is sustained by the Court, the examining attorney may make a specific offer of proof. The Court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The Court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(d) *Affirmation; when; form.* A person conscientiously scrupulous of taking an oath may be permitted, instead of swearing, solemnly, sincerely and truly to declare and affirm to the trust of the matters to be testified.

(e) *Evidence on motions.* When a motion is based on facts not appearing of record the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) *Interpreters.* The Court may appoint an interpreter of its own selection and may fix reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court.

Rule 44. Proof of official records.

(a) *Authentication.*

(1) *Domestic.* An official record kept within the United States, or any state, district or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) *Foreign.* A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) *Lack of record.* A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records, designated by the statement, authenticated as provided in subdivision (a)(1) of this Rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of

this Rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) *Other proof.* This Rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

History.

Amended, effective Sept. 3, 1996.

Rule 44.1. Determination of foreign law.

A party who intends to raise an issue concerning the law of a foreign country shall give notice in the party's pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Delaware Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law.

History.

Amended, effective Sept. 3, 1996.

Rule 44.2. Reports or other information; availability; restrictions on use; hearings.

(a) *Availability of reports.* The Court shall make known to all parties or their attorneys the existence of any reports or other information not offered by the parties which it intends to consider in reaching a decision and an opportunity to examine the same. If there is no objection or if any objection is overruled, the reports and/or other information shall be admitted into evidence, subject to subparagraph (b).

(b) *Restrictions on use.* The Court may provide any of the parties or their attorneys with copies of such reports or the substance thereof, subject in all cases to such restrictions as the Court may deem proper. Where appropriate the Court may order (1) nondisclosure of such reports or portions thereof to the parties, their attorneys, or other persons, (2) that no copies be made of such reports, or (3) that copies be returned to the Court at a designated time.

(c) *Further hearing on report.* If any affected party objects to the facts contained in any such report, in whole or in part, and if it appears that the objection is made in good faith and that the portion of the report objected to is of sufficient importance to influence the Court's judgment, the Court shall afford the objecting party an opportunity to present evidence refuting the report or that portion thereof to which objection is made.

Rule 45. Subpoena.

(a) *For attendance of witness; for production of documentary evidence; form; issuance.*

(1) Every subpoena shall be issued by the Clerk under the seal of the Court, and shall:

(A) state the name of the Court;

(B) state the title of the action and its civil action number;

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (d) and (e) of this Rule.

The Clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service. A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at a deposition or may be issued separately.

(2) Subpoenas for the attendance at a hearing, trial or deposition shall be issued by the Clerk of Court of the county where the hearing, trial or deposition is to be held. If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the Clerk for the county in which the production or inspection is to be made.

(3) If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a notice and a copy of the subpoena must be served on each party.

(b) *Omitted*.

(c) *Service.* A subpoena may be served by the sheriff, by the sheriff's deputy or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person. Prior notice of any inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(c). Proof of service shall be made by filing with the Clerk of the county by which the subpoena is issued a statement of the date and manner of service and the names of the persons served, certified by the person who made the service.

(d) *Subpoena for taking depositions.* Where discovery is permitted by these Rules, a party issuing a notice of deposition provided for in Rules 30(b) and 31(a) may serve a subpoena as provided for in Rule 45(a). The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(g), but in that event the subpoena will be subject to the provisions of Rule 26(h) and subdivision (a) of this Rule. The person to whom the subpoena is directed may, within 14 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 14 days after service, serve upon the attorney designated in the subpoena written objections to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect or copy the materials except pursuant to an order of the Court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time on or before the taking of the deposition. The attendance of witnesses and the production by them of designated documents or tangible things taken at depositions elsewhere than the State of Delaware may be compelled by whatever means are available under the laws of the place where the examination is held.

(e) *Subpoena for hearing or trial.* At the request of any party, subpoenas for the attendance at a hearing or trial shall be issued by the Clerk.

(f) *Contempt.* Failure by any person without adequate excuse to obey a subpoena served upon the person may be deemed a contempt.

(g) *Medical records.* The following procedure shall govern production of medical records under subpoena for trial purposes:

(1) In responding to a subpoena calling for the production of medical records belonging to a hospital or other institution having custody of medical records or records relating to the physical condition of a party, it will be considered that the institution has complied if it delivers within 10 days of receipt of the subpoena, or on the trial date set forth in the subpoena, whichever is sooner, either personally or by registered mail, return receipt requested, or by certified mail, to the Clerk issuing the subpoena to the original record, including all documents and x-rays relating to the medical record and meets all the other requirements hereinafter stated. Unless otherwise ordered by the Court, instead of the original records, legible photocopies thereof may be furnished.

(2) The documents and x-rays so delivered shall be kept in the custody of the Clerk of Court, in the envelope or envelopes in which they are supplied by the institution. This envelope shall be clearly marked to identify the contents, the name of the patient, the title and number of the court case, and

shall be of a distinctive type and form approved by the Court. The Clerk shall be charged with the custody and preservation of the envelope and its contents and shall not release them from custody except upon the Court's order or as otherwise provided herein. However, the Clerk shall permit counsel for any party in the case for which the medical records were furnished or any party thereto who is unrepresented by counsel to inspect such records while they remain within the custody of the Clerk. Copies may only be made upon Court order.

(3) The admissibility of the contents of the medical record shall be in no way affected or altered by these procedures and shall remain and be subject to the same rulings by the Court and objections by trial counsel as would exist if the original records were personally produced by the subpoenaed party, except that the certification referred to in subparagraph (2) above shall constitute sufficient evidence of genuineness of the record.

(4) The contents of the record as aforesaid shall be preserved and maintained as a cohesive unit and shall not be separated or released except as provided herein or upon the order of the Court. Forty days after any final notice, stipulation or order dismissing or otherwise terminating any case in which medical records have been subpoenaed, if no appeal is in process, or in the event of appeal proceedings, after any final order terminating the same, any original records shall be returned to the institution. It shall be the responsibility of the institution to arrange to take delivery of the records at the office of the Clerk. If photocopies were supplied, they need not be returned.

(5) Upon receipt of the documents and x-rays in connection with any pending action, the Clerk shall promptly notify all attorneys of record in the case in which the subpoena was issued that the documents involved have been delivered to the Court pursuant to the procedure outlined above. For purposes of this notice it will be considered adequate for the Clerk to inform the attorneys of the receipt of the record, the title and number of the case, and the name of the person to whom the record relates.

(6) Compliance with the foregoing procedures shall be generally construed as full compliance with the subpoena. In availing itself of the option afforded by this rule in responding to a subpoena, the institution shall take such action as the Court may direct on application of any party.

(h) *Protection of persons subject to subpoenas.*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court on behalf of which the subpoena was issued shall enforce this duty and may impose upon the party or attorney in breach of the duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produced and permit inspection and copying of designated books, papers, documents of tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (i)(2) of this Rule, a person commanded to produce and permit inspection and copying may within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the Court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the Court by which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance; (ii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or (iii) subjects a person to undue burden.

(B) If a subpoena (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the Court may, to protect a person subject to or affected by subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.

(i) *Duty in responding to subpoena.*

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient ot enable the demanding party to contest the claim.

History.

Amended, effective Sept. 3, 1996; July 14, 2020, effective Sept. 1, 2020.

Rule 46. Exceptions unnecessary.

Formal exceptions to rulings or orders of the Court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which the party desires the Court to take or objection to the action of the Court and grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

Rule 47. Jurors.

Omitted.

Rule 48. Juries of less than 12 — Majority verdict.

Omitted.

Rule 49. Special verdicts and interrogatories.

Omitted.

Rule 50. Motion for directed verdict.

Omitted.

Rule 51. Instructions to jury; objection.

Omitted.

Rule 52. Findings by the Court, conclusions, reasons; guidelines and standards in property distribution, alimony and child support cases.

Repealed July 14, 2020, effective Sept. 1, 2020.

Rule 53. Masters.

(a) *Appointment; qualifications.* The Chief Judge shall appoint, commission and set salaries of qualified persons to act as masters in the Court, all of whom shall hold office at the pleasure of the Chief Judge, shall be residents of the State for at least 5 years immediately preceding their appointment.

(b) *Authority.*

(1) Masters may hear and determine any matters properly before them as the Chief Judge may direct and may order the issuance of legal process to compel the attendance of necessary parties and witnesses, set bail, determine and punish civil contempt, render and enforce judgments, including default judgments, and assess fees and costs.

(2) The findings and recommendations of a master shall become the judgment of the Court, with rights of appeal reserved to all parties, unless they be disapproved in writing by an order of the Chief Judge or designee or unless application for a review de novo has been made in writing within 15 days from the date of a master's announcement of decision.

(3) Rule 53(b)(2) and 10 Del. C. Section 913(c) notwithstanding, and pursuant to 13 Del. C. Section 512(b), decisions of masters regarding support matters brought pursuant to Chapters 4, 5, and 6 of Title 13 of the Delaware Code shall be effective and enforceable when announced and shall remain in effect until and unless stayed or overruled by a judge of this Court upon filing of or hearing on a review de novo or by the appellate court or until and unless modified by other subsequent order of this Court.

(c) *Duties.* A master shall inform all parties unrepresented by counsel that he or she is a master in the Court and shall advise them of the provisions of Rule 53(b)(2), Rule 53(b)(3) and Rule 53(d). As soon after announcement of decision as practicable, the master shall transmit to the Chief Judge or such associate judge as the Chief Judge designates all papers and records relating to the case.

(d) *Reviews de novo; appeals.* Any party to an action before a master who desires to have the matter reheard by a judge of the Court shall, within 15 days after the master announces decision, file with the Court a written petition requesting trial de novo before a judge. Any party authorized by law to do so may appeal the master's judgment to the appellate court in accordance with Rule 73 and 73.1.

Rule 53.1. Appeals from commissioners' orders.

(a) An interim or final order of a commissioner may be appealed to a judge of the Court by any party, except a party in default of appearance before such commissioner.

(b) An appeal of a commissioner's order shall be accomplished by filing with the Court within 30 days from the date of the commissioner's order written objections to the commissioner's order which set forth with particularity the basis for each objection. A copy of the written objections shall be served on the other party, or the other party's attorney, if the other party is represented.

(c) The party filing written objections to a commissioner's order shall cause to be prepared a transcript of the proceeding before the commissioner, either in whole or in pertinent part, unless all parties agree to a statement of facts. The party filing objections shall file at the same time a notice to the Clerk of the Court that a transcript is to be prepared. The party filing objections will be informed by the Court of the cost of the transcript and will be required to pay such cost prior to the preparation of the transcript. The Court, upon request, may agree to accept an electronic recording of the proceedings, in lieu of a transcript, in cases where the objecting party is proceeding in forma pauperis.

(d) The other party shall have 20 days to file and serve a written response to the written objections. Once the period for filing a response has ended, the judge assigned to hear the appeal shall promptly decide the appeal, or if one is to be held, promptly schedule a hearing in the matter.

(e) From an appeal of a commissioner's final order, the Court shall make a *de novo* determination of the matter (that is, the matter shall be decided anew by a judge), based on the record below. Prior to determination of the matter, a party may request in writing that additional evidence be permitted to be offered. The Court shall only accept such additional evidence if it finds: 1) that it is newly discovered evidence which by due diligence could not have been discovered in time to offer it before issuance of the commissioner's order or 2) if the circumstances are such as would justify reopening the record in the interest of justice. If the Court determines that the additional evidence should be considered, it may remand the matter to the commissioner to hear additional evidence or the Court may hear and consider the additional evidence or the Court may conduct a *de novo* hearing.

(f) From an appeal of a commissioner's interim order, the Court may accept, reject or modify, in whole or in part, the commissioner's order or recommit the matter to the commissioner with instruction, where it is shown that the order is based upon findings of fact that are clearly erroneous, contrary to law or an abuse of discretion.

(g) A judge deciding an appeal from a commissioner's order may accept, reject or modify in whole or in part the commissioner's order. The judge may also recommit the matter to the commissioner with instruction.

(h) No appeal of a commissioner's order shall stay execution of the order unless such stay shall be specifically ordered by a judge of the Court.

(i) A party appealing an order of a commissioner who fails to comply with the provisions of this rule or with the direction of the Court as to the appeal shall be subject to dismissal of said appeal.

History.

Added, effective July 11, 1994; Aug. 28, 2008; amended July 14, 2020, effective Sept. 1, 2020; Sept. 22, 2021, effective Dec. 1, 2021.

VII. Judgment

Rule 54. Judgment.

(a) *Definition.* "Judgment" as used in these Rules includes any order from which an appeal lies.

(b) *Judgment upon multiple claims.* When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the Court may direct the entry of a final judgment upon one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties and the order or other form

of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Rule 55. Default judgments.

(a) *Judgment.* When a party against whom a judgment for affirmative relief is sought has failed to appear, plead or otherwise defend as provided by these Rules, and that fact is made to appear, judgment by default may be entered. A party entitled to a judgment by default shall apply to the Court therefor or the Court on its own motion may order a judgment by default when the interest of justice so requires; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian, trustee or other representative. If the party against whom judgment by default is sought has appeared in the action, that party (or, if appearing by representative, the representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper.

(b) *Setting aside default judgment.* The Court may set aside a judgment by default in accordance with Rule 60(b).

(c) *Petitioners, counterclaimants and cross-claimants.* The provisions of this Rule apply whether the party entitled to the judgment by default is a petitioner, a third-party petitioner or a party who has pleaded a cross-claim or counterclaim.

Rule 56. Summary judgment.

(a) *Motion for summary judgment or partial summary judgment.* A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The Court should state on the record the reasons for granting or denying the motion.

(b) *Time to file a motion.* Unless a different time is set by the Court, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) *Procedures.*

(1) *Supporting factual positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

i. citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

ii. showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection that a fact is not supported by admissible evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials not cited.* The Court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) *When facts are unavailable to the nonmovant.* If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) *Failing to properly support or address a fact.* If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) *Judgment independent of the motion.* After giving notice and a reasonable time to respond, the Court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) *Failing to grant all the requested relief.* If the Court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case.

(h) *Affidavit or declaration submitted in bad faith.* If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the Court — after notice and a reasonable time to respond — may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

History.

Amended July 14, 2020, effective Sept. 1, 2020.

Rule 57. Declaratory judgments.

The procedure for obtaining a declaratory judgment pursuant to the statute of this State shall be in accordance with these Rules. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory judgment.

Rule 58. Entry of judgment.

The order of the Court shall constitute the judgment of the Court.

Rule 58.1. Entry of judgment by confession and execution thereon.

Omitted.

Rule 58.2. Entry of judgment by confession in open court.

Omitted.

Rule 58.3. Judgments by confession entered prior to July 9, 1971.

Omitted.

Rule 59. New trials and reargruments.

(a) *Grounds.* A new trial may be granted to all or any of the parties and on all or part of the issues in an action in the interest of justice. On a motion for a new trial, the Court may open the judgment if one has been entered, take additional testimony and direct the entry of a new judgment.

(b) *Time and procedure for motion.* The motion for a new trial shall be served and filed not later than 15 days after the entry of judgment. The motion shall briefly and distinctly state the grounds therefor. If the motion is not accompanied by affidavits, the opposing party, within 10 days after service of such motion, may serve and file a short answer to each ground asserted in the motion, accompanied by a brief, if that party desires to file one.

If the motion is accompanied by affidavits, the opposing party has 10 days after such service within which to serve and file an answer and opposing affidavits and brief, if any; this period may be extended for an additional period not exceeding 10 days either by the Court for good cause shown or by the parties by written stipulation. Reply affidavits and brief may be served and filed within 10 days after service of the opposing affidavits and briefs; this period may be extended for an additional period not exceeding 10 days, either by the Court for good cause shown or by the parties by written stipulation. The Court shall determine from the motion, answer, affidavits and briefs, whether a new trial shall be granted or denied or whether there shall be oral argument on the motion. A copy of the motion, answer, affidavits and briefs shall be furnished forthwith by the respective parties serving them to the judicial officer involved.

(c) *On initiative of Court.* Not later than 15 days after entry of judgment the Court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the Court shall specify in the order the grounds therefor.

(d) *Motion to alter or amend a judgment.* A motion to alter or amend the judgment shall be served and filed not later than 15 days after entry of the judgment.

(e) *Reargruments.* A motion for reargument shall be served and filed within 15 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within 10 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted. A copy of the motion and answer shall be furnished forthwith by the respective parties serving them to the judicial officer involved.

History.

Amended July 14, 2020, effective Sept. 1, 2020.

Rule 60. Relief from judgment or order.

(a) *Clerical mistakes.* Clerical mistakes and mathematical errors in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders.

(b) *Mistake; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.* On motion and upon such terms as are just, the Court may relieve a party or legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant any relief provided by statute, or to set aside a judgment for fraud upon the Court. The procedure for obtaining relief from judgments shall be by motion as prescribed in these Rules or by an independent action.

Rule 61. Harmless error.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. Stays by trial court and on appeal.

(a) *Stay on motion for new trial or for judgment.* In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59 or of a motion for relief from a judgment or order made pursuant to Rule 60.

(b) *Injunction pending appeal.* When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(c) *Supersedeas or stay on appeal.* Stays pending appeal and stay and cost bonds shall be governed by Article IV, Section 24 of the Constitution of the State of Delaware and by the rules of the appellate court.

(d) *Stay according to statute.* A judgment debtor is entitled to a stay of execution where such stay is accorded by statute.

(e) *Stay of judgment as to multiple claims or multiple parties.* When a court has ordered a final judgment under the conditions stated in Rule 54(b), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Rule 63. Inability of a judicial officer to proceed.

If a trial or hearing has been commenced and the judicial officer is unable to proceed, any other judicial officer may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. The successor shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judicial officer may also recall any other witness.

History.

Amended, effective Sept. 3, 1996; July 14, 2020, effective Sept. 1, 2020.

VIII. Provisional and Final Remedies and Special Proceedings

Rule 64. Seizure of persons or property.

(a) *Generally.* At the commencement of and during the course of an action, all remedies provided for seizure of person or property for the purpose of compelling appearance or securing satisfaction of a judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by statute.

(b) *Capias.* If a person subject to the jurisdiction of the Court has failed to appear for a scheduled hearing, is evading service of process, leaves the jurisdiction of the Court, or for any other just cause, a capias for the apprehension of such person may issue out of the Court.

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

History.

Amended July 1, 2020, effective Nov. 1, 2020.

Rule 64.1. Orders for hearing or rules to show cause.

Omitted.

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 request appearing in a verified complaint, or a motion 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. (3) 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.* 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.

(c) *Form and scope of injunction.* Every order granting an injunction shall describe in reasonable detail, and not by reference to the complaint or other document unless such document is served with the injunction, the act or acts to be enjoined.

History.

Amended July 1, 2020, effective Nov. 1, 2020.

Rule 65.1. Security: Proceedings against sureties.

Whenever these Rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Court and irrevocably appoints the Clerk as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk, who shall forthwith mail copies to the sureties if their addresses are known.

Rule 65.2. Emergency and interim orders.

(a) *Emergency order requests.* The Court may enter an emergency ex parte order upon the motion of any party or upon the Court's own motion. Such orders may be entered without notice only where the Court determines, by affidavit or by verified complaint, that immediate and irreparable harm will otherwise result. The moving party must certify to the Court reasons supporting the claim that notice should not be required. In all cases in which a party other than the Department of Services for Children, Youth and their Families (DSCYF) seeks ex parte relief, the Court shall examine the Delaware criminal history of the parties prior to granting custody or guardianship, and may review a summary of the parties' history provided from the Division of Family Services, including substance abuse and mental health records. The Court's Order shall reflect the nature of the information obtained from the summary and the current DSCYF social worker assigned to the family, if applicable. The Court may require the appearance of the DSCYF social worker at trial. The Court's review of information provided by the Division of Family Services is for ex parte purposes only and is not a determination of admissibility of such information at a subsequent hearing. No ex parte order shall be extended past fifteen days without an evidentiary hearing which affords the adverse party an opportunity to be heard, unless extended by the Court for good cause shown.

(b) *Interim relief.* Applications for interim relief, not of an emergency nature, shall be made by motion after service of process has been accomplished. The motion shall be determined by the Court on affidavits or verified pleadings, or after hearing if the Court requires it. 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 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 after service of process has been accomplished. 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. 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.

History.

Amended, effective Sept. 1, 1987; Feb. 3, 1992; amended Dec. 30, 1998, effective Mar. 5, 1999; amended Nov. 15, 2006; amended, effective Sept. 11, 2007; amended, Oct. 8, 2018, effective Jan. 2, 2019; amended July 14, 2020, effective Sept. 1, 2020; amended July 1, 2020, effective Nov. 1, 2020.

Rule 65.3. Directions and restrictions on conduct.

(a) Whenever the Court intends to impose restrictions on the conduct of a party, the conditions or restrictions thereof shall be set forth in writing by the Court, or by such other person or agency as the Court, by order, may delegate authority to impose such conditions, and a copy thereof shall be furnished to such person at the earliest possible time. The conditions or restrictions shall become effective upon the person affected being notified, either orally or in writing, by the Court or by some person designated by the Court. In any case where imperiling the family relationship or care of a child is the issue, an order directing any party to perform or refrain from committing certain acts of conduct shall clearly set forth such acts or conduct.

(b) No party shall be ordered without consent to perform or refrain from any act concerning which no complaint was made or evidence presented.

Rule 66. Receivers appointed by federal courts.

Omitted.

Rule 67. Deposit in Court.

Omitted.

Rule 68. Offer of judgment.

Omitted.

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

(a) *In general.* If a final judgment or order is entered for the payment of 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.

(b) *Proceedings supplementary to judgment or execution.* In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record in the Superior Court, may examine any person, including the person against whom a judgment has been entered, in the manner provided in these Rules for taking depositions. Nothing herein is intended to limit any rights or remedies which such creditor or successor in interest may have in Superior Court.

History.

Amended July 1, 2020, effective Nov. 1, 2020.

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 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 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 noncompliant party to compel 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 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 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.

History.

Amended July 1, 2020, effective Nov. 1, 2020.

Rule 71. Process in behalf of and against persons not parties.

Omitted.

Rule 71.1. Condemnation of property.

Omitted.

Rule 71.2. Medical malpractice.

Omitted.

IX. Appeals

Rule 72. Appeals from certain boards to Family Court.

(a) *Application of rule.* This rule shall apply to appeals to the Family Court from administrative hearings conducted by the Division of Child Support Services and the Division of Family Services.

(b) *How taken.* When an appeal is permitted by law, a party may appeal by filing a notice of appeal with the Clerk of Court of the appropriate county within the time prescribed by statute. If no time is prescribed by statute, the notice of appeal shall be filed within 15 days from the entry of the final judgment, order, or disposition from which an appeal is permitted by law.

(c) *Notice of appeal.* The notice of appeal shall specify the parties taking the appeal, shall state the grounds of the appeal, and shall be signed by the party or their attorney.

Notification of the filing of the notice of appeal shall be given by the Clerk of Court by mailing copies thereof to all parties to the proceeding below. No notice of appeal need be given to the party or parties taking the appeal. The failure of the Clerk of Court to give notice of the taking of the appeal shall not affect the validity of the appeal. The notification of a party shall be given by mailing a copy of the notice of appeal to the party's attorney of record or, if the party is not represented by an attorney, then to the party at the party's last known address, and such notification is sufficient notwithstanding the death of the party or the party's attorney prior to the giving of notification.

(d) *Docket entries.* The Clerk of Court shall note in the appropriate docket the names of the parties to whom notices of appeal and citations have been mailed, the date of mailing, and dates when citations for the record issued and were returned.

(e) *Certified copy of the record.* Upon the filing of the notice of appeal, the Clerk of Court shall forthwith issue a citation to the custodian of records for the agency below. The citation shall direct such custodian to send to the Family Court of the county out of which the citation has issued, together with the citation, within 20 days from service thereof, a certified copy of the record of the proceedings below including exhibits.

(f) *Procedure for handling appeals.* Appeals shall be heard and determined as provided by statute. The appellee's reply to appellant's appeal shall be filed within 20 days of the date the notice of appeal was mailed to appellee. The answer shall contain a certificate or affidavit of service as provided by Rule 5.

(g) *Dismissal.* At any time before the filing of the appellee's response, an appellant may dismiss his or her appeal voluntarily by serving a notice of dismissal upon the other parties to the appeal, by filing the same with the Clerk of Court, and paying the costs. Otherwise, a voluntary dismissal may be made only upon stipulation of all parties to the proceeding and with the approval of the Court.

The Court may order an appeal dismissed, sua sponte, or upon a motion to dismiss by any party. Dismissal may be ordered for untimely filing of an appeal, for failure of a party to diligently prosecute the appeal, for failure to comply with any rule, statute or order of the Court or for any other reason deemed by the Court to be appropriate. In the event that the Court shall conclude, sua sponte, that dismissal is appropriate, a notice shall be forwarded to the appellant directing that he show cause why the appeal should not be dismissed for the reasons stated in the notice. The notice shall direct the appellant to respond within 10 days after receipt of the notice. After consideration of such response, the Court shall enter an order dismissing the appeal or maintaining jurisdiction of the case. If a response is not filed within the time allowed, the dismissal shall be deemed to be unopposed. If the Court is satisfied that the appeal should be dismissed it shall enter an order of dismissal. Upon entry of any order of dismissal, the Court shall specify the terms thereof.

History.

Amended, May 21, 2001, effective July 1, 2001; Nov. 10, 2016, effective Jan. 9, 2017.

Rule 73. Preparation of transcript on appeal.

The procedure for preparation of transcript on appeal from Family Court shall be in accordance with the rules of the appellate court.

Rule 73.1. Deposit for fees and costs of appeals.

Following the docketing of an appeal by a party pursuant to Rule 73, the Clerk of the Court shall demand and receive from the appellant by a day certain a deposit which the Court deems necessary to defray the fees and costs incurred in preparing the record for appeal, including an estimated amount for preparation

of the certified transcript of the testimony where required, and in default thereof no services shall be performed by the Clerk in preparing the record for appeal.

The Clerk shall apply the deposit from time to time in payment of such fees and costs and shall return to the appellant any balance remaining after completion of the preparation of the record for appeal. If the deposit is expended in the payment of the fees and costs as said fees and costs accrue from time to time, the Clerk shall demand and receive sufficient amounts which the Court deems necessary to defray the fees and costs for additional services, before any such additional services shall be performed by the Clerk.

Rule 74. Interlocutory appeals.

Appeals from interlocutory orders of the Family Court shall be upon such terms and conditions and in accordance with the procedures set forth in the rules of the appellate court.

Rule 75. Certification of questions of law to the Supreme Court.

Certification of questions of law shall be governed by Supreme Court Rule 41. A party filing a petition requesting the Family Court to certify a question of law to the Supreme Court shall set forth therein facts and issues at such length and with such clarity as to enable the Family Court to make a finding necessary to warrant a certification under the terms and conditions of Supreme Court Rule 41. There shall be attached to such petition a proposed form of certification substantially in the form set forth in Official Form K of the Rules of the Supreme Court. In the event the Family Court enters an order of certification, the petitioner shall file with the Clerk the copies necessary to conform to the requirements of Supreme Court Rule 41. The Clerk shall, within 5 days of the filing of such certification, file with the Clerk of the Supreme Court 6 certified copies thereof.

Rule 76. Supreme Court mandate.

Upon receipt of a mandate from the Supreme Court, the Clerk shall act in accordance with any instruction therein and in such a manner so as to enable the Family Court to comply with the requirements of Supreme Court Rule 19(c).

X. The Family Court: Clerk

Rule 77. The Family Court; duties of the Clerk; records and exhibits.

(a) *The Family Court always open.* The Family Court shall be deemed always open for the purpose of the transaction of business. The Court may at any time make any order, including a final order.

(b) *Notice of amendment of Rules.* The Clerk shall give to all members of the Bar of this State notice of any amendment to the Rules 30 days in advance of the effective date thereof.

(c) *Records and exhibits.*

(1) *Custody.* The Clerk shall have custody of the records and papers of the Court. The Clerk shall not permit any original record, paper or exhibit to be removed from custody except at the direction of the Court or as provided by statute or by these Rules.

(2) *Removal of exhibits.* Exhibits shall not be removed prior to the time provided in these Rules except on motion or stipulation and order of the Court.

(3) *Disposition of exhibits.* After the final determination of a cause by the Court and the expiration of the period for taking an appeal, if no appeal has been filed, all exhibits shall be removed by the party who introduced them. If not removed within 1 year following the time for appeal, the Court may dispose of the exhibits.

(d) *Opinions to be dated.* Each written opinion (including letter opinions) shall bear the following 2 dates:

(1) The date of the last oral argument, or brief filed, or other final submission of the case for decision; and

(2) The date of the filing of the opinion or order.

(e) *Captioning and reporting of opinions.* All proceedings shall be captioned and reported with the full names of the individual parties, except that the following shall be captioned and reported by only first initial, middle initial and last initial of the individual parties: matters concerning adoption, termination of parental rights, child custody and visitation and any other domestic relations matters which, in the discretion of the trial court, are deemed to be of a sensitive nature.

History.

Amended Sept. 22, 2021, effective Dec. 1, 2021.

Rule 78. Motion days; arguments.

Omitted.

Rule 79. Books and records kept by the Clerk and entries therein.

(a) *Record.* The Clerk shall keep a record of all civil actions in such form and manner as the Chief Judge shall direct.

(b) *Notation of action.* The Clerk or other staff as the Chief Judge shall direct shall make appropriate record entries noting court orders or dispositions in every matter whenever occurring, including, but not limited to, the dates of all conferences, hearings or trials, the mediator, master or judge, and the date of any decision.

(c) *Statistics.* The Clerk shall keep such statistics in such form as the Chief Judge shall direct.

Rule 79.1. Electronic filing.

(a) The electronic filing of documents in the Family Court of the State of Delaware shall be referred to as "eFile" or "eFiling." Electronic filing is the process of uploading a document from a user's computer, or the Court's public access computers, utilizing the Court's Internet and browser based Case Management and Electronic Case Filing system, known as "e-Flex" or any subsequent system adopted by the Court, to file the document in the Court's case file. E-Flex accepts documents only in common portable document format (PDF) readable by free PDF document readers. Any rules of this Court addressing e-Filing shall be known as the Court e-Filing Rules.

(b) Any civil matter may be initiated by e-Filing in compliance with the Rules of the Court. All civil matters and subsequent documents filed by any attorney in a matter initiated by e-Filing shall be e-Filed. When the Chief Judge determines that it is appropriate for any civil case, or category of cases, to follow the procedures for e-Filing, the Chief Judge shall designate it as an e-File case or category of cases.

(c) The Chief Judge shall establish administrative procedures for the e-Filing of documents.

(d) Paper documents presented to the Court by pro se litigants in e-Filed initiated cases shall be scanned and converted to PDF format and e-Filed by the Clerk of the Court. The e-Filed version of the document shall constitute the original and shall be the filed document in the matter, and the paper version of the document shall be destroyed.

(e) No Delaware lawyer shall authorize anyone to e-File on that lawyer's behalf, other than an employee of his/her law firm or service provider retained to assist in e-Filing.

(f) No person shall utilize, or allow another person to utilize the password of another in connection with any e-Filing.

(g) The e-Filing of a document by a lawyer, or by another under the authorization of a lawyer, shall constitute a signature of that lawyer under Family Court Civil Rule 11.

(h) All e-Filing must be signed by a member of the Delaware Bar or party not represented by an attorney in accordance with this Rule.

(i) Unless otherwise ordered, the electronic service of a document, in accordance with the e-Filing Rules shall be considered service under Family Court Civil Rule 5. Service by electronic means shall be treated in the same manner as service by mail for the purpose of adding 3 days to the prescribed period to respond, as set forth in Family Court Civil Rule 6(d).

(j) The rules governing and pertaining to artificial entities shall apply to this rule.

(k) A technology surcharge shall be assessed in each e-File case for the purpose of a fund to operate the e-Filing system. This technology fee is not imposed on filings by the state agencies or by indigent parties or their counsel. The Court shall expend the funds solely for the purpose of operating and maintaining the Court's case management and e-File system.

History.

Added, effective June 3, 2009; amended, effective May 16, 2011; effective Mar. 18, 2013.

Rule 79.2. Filing by email.

(a) When authorized by an Order or Administrative Directive of the Chief Judge, the Family Court may allow parties to file pleadings and other papers via email. When so authorized, Family Court will accept such pleadings and papers sent to only those mailboxes established for such purpose.

(b) For pleadings and papers filed in accordance with this Rule, the pleading or paper may include a handwritten signature or an electronic signature. When used in the context of this Rule, an electronic signature will be deemed to comply with the requirements of Rule 11. An electronic signature shall be in the format of "/s/Full Legal Name."

(c) Pursuant to § 3927 of Title 10, the use of an Unsworn Declaration is hereby authorized for any pleading or paper, except those listed below, filed through the mailboxes. Unsworn Declarations may be used in lieu of verifications, sworn declarations, affidavits, and notarized signatures that are otherwise required on pleadings or papers filed through the mailboxes. An Unsworn Declaration may not be used with a Parental Consent to any of the following: Termination of Parental Rights, Permanent Guardianship, or Guardianship, with a Consent Parentage Decree, or with any Consent filed in an Adoption proceeding. The Chief Judge may further limit the use of Unsworn Declarations by Order or Administrative Directive.

(d) The Court will continue to serve petitions filed via mailbox while all other pleadings and papers must be served by the parties in accordance with these Rules.

History.

Added May 14, 2020, effective July 1, 2020.

Rule 80. Stenographer; stenographic report or transcript as evidence.

Omitted.

XI. General Provisions

Rule 81. Applicability in special proceedings.

Reserved.

Rule 82. Jurisdiction and venue unaffected.

These Rules shall not be construed to extend or limit the jurisdiction of the Family Court or to affect the venue of actions therein.

Rule 83. Rules by district courts.

Omitted.

Rule 84. Forms.

Omitted.

Rule 85. Title.

These Rules may be known and cited as the Family Court Rules of Civil Procedure.

History.

Amended, effective Sept. 1, 1987.

Rule 86. Effective date.

(a) These Rules will take effect on January 1, 1987. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending when the Rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(b) *Effective date of amendments.* Any amendments which may be adopted in the future shall specify an effective date. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

History.

Amended Sept. 22, 2021, effective Dec. 1, 2021.

Rule 87. Assignment of causes to Family Court from Superior Court or the Court of Chancery.

(a) *Certificate; contents.* The assignment or transfer of causes and matters by the Superior Court or the Court of Chancery to the Family Court, under the respective statutes, shall be by certificate of one or more Judges of the Superior Court or the Chancellor or one of the Vice Chancellors. The certificate shall set forth the names of the parties, the nature of the cause or matter, and the issue or issues to be ultimately determined, and shall specify what matters and issues are to be heard, tried, and determined by this Court. The certificate shall also direct the Prothonotary or the Register in Chancery forthwith to deliver to the Clerk of the Family Court the certificate, together with such of the original pleadings and exhibits, or true and correct copies thereof, as the Superior Court or Court of Chancery shall direct.

(b) *Report.* The report or certificate of the Family Court shall be in triplicate and shall be signed by a judge thereof, shall set forth the decision or determination made, and shall be filed with the Prothonotary or Register in Chancery. Any original pleadings or exhibits shall be returned by the Family Court. The Prothonotary or Register in Chancery shall forthwith deliver a copy of the certificate or report to counsel for each party.

(c) *Retention of jurisdiction.* In the event a case is transferred, this Court shall retain its jurisdiction over any person for the purpose of disposition as if the case had been originally filed herein, unless the transferring court otherwise directs.

Rule 87.1. Assignment of cases to the Court of Common Pleas.

Omitted.

Rule 87.2. Venue and transfer of action between counties.

(a) Petition may be filed in any county.

(b) “Venue” is the legally proper physical location where a particular petition should be handled.

(c) A Petition shall be heard in the county in which it was filed unless:

1. A Motion to Transfer Venue is filed by a party or a party’s counsel and is granted.

2. The Court on its own changes the venue to another county.

3. The petitioner designates another county in the case caption.

(d) The Court may on its own Order a Change in Venue for the following reasons:

1. There is an existing file in another county involving the same parties regarding the same or similar issues.

2. The Petition seeks to modify an Order entered in another county.

3. The parties have relocated to another county.

4. In custody and guardianship cases, the children have relocated to another county.

5. Venue is required to be in another county by statute.

6. A Judge in any county has previously ordered that venue will be in an identified county.

7. Any other legal or equitable reason permitted by law.

(e) A Petition that is filed in the incorrect county shall not be dismissed but shall instead be transferred to the correct county.

(f) If a Petition is transferred to another county, the original open petition(s) and certified copies of all court and social records shall accompany the transfer.

History.

Amended, effective Sept. 1, 1987; Sept. 22, 2021, effective Dec. 1, 2021.

Rule 88. Allowance of attorneys' fees; expenses and services.

In every case where there is a legal or equitable basis therefor the Court may assess a party the reasonable counsel fees of any other party. Where counsel fees are requested the attorney shall submit to the Court an affidavit stating the following:

(1) time and effort expended;

(2) an itemization of services rendered;

(3) relevant hourly rates;

(4) itemization of disbursements claimed;

(5) any sums received or that will be received with respect to legal services and/or disbursements; and

(6) any information that will enable the Court to properly weigh the relevant factors set forth in the Rules of Professional Conduct, Rule 1.5.

Rule 89. Appointment of counsel for State officers and employees.

Appointment of counsel for State officials and employees, under 60 Del. Laws, c. 474, is governed by Supreme Court Rule 68.

Rule 90. Attorneys.

(a) *Admission.* Except as provided in paragraph (b) of this Rule, only an active member of the Bar of the Supreme Court of this State who maintains an office in Delaware for the practice of law as defined by Delaware Supreme Court Rule 12(d) shall be entitled to practice as an attorney in this Court.

(b) *Admission pro hac vice.*

(1) Attorneys who are not members of the Delaware Bar may be admitted pro hac vice in the discretion of the Court and such admission shall be made only upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law ("Delaware Counsel"). Application for admission pro hac vice must be made separately before each Court in which admission is sought. The admission of an attorney pro hac vice shall not relieve the moving attorney from responsibility to comply with any Rule or order of the Court.

(2) Any attorney seeking admission pro hac vice shall certify the following in a statement attached to the motion:

(A) That the attorney is a member in good standing of the Bar of another state;

(B) That the attorney shall be bound by the Delaware Lawyer's Rules of Professional Conduct and has reviewed the Statement of Principles of Lawyer Conduct;

(C) That the attorney and all attorneys of the attorney's firm who directly or indirectly provide services to the party or cause at issue shall be bound by all Rules of the Court;

(D) That the attorney has consented to the appointment of the Clerk of the Family Court as agent upon whom service of process may be made for all actions, including disciplinary actions, that may arise out of the practice of law under this Rule and any activities related thereto;

(E) The number of actions in any court of record of Delaware in which the attorney has appeared in the preceding 12 months;

(F) That a payment for the pro hac vice admission assessment determined by the Delaware Supreme Court is attached to be deposited with the Clerk of the Court. The pro hac vice admission assessment shall be $375 in calendar year 2015, $400 in calendar year 2016, and thereafter increased annually by the rate of inflation as determined by the Delaware Supreme Court. If the case in which the pro hac vice admission continues into a subsequent calendar year after the year of admission, such assessment shall be deemed an annual assessment to be renewed and be payable on January 1 of each subsequent year and be deemed delinquent if not paid by February 1 of each subsequent year. A notice that a pro hac vice admission may be subject to renewal shall be mailed to Delaware counsel by the Court Administrator of the Delaware Supreme Court. It shall be the duty of Delaware counsel to complete the notice stating whether the case in which the pro hac vice admission was granted remains open and to supervise the remittance of the renewal assessment if the case in which the pro hac vice admission was granted remains open.

(G) Whether the applying attorney has been disbarred or suspended or is the object of pending disciplinary proceedings in any jurisdiction where the applying attorney has been admitted generally, pro hac vice, or in any other way; and

(H) The identification of all states or other jurisdictions in which the applying attorney has at any time been admitted generally.

(3) Delaware Counsel for any party shall appear in the action in which the motion for admission pro hac vice is filed and shall sign or receive service of all notices, orders, pleadings or other papers filed in the action, and shall attend all proceedings before the Court, Clerk of the Court, or other officers of the Court, unless excused by the Court. Attendance of Delaware Counsel at depositions shall not be required unless ordered by the Court.

(4) Withdrawal of attorneys admitted pro hac vice shall be governed by the provisions of Rule 5(b)(2). The Court may revoke a pro hac vice admission sua sponte, or upon the motion of a party, if it determines, after a hearing or other meaningful opportunity to respond, the continued admission pro hac vice to be inappropriate or inadvisable.

(5) The motion and certificate described in subsections (1) and (2) of this Rule and the signed order granting admission shall be filed before the agency and a copy of each document shall be filed with the Court Administrator of the Delaware Supreme Court by the agency granting the pro hac vice admission as soon as reasonably possible, and they shall be filed no later than the date of the first appearance of the attorney who seeks admission pro hac vice before the agency in the matter for which admission is sought. The Court Administrator shall provide said copy to Disciplinary Counsel who shall be responsible for contacting Delaware counsel if the information contained in said copy is incomplete for the purposes of this Rule.

(6) In exercising its discretion in ruling on a motion for admission pro hac vice, the Court shall also consider whether, in light of the nature and extent of the practice in the State of Delaware of the attorney seeking admission, that attorney is, in effect practicing as a Delaware Counsel without complying with the Delaware requirements for admission to the Bar. In its consideration of this aspect of the motion, the Court may weigh the number of other admissions to practice sought and/or obtained by this attorney from Delaware courts, the question of whether or not the attorney in fact

maintains an office in Delaware although the attorney is not admitted to practice in Delaware courts, and other relevant facts.

(7) The Delaware Counsel filing a motion pro hac vice for the admission of an attorney not a member of the Delaware Bar shall certify that the Delaware attorney finds the applicant to be a reputable and competent attorney, and is in a position to recommend the applicant's admission.

(8) A signed copy of the entire pro hac vice motion shall promptly be filed by the secretary of the judge who signed the motion with the Court Administrator of the Delaware Supreme Court for disposition pursuant to Supreme Court Rule 71. The Court Administrator of the Delaware Supreme Court shall provide a copy to Disciplinary Counsel who shall be responsible for contacting Delaware counsel if the information contained in said copy is incomplete for purposes of this Rule.

(c) *Agreements between attorneys.* Agreements between attorneys will not be considered by the Court unless they are in writing and filed with the Clerk or stated on the record in the presence of the Court.

History.

Amended, effective Apr. 1, 1987; Nov. 19, 1992, effective Dec. 21, 1992; Sept. 3, 1996; Sept. 12, 2002; Jan. 28, 2015, effective Feb. 1, 2015; Nov. 13, 2014, effective Apr. 20, 2015.

Rule 90.1. Records; privacy.

(a) Without the permission of the Court, no complaint or other paper instituting an action and no paper ordered to be served shall be released for examination or publication by the Clerk or by the sheriff until a return showing service on all designated parties is made to the Clerk.

(b) If service is to be made on a nonresident, the material shall not be released, without the permission of the Court, until at least 10 days after any required mailing.

(c) Unless otherwise required by statute or rule, all records of proceedings before the Court shall be private and shall not be open or available to anyone except (1) the Court and its staff, or (2) the parties and their attorneys, or (3) other courts and public agencies, or (4) persons specifically approved by the Court because they have a legitimate interest in the records, subject in all events to such reasonable restrictions, conditions or limitations as the Court may impose.

(d) The Court may restrict access and dissemination of residential and employment addresses (collectively "location information") from persons reasonably believed to constitute a substantial risk of harm.

(1) Upon demand, any person filing for Protection from Abuse may have his or her location information designated as confidential. Parties to other types of cases may seek confidential designation by motion, which shall be treated as granted until or unless denied. Confidential designation shall continue indefinitely until further order of the Court or until withdrawn pursuant to subsections (2) or (3) herein.

(2) Any judicial officer may assign a confidential designation when appropriate and may remove the designation upon oral request of the protected party in open court.

(3) Inclusion of a personal mailing address by a protected party on a subsequent pleading related to the case in which the designation was granted may be interpreted that the confidential designation is no longer required.

(4) All protected parties have a duty to provide the Court with a functioning mailing address without regard to whether it is their actual residence. The Court will, at Court expense, facilitate necessary mailings to protected parties or in any case wherein a party believes he or she is subject to an injunction against contact with another party.

(5) When making determinations of venue or jurisdiction, the Court may examine protected records in camera revealing only the information necessary to provide the opposing party or counsel reasonable opportunity to make relevant arguments.

History.

Amended, effective Sept. 11, 2007; Sept. 22, 2021, effective Dec. 1, 2021.

Rule 90.2. Sealing records.

Upon motion by a party who is subject to the Court's jurisdiction or any other person who may be affected, the Court may order sealed all or part of the legal and social files, records of the Court and any private or confidential records of a party if the Court determines such action to be for the best interest of the party or person affected.

Rule 90.3. Transcripts.

(a) Upon payment of the required fee, a party to any proceeding in this Court, or the party's authorized attorney, shall be entitled to a transcript of such proceeding unless the tapes have theretofore been erased in accordance with the Court's archiving or retention policy. The party must in all cases furnish a copy of such transcript to the Court.

(b) Any party to any proceeding, or the party's authorized attorney, may listen to, but not copy, any tape-recorded hearing of that proceeding on the premises of Family Court at such times and under such conditions as the Court may from time to time determine.

History.

Added, effective Sept. 1, 1993.

Rule 90.4. Electronic copy of audio record.

(a) Any party to a proceeding, or the party's authorized attorney, may obtain an electronic copy of the audio record of such proceeding upon the filing of an Application and Affidavit of Proper Use and upon payment of assessed costs, unless the audio record of such proceeding has been destroyed in accordance with the Court's archiving and retention policy.

(b) The individual requesting the electronic copy must submit a notarized affidavit stating that the electronic copy of the audio record will not be copied, altered, transferred, or otherwise used in an inappropriate manner. Inappropriate use includes, but is not limited to, using the electronic copy on CD of the audio record for the purposes of harassment, embarrassment, entertainment, inflicting emotional distress, exploitation, blackmail, loss of employment, and/or commercial gain. Inappropriate use may implicate various criminal offenses.

(c) Requests for an electronic copy of any child interview shall be made by motion setting forth the reason for the request.

History.

Added, effective Oct. 24, 2007.

Rules 91-99.

Reserved for future use.

XII. Divorce and Annulment

Rule 100. Divorce and annulment; acquiring jurisdiction.

After filing of the petition for divorce or annulment, jurisdiction over respondent may be acquired by any of the methods now or hereafter provided by 13 Del. C. Section 1508.

Rule 101. Process; complaint; prayers.

(a) In accordance with the authority set forth in 13 Del. C. Section 1508(h), the original summons shall be returnable 20 days after the issuance thereof, unless the complaint contains the allegations prescribed by 13 Del. C. Section 1508(b), in which event such summons shall be returnable 30 days after the issuance thereof. An alias summons shall be returnable 30 days after issuance thereof.

(b) Each original petition for divorce or annulment shall contain, as an exhibit to the petition, an original or certified copy of the certificate of the marriage or certificate of civil union between the petitioner and the respondent. Previously filed certificates may be substituted by reference. Where a marriage certificate or a certificate of civil union is not written in English, a certified translation of the marriage certificate or certificate of civil unions will also be submitted. Upon good cause shown, the Court may accept a petition not in conformity with this requirement.

(c) Every petitioner in a divorce action shall provide the social security number of the petitioner and respondent to be maintained in the case file. If the respondent's social security number is unknown to the petitioner and petitioner is unable to obtain the respondent's social security number prior to the filing of the petition, the petitioner must so indicate in an affidavit. Further, the petitioner must make a good faith effort to obtain the social security number of the respondent prior to the hearing and, if unsuccessful, be prepared to describe to the Court reason for unavailability of the respondent's social security number.

(d) Each original petition for divorce or annulment shall include a designation by the petitioner whether the petitioner would like his or her divorce or annulment, if uncontested, to proceed with a hearing or without a hearing pursuant to 13 Del. C. § 1517 so long as all requirements to proceed without a hearing have been met.

(e) Any prayer for ancillary relief permitted by 13 Del. C. ch. 15 may be included in the petition, answer or motion, where appropriate to the action.

History.

Amended, effective Sept. 1, 1987; Dec. 31, 1999, effective Jan. 30, 2000; Dec. 6, 2004; effective Jan. 30, 2012; effective Nov. 8, 2013; amended, Oct. 5, 2017, effective Jan. 1, 2018; Sept. 22, 2021, effective Dec. 1, 2021.

Rule 102. Sheriffs to whom writs shall be issued.

Omitted.

Rule 103. Mailing of petition.

Omitted.

Rule 104. Answer in contested divorce.

Omitted.

Rule 104.1. Scheduling; notice of hearings.

(a) When a hearing has been requested by the Petitioner in his or her Petition for Divorce or Annulment or by the Counter-petitioner, the Court Clerk shall schedule the petition for an uncontested divorce hearing.

(b) When the Petitioner has requested to proceed without an uncontested divorce or annulment hearing, the Court Clerk shall send the Petitioner a Notice once the case becomes trial ready. A case is deemed trial ready once any applicable period of separation has passed, the Respondent has been served, and the applicable Parent Education requirements have been satisfied. The Petitioner shall have twenty (20) days from the date on the Notice of Trial Readiness to file a Request to Proceed Without a Hearing and Affidavit in Support of the Request with the Court. If no Request and Affidavit are filed within twenty (20) days of the date of the Notice of Trial Readiness, the Court Clerk shall schedule the petition for an uncontested divorce or annulment hearing.

(c) Nothing in this Rule prohibits a Petitioner or Counter-petitioner from filing a Request to Proceed before receiving a Notice of Trial Readiness if the case is trial ready.

(d) Once an uncontested divorce or annulment hearing has been scheduled, a Petitioner may request to have his or her petition decided without a hearing by filing a Request to Proceed Without a Hearing and Affidavit in Support of the Request provided that the Request and Affidavit are filed prior to the date of the scheduled uncontested divorce or annulment hearing.

(e) A Request to Proceed without a Hearing shall be accompanied by (1) an Affidavit in support thereof, (2) if available, a copy of either the Notice of Trial Readiness or Notice of Hearing issued by the Court, and (3) a verification that a copy has been served on the Respondent.

(f) The Affidavit in Support of Request to Proceed Without a Hearing shall:

(1) Reaffirm the petition;

(2) Verify service of process on the Respondent;

(3) Verify the military status of the Respondent and advise whether Respondent has filed an Answer or a Waiver of his or her rights under the Servicemembers Civil Relief Act;

(4) Affirm any applicable periods of separation under Title 13, Chapter 15; and

(5) Affirm that the parties have not occupied the same bedroom or had sexual relations with each other with the last 30 days.

(g) Unless there has been appearance by respondent, an affidavit of nonmilitary service shall be presented at the hearing or filed in the action.

History.

Amended, Sept. 14, 2000, effective Nov. 1, 2000; Dec. 6, 2004; Sept. 22, 2021, effective Dec. 1, 2021.

Rule 104.2. Decrees of divorce and annulment.

(a) A decree of divorce or annulment shall be final immediately upon entry, subject to the right of appeal.

(b) A decree may incorporate by reference an agreement pursuant to a separate stipulation executed by the parties or their attorneys and approved by the Court. The agreement may include any matters incident to a marriage, separation, or divorce.

(c) Duplicate originals or certified copies of a decree entered in a divorce proceeding shall be furnished to each party following the entry thereof if a current address is known.

(d) Duplicate originals or certified copies of a decree entered in a contested proceeding shall not be made available to the parties earlier than the 31st day following the entry thereof and only then after the Clerk of the Court shall be satisfied from a letter addressed to the Clerk by the petitioner or petitioner's counsel that no proceedings are pending in this Court or on appeal challenging the decree. In the Clerk's discretion, the Clerk may require further proof or make independent inquiry to determine whether such proceedings are pending before releasing the decree.

History.

Amended, effective Dec. 20, 2012; Sept. 22, 2021, effective Dec. 1, 2021.

Rule 105. Necessity to pay costs.

Omitted.

XIII. Miscellaneous Provisions

Rule 106. Removal of causes from Court of Common Pleas.

Omitted.

Rule 107. Briefs; letter memoranda.

(a) *Number.* The original and a copy of all briefs and letter memoranda shall be filed with the Clerk of the county in which the case is pending, and the Clerk shall deliver the original of each brief to the appropriate judge; if more than one judge is sitting at the argument of a case, sufficient number of copies shall be filed for delivery to each additional judge. A copy of every letter from counsel to the Court containing argument shall be sent to the Clerk for filing in the cause.

(b) *Time of filing.* Unless otherwise ordered by the Court, all briefs and letter memoranda shall be filed and copies supplied to counsel for the opposing parties not less than 5 days before the argument to which they pertain, if any.

(c) *Form.* All briefs and letter memoranda shall contain the following information:

(1)a. The name of this Court.

b. The title of the case and its number in this Court.

c. The name and addresses of counsel for the party submitting the brief with the office addresses of any counsel resident outside the State.

(2) Briefs may be printed, typed, or handwritten and reproduced by any duplicating or copying process which produces a clear, black image on opaque, unglazed white paper. Carbon copies of briefs may not be submitted without permission of the Court. All printed matter must appear in at least 11 point type on opaque, unglazed paper.

(3) All briefs shall be firmly bound at the left margin. Printed briefs shall have pages approximately 7 by 9½ inches. Briefs produced by any other process shall have pages not exceeding 8½ by 11 inches with double spacing between each line of text except for quotations and footnotes. Side margins of briefs shall be not less than 1½ inches.

(4) It is permissible for any brief or legal memorandum to include material printed, typed, or handwritten on 1 side or both sides of the page, provided legibility is maintained.

(5) *Form of citations.* The following shall be the form of citations:

(i) *Reported Opinions.* The style of citation shall be as set forth in "The Bluebook: A Uniform System of Citation," with no reference to the State Reporter Systems or other parallel citations. For example:

Melson v. Allman, 244 A.2d 85 (Del. 1968).

Prince v. Bensinger, 244 A.2d 89 (Del. Ch. 1968).

State v. Pennsylvania R.R. Co., 244 A.2d 80 (Del. Super. Ct. 1968).

Jones v. Jones, 244 A.2d 78 (Del. Fam. Ct. 1968).

Cases with citations to computer reported systems; e.g., Westlaw, Lexis, and Fastcase shall be cited as set forth below:

LEXIS Citation Form: *C. C. C. v. A. C. S.*, 2017 Del. Fam. Ct. LEXIS 16 (Del. Fam. Ct. Aug. 29, 2017).

Westlaw Citation Form: *C. C. C. v. A. C. S.*, 2017 WL 3867826 (Del. Fam. Ct. Aug. 29, 2017).

Fastcase Citation Form: *C. C. C. v. A. C. S.*, File No.: CS03-06009, Petition No. 17-10754 (Del. Fam. Ct. Aug. 29, 2017) (Fastcase).

(ii) *Unreported Opinions.* The style of citation shall be as set forth below:

Delaware Citation Form: *Fox v. Fox*, Del., No. 510, 1997, Berger, J. (May 14, 1998).

C. C. C. v. A. C. S., Del. Fam., File No. CS03-06009, Newell, C.J. (Aug. 29, 2017).

(iii) *Other Authority.* The style of citation to any other type of authority, including but not limited to statutes, books, and articles, shall be as set forth in "The Bluebook: A Uniform System of Citation."

(d) *Contents.* All briefs shall contain the following matter arranged in the following order:

(1) A table of contents or index.

(2) A table of citations arranged alphabetically and indicating the pages of the brief on which each cited authority appears.

(3) In the first brief of each party, a statement of the case, including a statement of the nature of the proceedings and a concise chronological statement, in narrative form, of all relevant facts with page references to the transcript of testimony, if any, and to any pleadings and exhibits.

(4) A statement of the questions involved.

(5) Argument, divided into sections under appropriate headings, one section to be devoted to each of the questions involved.

(e) *Failure or neglect to file briefs.* If any brief or letter memorandum is not served and filed within the time and in the manner required by these Rules or in accordance with any order of the Court or stipulation of counsel, the Court may, in its discretion, dismiss the proceeding if the petitioner is in default, consider the motion as abandoned, or summarily deny or grant the motion, such as the situation may present itself, or take such other action as it deems necessary to expedite the disposition of the case. Upon the showing of good cause in writing, the Court may permit late filing of any of the aforesaid papers and pursuant to a written rule or order. This Rule shall not be deemed to affect any other Rule or Rules of the Court specifically providing for the time in which to file motions to which there may be attached briefs, affidavits and/or memoranda.

(f) *Unreported opinions.* If an unreported or memorandum opinion is cited, a copy thereof shall be attached to the brief, and the file number in which it was filed shall be stated. If such opinion does not contain a sufficient statement of the facts to demonstrate its pertinency to the pending argument, a statement of the facts shall also be attached to the brief. If the citation is first made in a reply brief, the opposing party may discuss the opinion at oral argument, if any, or, upon application made promptly thereafter, may be given the opportunity to do so in writing.

(g) *Length of briefs.* Without leave of Court, an opening or answering brief shall not exceed a total of 35 pages and a reply brief shall not exceed 20 pages, exclusive of appendix. In the calculation of pages, the material required by paragraphs (d)(1) and (2) of this Rule is excluded and the material required by paragraphs (d)(3) through (5) of this Rule is included.

History.

Amended, effective Sept. 1, 1987; Oct. 8, 2018, effective Jan. 2, 2019.

Rule 108. Sureties.

Omitted.

Rule 109. Complaint.

Omitted.

Rule 110. Condemnation cases; designation of proposed commissioners and formation of calendar.

Omitted.

Rule 111. Termination of parental rights and adoption.

(a) Petitions for termination of parental rights and for adoption, and the proceedings thereon, shall conform to these Rules to the extent applicable and to the requirements of the applicable statutes. All such matters shall be heard privately by the Court and the identity of the parties shall not be disclosed in the Court's published opinion unless the Court determines otherwise for good cause shown.

(b) All foreign adoption filings in which the original birth certificate and any and all other pertinent foreign documents are in a foreign language must be accompanied by a translation of the documents into the English language. Said translation must include a certification that it is a true and correct translation of the documents.

(c) In termination of parental rights cases in which notice to the father must be provided by publication and in which the mother of the child has consented to the termination, the name of the mother shall not be provided in the publication. The publication shall include language indicating that the father can obtain the name of the mother by contacting the Family Court in the county in which the action was filed.

History.

Amended Aug. 31, 1999, effective Sept. 30, 1999.

Rule 112. Proceedings in forma pauperis.

Upon application of the party claiming to be indigent, the Court may authorize the commencement, prosecution or defense of any civil action or civil appeal without prepayment of fees or deposit for costs or security therefor, by a person who makes affidavit of inability to pay such costs or give security therefor. Such affidavit shall state the nature of the action or defense and affiant's belief that the affiant is entitled to redress, and shall state sufficient facts from which the Court can make an objective determination of the petitioner's alleged indigency. The Court may in its discretion conduct a hearing on the question of indigency.

History.

Added, effective Sept. 1, 1987; amended Sept. 22, 2021, effective Dec. 1, 2021.

XIV. Child Dependency, Neglect and Abuse Proceedings

A. Rules applicable to all proceedings involving dependent, neglected, and/or abused children in DSCYF custody

Rule 200. Scope.

These rules govern the procedures of the Family Court regarding dependency, neglect, and abuse Petitions for Custody filed by the Department of Services for Children, Youth and their Families ("DSCYF") pursuant to 13 Del. C., Ch. 25.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 201. Construction and enforcement of rules.

These rules shall be liberally construed to accomplish the purpose of achieving safety, stability, and well-being for dependent, neglected or abused children.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 202. Extension of time and continuances.

Extensions of time and continuances beyond the times specified in this section of the rules shall be granted only for good cause shown.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 203. Scheduling of subsequent proceedings.

At or before the conclusion of each hearing a subsequent hearing date shall be set if possible and necessary. Mailed notice is not required when notice of the next hearing date is contained in an order of the Court or actual notice is given to the parties at the hearing.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 204. Commencement of action.

(a) DSCYF custody proceedings shall be commenced by:

(1) DSCYF filing in this Court a written petition setting forth the facts verified by affidavit in accordance with 13 Del. C., Ch. 25;

(2) A verbal request by DSCYF for an emergency ex parte Order for custody of a child verified by verbal affidavit in accordance with 13 Del. C. § 2512. DSCYF shall thereafter file a petition and verified affidavit with the Court by noon the following business day; or

(3) The Court, by written or verbal order, sua sponte grants custody of a child to DSCYF as a result of another proceeding in this Court. Upon the entry of the sua sponte order, DSCYF shall be notified of the Court's action and DSCYF shall thereafter file a petition and verified affidavit with the Court by noon the following business day.

(b) A copy of the petition shall be served upon the respondent(s) pursuant to Rule 4.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 205. Notice to parents of right to counsel.

(a) At the time of service of process on a parent by personal service, the parent shall be notified in writing that if the parent is unable to afford counsel and wishes to have counsel represent him/her in this action, the parent shall complete an application for the appointment of counsel. Upon receipt of the parent's application, the Court shall determine if the parent qualifies for court appointed counsel.

(b) In the event that a parent cannot be personally served with a copy of the summons, complaint, and application for the appointment of counsel, then notice of the application for the appointment of counsel, in a form approved by the Court, shall be included in the notice used for publication to complete service of process on the parent.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 206. Appointment of counsel for the parent.

(a) A parent, determined by the Court to be indigent, may have counsel appointed by the Court during the parent's initial appearance on a petition, or at such other time as deemed appropriate by the Court.

(b) In considering the appointment of counsel, the Court shall consider: the degree to which the loss of parental rights are at stake; the risk of an erroneous deprivation of those rights through the dependency proceedings; and the interest of DSCYF as to the ultimate resolution.

(c) In the event a parent is entitled to appointment of counsel and declines court appointed counsel, such waiver shall be noted on the record or in the Court's Order.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 207. Appointment of Guardian ad Litem, Court Appointed Special Advocate, or counsel for the child.

(a) The Court shall appoint an attorney authorized to practice law in this state or a Court Appointed Special Advocate ("CASA") to represent the best interests of the child.

(b) The Court may appoint an attorney authorized to practice law in this state to represent the wishes of the child.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 208. Notice to foster caregivers.

Notice of any proceeding and of the opportunity to be heard at any proceeding shall be provided to current foster parent(s), pre-adoptive parent(s), or relative caregiver(s) of the child by DSCYF. This notice and the right to be heard shall not be construed to entitle the foster parent(s), pre-adoptive parent(s), or relative caregiver(s) to be a party to the action.

History.

Amended, effective Sept. 11, 2007; Aug. 28, 2008; July 25, 2009; Jan. 28, 2015, effective Apr. 20, 2015.

Rule 209. Contrary to the child's welfare.

At the time of the entry of the first order which removes the child from the home, the Court shall make a written determination whether continuation in the home would be contrary to the welfare of the child or that placement would be in the best interests of the child.

History.

Adopted Jan. 28, 2015, effective Apr. 20, 2015.

Rule 210. Determination of reasonable efforts.

(a) The Court shall make a written determination within sixty (60) days from the date the child is removed from the home whether reasonable efforts were made to maintain the family unit and prevent the unnecessary removal of the child from his or her home.

(b) The Court shall make a written determination at the Preliminary Protective Hearing, and at such other times as the Court deems appropriate, whether DSCYF has used reasonable efforts to place siblings together, unless DSCYF documents that such joint placement would be contrary to the safety or well-being of any of the siblings;

(c) The Court shall make a written determination at regularly scheduled hearings, whether DSCYF has used reasonable efforts to effect the safe reunification of the child and family and to provide for frequent visitation or other ongoing interaction between siblings, unless DSCYF documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings.

(d) The Court shall make a written determination whether DSCYF has used reasonable efforts to make and finalize the permanency plan in effect no later than twelve (12) months from the time the child "enters foster care", unless there has been a judicial determination that DSCYF is not required to offer reunification services to the parent(s). A similar determination shall be made every twelve (12) months thereafter. For the purposes of these rules, the date a child has "entered foster care" shall mean the earlier of:

(1) A judicial finding in an adjudicatory order that the child is dependent, neglected or abused; or

(2) Sixty (60) days after DSCYF is granted custody and the court orders physical or constructive removal of the child from his or her parent or relative.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 211. Notification to relatives.

The Court shall determine at a hearing whether DSCYF used due diligence within thirty (30) days of the removal of the child from the home to identify and to provide notice to all grandparents, and adult relatives of the child (including any other adult relatives suggested by a parent), subject to exceptions due to family or domestic violence.

History.

Adopted Jan. 28, 2015, effective Apr. 20, 2015.

Rule 212. Emergency removal of a child.

(a) When emergency removal of a child from the home is sought by DSCYF during court operating hours, after considering the petition and affidavit, a Judge shall order physical or constructive removal of the child from the parent or specified relative and emergency temporary custody to DSCYF, pursuant to 13 Del. C. § 2512.

(b) When emergency removal of a child from the home is sought by DSCYF outside court operating hours, DSCYF shall contact the designated on-call Judge and a Judge shall verbally order physical or constructive removal of the child from the parent or specified relative and emergency temporary custody to DSCYF, pursuant to 13 Del. C. § 2512. The Court shall thereafter issue a written Order as soon as practical.

(c) When emergency removal of a child from the home is requested, DSCYF shall file a petition and affidavit with the Court no later than noon of the following business day.The Court shall schedule the

DSCYF petition as determined appropriate for either a Preliminary Protective Hearing within ten (10) days of the filing, or an Adjudicatory Hearing within thirty (30) days of the filing.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 213. Motion to change legal custody or permanency plan; aggravated circumstances; motions in general.

(a) Whenever a party seeks a change in legal custody pursuant to 13 Del. C. § 2513, the party shall file a motion notifying the Court and all parties at least fifteen (15) days prior to the next scheduled hearing, except where good cause is shown why such notice could not be timely filed. The motion shall state the basis for such change in legal custody.

(b) Whenever a party seeks a change in the permanency plan established under Rule 216, the party shall file a motion notifying the Court and all parties at least fifteen (15) days prior to the next scheduled hearing, except where good cause is shown why such notice could not be timely filed. The motion shall state the basis for such change in the permanency plan.

(c) Whenever a party seeks a permanency plan other than reunification with a parent due to aggravating circumstances as set forth in 13 Del. C. § 1103(d), the party shall file a motion notifying the Court and all parties at least fifteen (15) days prior to the next scheduled hearing, except where good cause is shown why such notice could not be timely filed. The motion shall state the applicable aggravating circumstance and shall request that DSCYF be relieved of any obligation to pursue a permanency plan of reunification with a parent. When considering this motion, the burden of proof shall be clear and convincing evidence.

(d) All other motions shall be filed at least fifteen (15) days prior to the next scheduled court hearing, unless good cause is shown.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 214. Preliminary protective hearing. (10 day hearing*Denotes time guidelines reflective of the Adoption and Safe Families Act, which can be adjusted as deemed necessary by the Court.).

(a) A Preliminary Protective Hearing shall be held before a Judge within ten (10) days of the entry of the ex parte order; or if an ex parte order of custody is not granted but the Court finds that priority scheduling is warranted, a Preliminary Protective Hearing shall be scheduled within ten (10) days of the filing of the petition.

(b) At the Preliminary Protective Hearing, the Court shall determine, in writing, whether the evidence establishes that probable cause exists to believe that:

(1) As to each parent, the child is dependent, neglected, or abused, or there is a substantial imminent risk thereof, and

(2) It is in the best interests of the child to be in the custody of DSCYF.

(c) If the Court finds that probable cause is established as specified in (b), the Court shall continue the custody order in effect, if an ex parte order has been entered granting custody to DSCYF, or, if no ex parte order has been entered, enter an order which grants custody to DSCYF, orders physical or constructive removal of the child from his or her parent or relative, and complies with Rule 209 pending an Adjudicatory Hearing.

(d) If the Court finds probable cause as specified in subsection (b), has not been established with respect to each parent, the petition shall be dismissed and the child returned to a custodial arrangement in a time and manner determined by the Court to be reasonable and in the best interests of the child.

(e) If the Court finds that probable cause has been established as specified in (b) with respect to only one parent, the Court may rescind custody to the fit parent in a custodial arrangement and in a time and manner as determined by the Court to be in the best interests of the child.

(f) The finding of probable cause may be based in whole or in part on hearsay evidence.

(g) The Court may enter a visitation and/or contact order as provided by Title 13, Chapter 25 of the Delaware Code.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 215. Adjudicatory hearing. (30 days*Denotes time guidelines reflective of the Adoption and Safe Families Act, which can be adjusted as deemed necessary by the Court.).

(a) An Adjudicatory Hearing shall be held within thirty (30) days of the conclusion of the Preliminary Protective Hearing.

(b) The parties may agree to continued custody of the child with DSCYF so long as all parties knowingly and voluntarily enter into the agreement, and consent to the findings required by 13 Del. C. § 2512(b). The ground(s) for these findings shall be stated on the record and documented in the Court's written Order.

(c) If the Court finds the elements of 13 Del. C. § 2512(b) are established, the Court shall enter an order which grants or continues custody of the child to DSCYF, and complies with Rule 210.

(d) If the Court finds that the elements of 13 Del. C. § 2512(b) are not established, the petition shall be dismissed and the child returned to a custodial arrangement in a time and manner determined by the Court to be reasonable and in the best interests of the child.

(e) If the Court finds that the elements of 13 Del. C. § 2512(b) have been established with respect to only one parent, the Court may rescind custody to the fit parent in a custodial arrangement and in a time and manner as determined by the Court to be reasonable and in the best interest of the child.

(f) If the Court finds that the elements of 13 Del. C. § 2512(b) have been established, the Court shall establish or modify the nature and extent, if any, of visitation, contact, or sharing of information between the parent and the child in accordance with 13 Del. C. § 2512(c).

(g) If the Court continues custody with DSCYF and a parent desires reunification with the child, the Court shall order DSCYF to prepare a case plan for the child and the parent. The case plan shall be presented at the Dispositional Hearing and shall contain a statement of the proposed permanency plan for the child.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 216. Dispositional hearing. (70 days*Denotes time guidelines reflective of the Adoption and Safe Families Act, which can be adjusted as deemed necessary by the Court.).

(a) A Dispositional Hearing shall be held within seventy (70) days of the physical or constructive removal of the child from the home.

(b) With the consent of the parties, a Dispositional Hearing may be conducted immediately following the Adjudicatory Hearing.

(c) At the Dispositional Hearing, the Court shall establish a permanency plan for the child. Concurrent permanency plans may also be implemented when appropriate. The permanency plans available to the child are:

(1) reunification with a parent

(2) adoption

(3) guardianship

(4) permanent guardianship

(5) placement in Another Planned Permanent Living Arrangement ("APPLA") where DSCYF has documented to the Court a compelling reason why every other permanency goal is not in the child's best interest.

(d) If the proposed permanency plan is reunification with a parent, a case plan shall be developed by DSCYF, in consultation with all parties. The case plan shall be submitted to the Court and the parties five (5) days prior to the Dispositional Hearing.

(e) If the proposed permanency plan is not reunification with a parent, a motion shall be filed pursuant to Rule 213.

History.

Amended, effective Oct. 24, 2007; Jan. 28, 2015, effective Apr. 20, 2015.

Rule 217. Review hearings. (90 days*Denotes time guidelines reflective of the Adoption and Safe Families Act, which can be adjusted as deemed necessary by the Court.).

(a) A Review Hearing shall be held within ninety (90) days of the Dispositional Hearing. Subsequent Review Hearings shall be held at the Court's discretion until a Permanency Hearing is held.

(b) At the Review Hearing, the Court shall evaluate and subsequently issue a written order, regarding:

(1) the safety of the child;

(2) the necessity for and appropriateness of the child's placement;

(3) the delivery of services to the child and whether the needs of the child, including but not limited to educational, medical and mental health, are being met;

(4) where the permanency plan is reunification with a parent, the extent of compliance with the case plan by the parent and DSCYF;

(5) the extent of progress made toward alleviating or mitigating the causes necessitating the placement of the child into care;

(6) the projected date of the safe return of the child to the parent or placement for adoption, guardianship or permanent guardianship; and

(7) whether independent living services are appropriate and are being provided pursuant to Rule 222 and 29 Del. C. § 9003(14).

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 218. Permanency hearing. (twelve months*Denotes time guidelines reflective of the Adoption and Safe Families Act, which can be adjusted as deemed necessary by the Court.).

(a) A Permanency Hearing may be held upon motion by any party or scheduled by the Court, but in no event shall be later than twelve (12) months from the time the child has "entered foster care," as defined by Rule 210(d), or within thirty (30) days of a judicial determination that DSCYF is not obligated to provide a permanency plan of reunification with a parent under Rule 213, unless the requirements of the Permanency Hearing are fulfilled at the hearing in which the Court determines reasonable efforts to reunify the child and family are not required.

(b) At the Permanency Hearing or through separate interview under 13 Del. C. § 724, the Court shall consult with the child regarding the permanency plan, in an age appropriate manner, which may include as the Court deems necessary and appropriate consultation with and representations of the child's GAL or CASA.

(c) At the Permanency Hearing, the Court shall determine, and enter a written Order finding, whether DSCYF has made reasonable efforts to finalize the permanency plan in effect for the child. In determining whether DSCYF has exercised reasonable efforts, the Court shall consider:

(1) whether the current permanency plan should continue, a new plan should be adopted, or a concurrent plan should be pursued or established;

(2) the safety of the child;

(3) the appropriateness of the child's placement;

(4) the child's educational, medical, and mental health needs;

(5) where the permanency plan is reunification with a parent, the extent of compliance with the case plan by the parent and the provision of services by DSCYF;

(6) the extent of progress made toward alleviating or mitigating the causes necessitating placement in foster care;

(7) if DSCYF concludes, after considering reunification, adoption, guardianship, or permanent guardianship, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, DSCYF must document to the Court the compelling reason for the alternate plan;

(8) the projected date of safe return of the child to the parent or placement for adoption, guardianship or permanent guardianship; and

(9) whether independent living services should and are being provided pursuant to Rule 222 and 29 Del. C. § 9003(14).

(d) At the Permanency Hearing, the Court shall consider any motion filed pursuant to Rule 213 to change the permanency plan in effect. The permanency plans available to the child are set forth in Rule 216(c).

(e) In any case where the Permanency Hearing continues the permanency plan of reunification with a parent, the Court shall schedule a review hearing within ninety (90) days.

History.

Amended, effective Aug. 28, 2008; Jan. 28, 2015, effective Apr. 20, 2015.

Rule 219. Permanency review hearings.

(a) Permanency Review Hearings shall be held at least every six (6) months after the Permanency Hearing, while the child remains in DSCYF custody.

(b) The Court shall determine at each Permanency Review Hearing the appropriateness of the child's permanency plan established under Rule 216(c) and reviewed under Rule 218, and shall consider any motions to change the permanency plan filed pursuant to Rule 213.

(c) The Court's written Order shall address the same findings as Rule 218.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

Rule 220. Post termination placement orders.

(a) Within sixty (60) days after the entry of the final termination order or decree for both parents, the Court may convene a hearing to review the proposed placement plan of the agency responsible for placement of the child. The placement plan, and any amendment to it, shall be submitted to the Court and the parties ten (10) days prior to the hearing. The plan shall include the following:

(1) a description of the agency's progress toward arranging an adoptive placement for the child;

(2) where adoptive parents have not already been selected, a schedule and description of steps to be taken to place the child for adoption; and

(3) a description of any barriers preventing placement of the child for adoption and how they should be overcome.

History.

Amended Jan. 28, 2015, effective Apr. 20, 2015.

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.

History.

Adopted Jan. 28, 2015, effective Apr. 20, 2015; amended Oct. 20, 2021, effective Jan. 1, 2022.

Rule 222. Independent living services.

(a) When independent living services are provided to a child by DSCYF directly or through a contracted agency, the Court shall evaluate the child's independent living services, and make findings, where applicable, regarding:

(1) financial stability;

(2) housing;

(3) medical benefits, including access to health care and other public benefits;

(4) employment and training;

(5) education; and

(6) community and individual connections to help support the youth.

(b) For any child at least 16 years of age, the Court shall ensure that DSCYF provides the child with a copy of his or her credit report annually and the child receives assistance in interpreting and resolving any inaccuracies in the report.

(c) At least 90 days prior to the child's 18th birthday, the Court shall ensure the parties have assisted the child in developing a transition plan that is personalized and includes housing, health insurance, education, mentors, continuing support services, work force supports and employment, health care decisions and option to execute a health care power of attorney.

(d) Prior to the child's 18th birthday, the Court shall ensure the child has been provided with a copy of his or her health and education records.

(e) Prior to the child's 18th birthday, the Court shall inquire as to whether the child is entitled to the expungement of any criminal charges and whether a Petition for expungement has been filed on behalf of the child.

History.

Adopted Jan. 28, 2015, effective Apr. 20, 2015.

B. Rules applicable to all proceedings in which the Department of Services for Children, Youth and Their Families is not the petitioner

Rule 223. Scope.

These rules govern the procedures of the Family Court regarding dependency, neglect and abuse petitions for custody, and petitions for guardianship where the department of Services for Children Youth and their Families is not the petitioner.

Rule 224. Commencement of action.

(a) Child dependency, neglect and abuse custody or a guardianship proceeding shall be commenced by filing in this Court a written petition setting forth the facts verified by affidavit in accordance with 10 Del. C. § 1003 and 13 Del. C. § 2322.

(b) The petition may be filed by any person having knowledge of the circumstances of child dependency, neglect or abuse. The petition shall be accompanied by a Custody Separate Statement.

(c) A copy of the petition shall be served upon the Respondent pursuant to Rule 4.

Rule 225. Emergency removal of a child.

When emergency removal of a child from the home or other emergency relief is sought during normal Court operating hours, relief may be awarded subject to the requirements of Family Court Civil Rule 65.2. In all cases in which a party other than the Department of Services for Children Youth and their Families (DSCYF) seeks ex parte removal of a child, the Court shall examine the Delaware criminal history of the parties prior to granting custody or guardianship, and may review a summary of the parties' history provided from the Division of Family Services, including substance abuse and mental health records. The Court's Order shall reflect the nature of the information obtained from the summary and the current DSCYF social worker assigned to the family, if applicable. The Court may require the appearance of the DSCYF social worker at trial. The Court's review of information provided by the Division of Family Services is for ex parte purposes only and is not a determination of admissibility of such information at a subsequent hearing.

History.

Amended July 14, 2020, effective Sept. 1, 2020.

Rule 226. Preliminary protective hearing.

(a) If an ex parte order is granted, a preliminary protective hearing shall be scheduled before a judge within 15 days of the entry of the ex parte order; or if an ex parte order of custody or guardianship is not entered but the Court finds that priority scheduling is warranted, a preliminary protective hearing shall be scheduled within 15 days of the filing of the petition. The Court shall determine whether the evidence demonstrates that probable cause exists to believe that immediate and irreparable harm will otherwise result. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(b) Upon a finding by the Court that probable cause exists to believe that immediate and irreparable harm will result, the Court shall continue the custody or guardianship order in effect if an ex parte order has been entered, or if no ex parte order has been entered, enter a temporary order of custody or guardianship to the petitioner pending an adjudicatory hearing in accordance with 10 Del. C. § 1009. If the Court does not find probable cause to believe continuation of the child in the home will result in immediate and irreparable harm, then the child shall be returned to the custody or guardianship of the parents or other caregiver who had the legal custody or guardianship authority by Court of competent jurisdiction and the matter shall be scheduled in the normal course of business.

History.

Amended, Oct. 8, 2018, effective Jan. 2, 2019.

Rule 227. Adjudicatory hearing.

(a) Unless a respondent(s) waives his or her right to an adjudicatory hearing and agrees to continued custody or guardianship of the child with the petitioner, an adjudicatory hearing shall be scheduled within 60 days of the entry of the preliminary protective order.

(b) If the Court finds by a preponderance of the evidence that a child is dependent, neglected or abused, an order in accordance with 10 Del. C. § 1009(b) shall be entered together with such other terms and conditions that may be set forth by the court.

(c) If the Court fails to find by a preponderance of the evidence that a child is dependent, neglected or abused, the petition shall be dismissed and the child returned to the care and control of the respondent at such time as determined reasonable by the court.

History.

Amended, Oct. 8, 2018, effective Jan. 2, 2019.

XV. Support Proceedings

Rule 300. Expedited procedures for support actions.

(a) *Expedited process; definition.*

(1) For any action in which a mediation conference is permitted under Rule 16.1(a), expedited process shall include the mediation conference together with a hearing before a master or commissioner if the mediation conference does not result in a permanent order for support.

(2) In all other proceedings requesting relief in the form of support pursuant to Chapter 5, and requesting relief pursuant to Chapters 4, 6 and 8 of Title 13 of the Delaware Code, including actions for modification of existing orders and proceedings alleging contempt of such orders, expedited process shall be the trial before a master or commissioner.

(b) *Expedited process; when required.* All actions for the determination, modification and enforcement of support obligations under Chapters 4, 5, 6 and 8 of Title 13 of the Delaware Code shall be scheduled and resolved by the use of expedited process as defined in Rule 300(a), unless the Court orders otherwise in accord with the criteria established under Rule 300(c).

(c) *Initial scheduling for trial before a judge; when allowed.* Upon motion of either party or recommendation of the court staff mediator or upon its own motion, the Court may order trial of the action scheduled initially before a judge, provided there is a prior existing order in effect or, in the case of a petition for non-support, an interim or temporary order and the Court finds one of the following:

(1) the support matter is so intrinsically tied to an action that must be heard by a judge that the use of expedited process would unduly delay the proceedings; or

(2) the identity of the parties, issues and evidence are so similar in nature that consolidation with an already scheduled matter would in fact expedite the resolution of the support issue; or

(3) a material legal issue must be resolved for which there is no legal precedent; or

(4) such good and substantial cause as the Court may find, consistent with the principle that support cases shall be heard in a timely manner.

History.

Amended Dec. 31, 1999, effective Jan. 30, 2000; Oct. 5, 2017, effective Jan. 1, 2018; Oct. 4, 2022, effective Jan. 1, 2023.

Rule 301. Petition requirements.

(a) Every petitioner in a child support or a paternity determination action shall provide the social security number of the petitioner and the respondent to be maintained in the case file. If the respondent's social security number is unknown to the petitioner and the petitioner is unable to obtain the respondent's social security number prior to filing the petition, the petitioner must so indicate to the Court. Further, the petitioner must make a good faith effort to obtain the social security number of the respondent prior to the hearing, and, if unsuccessful, be prepared to describe to the Court reason for the unavailability of the respondent's social security number.

(b) Every petitioner to a child support petition shall provide the social security number of the child(ren) at issue. If the child(ren) have not yet been assigned a social security number, the petitioner must apply for social security numbers for the children and make a good faith effort to have the child(ren)'s social security number(s) available prior to the entry of the Court's order.

History.

Adopted Dec. 31, 1999, effective Jan. 30, 2000; amended effective Nov. 8, 2013.

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) 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, DCSS may, pursuant to this rule, 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 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.

History.

Adopted, effective Apr. 11, 2007; amended, Nov. 10, 2016, effective Jan. 9, 2017; July 18, 2018, effective Dec. 1, 2018.

Rule 303. Hearings and records.

(a) All child support hearings and trials shall be conducted publicly unless in the Court's discretion there is sufficient reason to close such proceedings.

(b) In the interest of protecting sensitive identifying and confidential information, the privacy of records related to child support matters is governed by Rule 90.1.

History.

Adopted, effective Sept. 11, 2007.

XVI. Protection from Abuse Proceedings

Rule 400. Hearings.

All Protection from Abuse hearings and trials shall be conducted publicly unless in the Court's discretion there is sufficient reason to close the hearing.

History.

Adopted, effective Sept. 11, 2007.

Rule 401. Records.

All records of Protection from Abuse proceedings shall be open, unless in the Court's discretion there is sufficient reason to close the records.

History.

Adopted, effective Sept. 11, 2007.

XVII. Delaware Child Support Formula

Rule 500. Delaware child support formula; general principles.

(a) *Rebuttable presumption.*

(1) The Delaware Child Support Formula (the "Formula") shall serve as a rebuttable presumption for the establishment and modification of child support obligations in the State of Delaware. The Formula shall be rebutted upon a preponderance of the evidence that the results are not in the best interest of the child or are inequitable to the parties. Every contested order deviating from the Formula shall state the factual findings and reasoning for the deviation.

(2) Every contested order that rebuts the presumptive applicability of the Formula on grounds the results are not in the best interest of the children or inequitable to the parties shall be archived for analysis at the next quadrennial review and update as provided in subsection (b). Application of the evidentiary presumptions within the Formula (Rules 500-510) constitute the application of the Formula and not a deviation from the Formula.

(3) The Court may decline to adopt any agreement deviating from the Formula that is clearly contrary to the best interest of the child. Any consent order resolving new support or modification of support petitions must have attached a calculation pursuant to the Formula, whether it is one utilized or one from which there is a deviation.

(b) *Review, update, and adjustment.* The Delaware Child Support Formula shall be reviewed and updated no less than every four years with revisions implemented not later than February 1 of the year following each quadrennial review. The numerical values utilized in the Formula will be adjusted not later than February 1 of each year utilizing predetermined objective criteria. The Court will create appropriate forms, tables, and instructions to facilitate consistent and accurate application of the Formula.

(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.

(d) *Notice; Admissibility of Reports.*

(1) Any notice for mediation or a hearing to be conducted under the Formula shall include, in plain language, an advisory that parties are obligated to bring a Child Support Financial Disclosure Report pursuant to Rule 16(a) with adequate supporting documentation.

(2) Any notice for mediation or a hearing under this rule shall also advise the parties that quarterly wage reports provided by their employer(s) to the state and federal Departments of Labor may be presented in any case involving the Division of Child Support Services. The notice must advise the parties that these reports are available to the parties prior to the mediation or hearing upon request to the Delaware Department of Justice, Child Support Unit (DOJ). Contact information for the DOJ must be included in the notice.

(3) At any mediation or hearing conducted under the Formula, the Court may consider representations of income for each party as reported by employers to the state or federal Departments of Labor.

Income reports provided by the state or federal Departments of Labor shall be presumptively admissible evidence without further authentication. If the contents of a report admitted under this rule are materially contradicted by credible documentation of income or testimony during a hearing, or if a party did not receive notice that the income reports could be presented at the hearing, then the Court may in its discretion disregard the report or provide the parties at least ten (10) days to submit further documentation to resolve the discrepancy. All but the last four (4) digits of any Social Security number shall be redacted. Further redaction may occur upon leave of court for good cause shown.

(4) A fully executed Child Support Disclosure Report with authorized documentation may be admitted into evidence as a single exhibit subject to challenge of its individual components.

History.

Adopted, effective Jan. 1, 2011; amended Jan. 28, 2015, effective Apr. 20, 2015; Nov. 8, 2018, effective Feb. 1, 2019; July 1, 2020, effective Nov. 1, 2020; Dec. 6, 2022, effective Feb. 1, 2023.

Rule 501. Reasonable earning capacity.

(a) *General.* In determining each parent's ability to pay support the Court considers the health, income and financial circumstances, and reasonable earning capacity of each parent, the manner of living to which the parents had been accustomed as a family unit and the general equities inherent in the situation.

(b) *Actual income.* A parent employed at least 35 hours per week in a manner commensurate with his or her training, education, and experience shall be presumed to have reached his or her reasonable earning capacity.

(c) *Documented part-time employment.* A parent with documented earnings representing an average of fewer than 35 hours per week at employment otherwise commensurate with his or her training and experience shall be imputed the number of hours reasonably available either with parent's current employer or through similar employment but not less than 35 hours per week unless:

(1) The parent has medical limitations;

(2) More substantial employment has proven unavailable despite diligent efforts;

(3) Upon consideration of available hours and rates of pay, available full-time employment would not produce greater total earnings; or

(4) A child of the union has profound special needs inhibiting the support recipient's ability to maintain employment.

(d) *Imputed income.* Unemployment or underemployment that is either voluntary or due to misconduct, failure to provide sufficient documentation, or failure to appear for a hearing or mediation conference shall cause reasonable earning capacity to be imputed. In determining whether actual employment is commensurate with training and experience and when imputing income, the Court shall consider each parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors. Except as provided in subsection (c) of this Rule, imputed income shall be calculated at not less than 40 hours of wages each week.

(e) *Wage surveys.* The Court may take judicial notice of occupational wage surveys compiled by the United States Bureau of Labor Statistics (BLS) and the Office of Occupational and Labor Market Information (OOLMI) in the Delaware Department of Labor to impute or corroborate reasonable earning capacity.

(1) If a parent's reasonable earning capacity has not previously been established and the actual income expressed as an hourly wage exceeds the survey's "Entry" level wage (average of the lowest 30%) for the parent's occupation, then the rate of pay shall be presumed commensurate with the parent's training and experience.

(2) For imputation purposes, analysis should begin with the median wage for each occupation, but may be adjusted up or down between "Entry" and "Experienced" (average of the highest 70%) based upon the totality of the circumstances.

(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 "Entry" level wage statewide for all occupations as reported in the most recent edition of "Delaware Wages" published annually by the Delaware Department of Labor Office of Occupational and Labor Management Information (OOLMI) at 150 hours per month rounded to the nearest multiple of ten (10). This shall be effective February 1 of each year as provided in Rule 500(b).

(g) *Unemployment.* A person who receives unemployment compensation shall be presumed to have been terminated from employment involuntarily and without cause. Termination without receipt of unemployment compensation shall be presumed voluntary or for cause. Continued unemployment or underemployment in excess of 6 months shall be presumed voluntary.

(h) *Involuntary unemployment.* If a parent's unemployment or underemployment is found by the Court to be involuntary and not for misconduct, then the parent's reasonable earning capacity shall be presumed the greater of:

(1) One-half of the parent's previous reasonable earning capacity;

(2) Any Unemployment Compensation received; or

(3) Minimum Income pursuant to subsection (f) of this Rule.

(i) *Disability.* When a person has been determined to be eligible for Social Security Disability Income (SSDI) or Supplemental Security Income (SSI), this determination shall be substantive evidence of a disability. Whether a person has the ability to provide support or to earn additional income shall be determined upon consideration of the nature and extent of the disability, cash and other resources available and the totality of the circumstances. A parent who receives SSI shall not be imputed income or assessed a child support obligation unless the parent has income or an earning capacity independent of his or her SSI entitlement.

(j) *Earnest re-employment.* Parents who suffer a loss of income either voluntarily or due to their own misconduct may have their support obligation calculated based upon reduced earnings after a reasonable period of time if the parent earnestly seeks to maximize earning capacity.

(k) *Incarcerated parents.* Service of a term of incarceration that exceeds 180 days of continuous confinement may be considered as evidence of a diminished earning capacity unless the individual has independent income, resources, or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances.

(*l*) *Secondary Income.* Secondary income includes earned income from second jobs and passive income from interest, dividends, and trusts. Employment is "secondary" if the parent's primary employment is substantially full time and consistent with the parent's reasonable earning capacity. Whether secondary income is included in the determination of support is determined on a case-by-case basis and:

(1) Existing secondary employment income is more likely to be included if it:

(i) Was historically earned or received especially when or if the parents resided together and significantly enhanced the family's standard of living;

(ii) Substantially raises the standard of living of the parent or the parent's household to an extent not shared by the child or children before the court; or

(iii) Is necessary to meet the minimum needs of the child or children before the court; and

(2) Existing second employment income is more likely to be excluded if it:

(i) Merely allows the parent to "make ends meet" especially regarding the needs of other dependent children;

(ii) Is used to pay extraordinary medical or educational expenses (including those of an emancipated child) or to service extraordinary indebtedness;

(iii) Is necessary because the other parent of the child or children before the court is not providing adequate support;

(iv) Substantially conflicts with the parent's contact with the child or children before the court; or

(v) Was historically saved or reinvested.

(3) Fluctuating income and the 40-hour work week. All income from primary employment is included in determining child support. The fact that income may fluctuate or that wage income may exceed 40 hours per week is not a basis for exclusion from income. Where income fluctuates, the Court must determine average monthly income likely to prospectively recur.

(4) Forsaken second jobs and overtime. To leave a second job or to decline prospective overtime without just cause is not a substantial change of circumstance for the purpose of a modification within two and one-half years. However, in the context of a new support petition or a modification beyond two and one-half years, previously earned second job income or overtime will not be imputed to a parent as long as that parent's actual income is substantially full-time and consistent with reasonable earning capacity.

(m) *Financial report.*

(1) Failure to submit a Child Support Financial Disclosure Report pursuant to Rule 16(a) with adequate supporting documentation risks dismissal or an adverse outcome. Adequate supporting documentation commonly includes but is not limited to each parent's most recent tax returns, W-2 Forms, three most recent pay stubs, documentation of payments from Social Security, Unemployment Compensation, Worker's Compensation, a recent physician's statement as to any claimed disability, and receipts for child-care payments and private school costs.

(2) Individuals with self-employment income shall include all schedules and forms required to be filed with the tax return with corroborating documentation for significant expense categories and, to the extent that tax returns do not reflect current earnings or income, other reliable documentation of that income (such as recent bank statements).

(3) Individuals receiving income from a business organization in which they are a partner or significant shareholder also shall include the organization's tax return and supporting schedules and forms, and to the extent that tax returns do not reflect the organization's current earnings or income, other reliable documentation of that income (such as recent bank statements).

(n) *Nontaxable Income Adjustment.* Alimony awarded or modified after 2018, nontaxable proceeds from a private or public entity paid to a parent due to an injury or disability, personal injury awards or settlements determined by the Court to be income for support purposes, military allowances, or any cash entitlement not based on need that enhances the standard of living of a parent but is not taxable under federal law shall be increased by 25% to estimate the taxable earned income equivalent. This shall not apply to payments made by the Social Security Administration.

History.

Adopted, effective Jan. 1, 2011; amended Jan. 28, 2015, effective Apr. 20, 2015; Oct. 5, 2017, effective Jan. 1, 2018; Nov. 8, 2018, effective Feb. 1, 2019; Oct. 20, 2021, effective Jan. 1, 2022; Dec. 6, 2022, effective Feb. 1, 2023.

Rule 502. Net available income.

(a) *Net income.* Net available income for each parent is determined by subtracting limited deductions and a Self Support Allowance from gross income. The result is discounted further by a designated percentage based upon the number of other children each parent is obligated to support. Obligations are calculated on a monthly basis and all values should be rounded to the nearest whole number. Gross income includes:

(1) *Salary and wages.* This includes salaries, wages, commissions, bonuses, overtime and any other income (other than self-employment income) that is subject to Federal Retirement or Medicare taxes. For child support purposes, it also includes all income and benefits identified by an employer as "pre-tax" or other similar designation.

(2) *Self employment.* This includes all income earned as an independent contractor and subject to federal self-employment tax.

(3) *Unearned.* This includes all other taxable income including but not limited to dividends, severance pay, pensions, interest, trust income, annuities, capital gains, workers' compensation, unemployment compensation, disability insurance benefits, prizes, and alimony or maintenance received.

(4) *Nontaxable.* This includes all other income not subject to income taxation such as:

(i) Most Social Security Disability (SSD) or retirement benefits and some pension/disability benefits issued by private corporations. Such benefits paid to a child on account of a parent's disability are included in that parent's income but offset the Net Monthly Obligation of that parent as set forth in Rule 506 dollar for dollar. Public need-based benefits, such as Supplemental Security Income (SSI), paid to a child due to the child's own disability shall not be included as income to either parent.

(ii) *Military allowances.* Military allowances in addition to pay shall be treated as income. However, military clothing allowances shall be excluded and a servicemember's housing allowance (BAH) shall be limited to the amount that he or she would receive if stationed at Dover Air Force Base.

(5) *Exceptions.*

(i) Expense reimbursements or in-kind payments received in the course of employment, self-employment, or operation of a business should be counted as income only if they are significant and reduce personal living expenses.

(ii) A cost-of-living stipend given to an employee as compensation due to relocation to a high cost location will not be included as income as long as it is clearly identified on pay documents.

(iii) Adoption subsidies disbursed pursuant to 42 U.S.C. § 673 or a subsequent or similar statute shall not be counted as income.

(b) *Taxes.*

(1) Except as otherwise provided in subsection (2) herein, taxes, either actual or estimated, shall not be deducted in determining available income.

(2) Self-employed parents who establish with documentation actual payment of self-employment taxes shall have their available income reduced a designated amount. That amount shall be 7% of self-employment income to the extent that the sum of taxable wages and self-employment income does not exceed the Social Security wage base.

(c) *Deductions.* Allowable deductions include:

(1) *Medical insurance.* Medical insurance premiums (including COBRA payments) paid by either parent (but not guardian or stepparent) and regardless of which persons are covered by the policy are deductible unless the policy also covers the children of the union and are includable as an element of primary support pursuant to Rule 503(b)(3).

(2) *Pension.* All mandatory retirement contributions are deductible. If that amount is less than 5% of gross income, voluntary contributions to a 401(k) or similar IRS approved retirement plan of up to 5% (including mandatory) of gross income also may be deducted.

(3) *Union dues.* Average monthly amount paid to any labor organization as a condition of employment is deductible.

(4) *Alimony paid.* Court ordered periodic cash payments for the support of a former spouse shall be deductible from gross income.

(5) *Disability insurance.* Disability insurance premiums withheld from pay or purchased privately for purposes of income replacement (but not to guarantee credit card, mortgage or other third-party obligations) shall be deductible in determining net income available for child support.

(6) *Other.* Other mandatory unreimbursed business expenses such as supplies required by the employer to be purchased are deductible.

(d) *Self Support Allowance.* The Self Support Allowance shall be 120% of the Federal Poverty Guideline for a one-person household as published in the Federal Register by the United States Department of Health and Human Services rounded to the nearest multiple of ten ($10). The allowance shall be adjusted in January of each year.

(e) *Adjustment for other dependent.* Each parent's available net income will be diluted in recognition of his or her duty of support to other dependent children, excluding step-children, not of this union either in or out of the household by multiplying net income after the subtraction of the Self Support Allowance by 70%. Children outside a parent's household should be counted only if there is a court order for current support or proof of a pattern of support. A parent's support of an adult dependent may be similarly recognized, but only if the parent is legally obligated to provide that support as established either by other court order or the agreement of the parties before the Court.

History.

Adopted, effective Jan. 1, 2011; amended Jan. 28, 2015, effective Apr. 20, 2015; Nov. 8, 2018, effective Feb. 1, 2019; Dec. 6, 2022, effective Feb. 1, 2023.

Rule 503. Primary support need.

(a) *Primary share.* Each parent's Net Available income will be expressed as a percentage to be known as the Primary Share of the parents' combined Net Available income. The percentage will be derived on a case-by-case basis by dividing each parent's Net Available income by their combined Net Available income. This is to allow the children's primary support needs to be equitably allocated between the parents and to facilitate the sharing of extraordinary medical expenses. If the person seeking support is not a parent, then the Primary Share for the obligor before the Court is 50%.

(b) *Primary support.* Each parent's Primary Support Obligation is determined by multiplying their Primary Share percentage by the sum of all of the elements of the children's primary support need. The elements of the primary support need are:

(1) *Primary allowances.* The primary allowances shall be comprised of two components, a per household component and a per child component:

(i) The per household component is 25% of the Self Support Allowance minus $25.

(ii) The per child component is 25% of the Self Support Allowance plus $20.

(iii) Each component shall be rounded to the nearest multiple of ten (10). Half child allowances may be rounded to a multiple of five (5).

(iv) To determine the allowance for each household, multiply the number of children by the per child component, and then add the per household component to the result. The allowances shall be adjusted in January of each year.

(2) *Child care.* The Formula facilitates the equitable allocation of all expenses incurred for the care and supervision of the children of this union by either parent required for the parent to work. No hypothetical or attributed child-care costs are permitted. Cancelled checks, child-care contracts, receipts, and other instruments created in the usual course of business shall be admissible in addition to the testimony of the parties to prove child-care expenses.

(3) *Health insurance premiums.* A portion of premiums paid by a party for health insurance covering dependent children of the union shall be included as an element of primary support as follows:

(i) That portion shall be three-quarters ($^3/_4$) of a party's out-of-pocket premium unless the party has other minor children to support as described in Rule 502(e) in which case the proportion will be one-half ($^1/_2$).

(ii) This may include insurance premiums paid by a guardian or through a stepparent. However, no recognition will be given for a premium paid by a guardian or through a stepparent if the policy covers any of the guardian's or stepparent's own children. The portion allocated to the children by way of a stepparent shall be as in subsection (1) by reference to the parent to whom the stepparent is married. The portion allocated to the children by way of a guardian shall be controlled by reference to whether or not the guardian is also guardian to other children of other unions.

(4) *Other primary expenses.* The special needs of some children require parents to regularly incur other expenses including, as permitted by subsection (c), private school.

(c) *Private school.* Private or parochial school expenses shall be included as a primary expense only where:

(1) The parties have adequate financial resources, and

(2) After consideration of the general equities of the particular case including consideration of whether:

(i) The parents previously agreed to pay for their child(ren)'s attendance in private school; or

(ii) The child has special needs that cannot be accommodated in a public school setting; or

(iii) Immediate family history indicates that the child likely would have attended private or parochial school but for the parties' separation.

(d) *Shared equal placement.* Shared Equal placement (at least 164 overnights annually in each household) is established by order of the court, by written agreement, or in the absence of any order or written agreement by other evidence. Additionally,

(1) Each child is counted as one half in each household;

(2) The Court shall establish additional primary support allowances to accommodate any such partial allocation of placement;

(3) Any modification of an order based upon a change between primary and shared equal placement must be proven by court order or written agreement or, in the absence thereof, by clear and convincing evidence.

(4) *Shared Incidental Expenses.* Upon a showing that a parent is not equally contributing to shared incidental expenses, the Court may impose any appropriate sanction, including but not limited to recalculating the support obligation as if the child resided primarily with the other parent.

a. An expense is considered a "shared incidental expense" based on a totality of the circumstances, including:

i. Whether the parents agreed or acquiesced to the expense being incurred (even if the parents did not agree how to divide the expense);

ii. Whether the expense is customarily incurred by similarly situated families;

iii. Whether both parents benefit from the expense;

iv. The amount of the expense and the frequency with which it is anticipated to be incurred; and

v. The parents' respective abilities to contribute to the expense.

b. The following expenses shall be presumptively considered shared incidental expenses: haircuts; school lunches; instrument rentals; school supplies; school project supplies; enrollment/uniform and other mandatory fees (but not equipment) associated with participating in local recreational sports or extracurricular activities; and local field trips not requiring overnight accommodations or air transportation.

c. An action to enforce the provisions of this Rule shall be plead with particularity.

(5) If all the minor children before the Court reside in shared placement, and the calculation indicates a net order of less than $50 per month, no affirmative payment of current support shall be ordered.

(6) Either parent may be assessed an affirmative obligation without regard to which parent filed the petition.

History.

Adopted, effective Jan. 1, 2011; amended Jan. 28, 2015, effective Apr. 20, 2015; Nov. 8, 2018, effective Feb. 1, 2019; Dec. 6, 2022, effective Feb. 1, 2023.

Rule 504. Standard of Living Adjustment (SOLA).

(a) After satisfying the parents' own and the children's primary needs, the Standard of Living Adjustment (SOLA) allows each child to share in each parent's economic well-being to simulate what the child would have enjoyed if the parents lived as a single family unit. SOLA is determined by subtracting each parent's Primary Support Obligation from his or her respective Net Available Income and multiplying the result by a designated percentage based upon the number of children of the union:

1 child	12%
2 children	17%
3 children	21%
Each additional child	2%

(b) If either or both parents' Net Available Income for the SOLA exceeds ten times (10X) the Self-Support Allowance, then each parent's Net Available Income for the SOLA will be reduced by 30% of their combined excess.

History.

Adopted, effective Jan. 1, 2011; amended Jan. 28, 2015, effective Apr. 20, 2015; Nov. 8, 2018, effective Feb. 1, 2019; Dec. 6, 2022, effective Feb. 1, 2023.

Rule 505. Credits and the net monthly obligation.

(a) *Gross obligation.* Each parent's Gross Obligation is the sum of the individual's Primary Support Obligation (Rule 503(b)) and Standard of Living Adjustment (Rule 504).

(b) *Credits.* Each parent shall retain from their Gross Obligation:

(1) Primary Support Allowance for the children of this union in their primary or shared placement; and

(2) Child care, private school, or other primary expenses claimed by the parent as allowed by Rule 503(b) or (c); and

(3) Per capita share of the parents' combined SOLA obligation for the children of this union in each parent's primary or shared placement; and

(4) Parenting Time Adjustment as set forth in Rule 505(c), if applicable.

(c) *Parenting time adjustment.* When a child spends an average of more than 79 but less than 164 annual overnights in the household of the parent from whom support is sought, that parent shall be entitled to retain a percentage of the primary support allowance allocable to that child and combined SOLA and shall be known as the Parenting Time Adjustment. The percentage is 10% for 80 to 124 overnights, and 30% for 125 to 163 overnights. Additionally:

(1) The number of overnights must be proven by court order, written agreement, previous finding, or other clear and convincing evidence. The party asserting a number of overnights other than as indicated in the order, agreement, or previous finding carries the burden of proof.

(2) Modest or temporary departures from the established contact schedule will not prompt any adjustments or rebuttal of the Formula.

(3) Where the residential arrangement is complex with children in different ranges, then the percentages should be averaged.

History.

Adopted, effective Jan. 1, 2011; amended Jan. 28, 2015, effective Apr. 20, 2015; Dec. 6, 2022, effective Feb. 1, 2023.

Rule 506. Minimum orders and low-income adjustments.

(a) *Minimum orders.* Except as otherwise provided in this Rule, a support obligation for one child shall not be less than 20% of the Primary Allowance for one child; and for 2 or more children, 20% of the Primary Allowance for two children. Minimum orders shall be rounded to the nearest multiple of ten (10).

(1) This limitation shall not apply where children reside in shared (at least 164 overnights in each household) or split (at least one child of the union with primary residence in each household) placement.

(2) A disabled person with actual income of less than the Self Support Allowance may be assessed a lesser obligation upon consideration of the nature and extent of the disability, cash and other resources available, and the totality of the circumstances.

(b) *Self-Support Protection.* Except incident to subsection (a) of this Rule, no parent shall be placed under an obligation to pay more than a designated percentage of net available income as determined under Rule 502(a). The designated percentage shall be 50% unless the parent has children to support in three (3) or more households in which case the percentage shall be 35%.

(c) *Automatic adjustment for incarceration.*

(1) After 180 days of continuous incarceration, every prospective current support obligation established or modified after January 31, 2019, will automatically decrease to one half of the

minimum order amount recited in Rule 506(a) as of the date of the order. This also applies to new support and modification petitions wherein the obligated parent is currently incarcerated and has been continually confined for more than 180 days at the time of the hearing or mediation conference. The presumption of a reduced obligation shall be rebutted if the obligated parent has independent income, resources, or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances.

(2) A petition may be filed to determine the exact date of adjustment and whether the individual has independent income, resources, or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances.

(3) The obligation will not revert upon release from incarceration, but release shall constitute a substantial change of circumstances for modification pursuant to Rule 508.

(4) Every written order for new or modified current support shall advise of this potential adjustment.

(5) Incarcerated parents subject to current child support orders that issued prior to February 1, 2019, or who were subsequently denied relief due to the underlying reasons for their incarceration, may petition for modification under the standards recited in subsection (1). However, if the obligation had already been calculated on the basis of continuous confinement under the prior standard, then relief may only be awarded two and one-half ($2^1/_2$) years after the last determination of current support.

(6) The Division of Child Support Services (DCSS) may utilize the procedures outlined in Rule 302 to facilitate these adjustments.

History.

Adopted, effective Jan. 1, 2011; amended Jan. 28, 2015, effective Apr. 20, 2015; Nov. 8, 2018, effective Feb. 1, 2019; Dec. 6, 2022, effective Feb. 1, 2023.

Rule 507. Medical support.

(a) *Available, affordable, and accessible health insurance.* One or both parents shall be ordered to acquire private health insurance when it is available through employment, reasonable in cost, and accessible to the child. Whether health insurance available to a parent other than through employment is reasonable in cost and should be acquired or maintained will be determined on a case-by-case basis.

(1) *Reasonable cost.* In the context of establishing or modifying a child support obligation health insurance is reasonable in cost if:

(i) The premium to cover both the parent and the parent's dependent children does not exceed ten percent (10%) of the parent's gross income; and

(ii) After inclusion of the insurance premium in the Formula, the parents' combined net income pursuant to Rule 502 is sufficient to provide all primary expenses exclusive of private school tuition.

(2) *Continuing duty to acquire insurance.* If affordable coverage is not available at the time of the order or whenever coverage lapses, each parent shall be ordered to acquire coverage that becomes available if the cost to cover both the parent and the parent's dependent children does not exceed ten percent (10%) of the parent's gross income.

(3) *Accessibility.* Health insurance is accessible to a child if it covers medical services within a reasonable distance from the child's primary residence.

(4) *Termination.* Once a parent has been ordered to acquire or maintain a specific policy of insurance, the parent shall continue the coverage despite changes in cost or accessibility until further order of the Court or written consent of the opposing party, or the State of Delaware if the child is a Medicaid recipient.

(5) *Specialized coverage.* Whether either parent is required to acquire or maintain dental, vision, or other specialized coverage shall be determined on a case-by-case basis. A National Medical Support Notice or medical support attachment shall not include specialized coverage unless expressly ordered.

(b) *Cash medical support.* Every new or modified order for current support entered on or after January 1, 2015, shall impose an obligation of cash medical support on each parent who is a party to the petition.

(1) Cash medical support shall include all healthcare expenses not reimbursed by insurance, and incurred for the children for whom the order is entered. Such expenses include, but are not limited to, medical, dental, orthodontic, vision, and psychological counseling costs incurred on behalf of each child.

(2) Each parent's obligation for cash medical support shall be determined by multiplying the amount of unreimbursed healthcare expenses by the parent's primary share percentage as defined in Rule 503(a) but rounded to a multiple of 10% as herein described. As needed, percentages greater than 50% shall round down to the next 10% interval; percentages less than 50% shall round up. Other than a child with only one known living parent, the percentage shall be neither greater than 90%, nor less than 10%. If the support recipient is a nonparent and the child has only one known living parent, then the cash medical support percentage is 100%. The cash medical support percentage for inmate obligations imposed pursuant to Rule 506(c) shall be 50%.

(3) An action for contribution to or reimbursement for a medical expense for a child may be brought at any time after the medical expense is incurred. However, any right of reimbursement will be presumed to have been waived unless a petition for reimbursement is filed with the Court by December 31 of the second year following the date the expense was incurred. This presumption may be rebutted for good cause shown.

(4) *Incurred.* For purposes of this rule (including orders entered before 2015 that assigned the first $350 of healthcare expenses to the child support recipient), "incurred" shall be the date the medical healthcare service was provided, except that in the event a parent contracts to pay orthodontic or other long-term treatment services over a period of time the date each periodic payment is due under the contract shall be deemed to be the date the expense was "incurred."

History.

Adopted, effective Jan. 1, 2011; amended Jan. 28, 2015, effective Apr. 20, 2015; Nov. 8, 2018, effective Feb. 1, 2019; Dec. 6, 2022, effective Feb. 1, 2023.

Rule 508. Modification.

Any petition for child support modification filed within two and one-half years of the last determination of current support must allege with particularity a substantial change of circumstances not caused by the petitioner's voluntary or wrongful conduct except as described in Rule 501(j) and 506(c). Furthermore:

(a) No modification will be ordered unless the new calculation produces a change of more than 10%.

(b) Beyond two and one-half years, neither the "particularity" nor the "10%" requirement applies.

(c) An obligation may be adjusted upwards or downwards, and the payor and payee may be reversed, regardless of who filed the petition.

(d) An update or adjustment to the Delaware Child Support Formula pursuant to Rule 500(b) does not constitute a change of circumstances sufficient to modify an existing order for current support even if the amount of current support would change as a result of the update or adjustment.

(e) Any petition for modification of an arrears only order filed within two and one- half years of the last establishment by the Court of an arrears only payment after either a hearing on the merits or stipulation of the parties must allege with particularity a substantial change of circumstances not caused by the Petitioner's voluntary or wrongful conduct except as described in Rule 501(j).

(f) Annual Document Exchange. Any party subject to an active current child support obligation may initiate an exchange of child support financial disclosure reports as required by Rule 16(a). Specifically:

1. An exchange is initiated by a party to an ongoing current support obligation sending their own completed financial report along with a blank financial disclosure report form to the other party to complete. The receiving party shall return their completed report with all attachments within 30 days.

2. If the exchange is initiated prior to May 1, tax returns exchanged shall be the most recently filed by the party. After May 1, tax returns exchanged shall be for tax year immediately preceding. If the party has received a tax filing extension, they shall instead submit equivalent financial records such as a draft return with attachments. An exchange may be limited in scope such as the parties' 3 most recent pay stubs incident to a recent change in employment.

3. Attached to each financial disclosure report shall be all documentation otherwise required by Rule 500(c) to be submitted in preparation for a hearing.

4. No party shall initiate an exchange more than once per year or within 6 months after the most recent Court determination of current support (including the dismissal with prejudice of a petition for modification), or in the calendar year in which the last child subject to the order will reach their 17th birthday. A nonparent child support recipient shall only be required to provide information that is directly relevant to the calculation of child support.

5. The Court will assist, upon request, with the exchange if compliance may violate a no-contact order with the other party or any resident in the other party's home, or if a party has been granted confidential address designation pursuant to Rule 90.1(d).

6. An independent Motion to Compel may be filed upon an opposing party's failure to comply with a properly initiated exchange. The motion may be decided on the papers or after a hearing at the discretion of the Court. The motion shall have attached a copy of the moving party's own financial report and proof of actual delivery to and receipt by the noncompliant party.

7. If the Court finds a party has failed to make a good faith effort to comply with this rule or used this rule to harass or abuse the opposing party, the Court may:

i. Direct the party to comply with the rule within a time certain or else appear before the Court for contempt;

ii. Authorize the compliant party to file a petition for modification not subject to Rule 508(c).

iii. Require the noncompliant party to pay court costs and attorney's fees incurred by the compliant party; or

iv. Any other relief the Court finds just and appropriate.

8. The Division of Child Support Services and Department of Justice are not required to facilitate the operation of this rule, and the fact of those agencies' involvement shall not constitute a basis to relieve or excuse either party of their obligations under this rule.

History.

Adopted, effective Jan. 1, 2011; amended Jan. 28, 2015, effective Apr. 20, 2015; Nov. 8, 2018, effective Feb. 1, 2019; Dec. 6, 2022, effective Feb. 1, 2023.

Rule 509. Retroactive support.

(a) Retroactive support in a new support action shall be presumed at 6 months prior to the date of filing. The burden of proof shall be on the party seeking greater or lesser retroactivity. Retroactivity shall not exceed 24 months prior to the date of filing and shall not predate the resolution of a previous new support

action wherein current support was declined by the same petitioner, or not awarded due to the same petitioner's failure to appear.

(b) Retroactive support is determined by the totality of the circumstances. Whether or not the value of direct, in-kind, or other support provided is comparable to the amount indicated by the Formula is not conclusive of whether retroactive support should be awarded. Factors to be considered include but are not limited to whether:

(1) The parent has:

(i) The ability to pay;

(ii) Been aware of the possible parentage;

(iii) Other children to support;

(iv) Avoided service of process;

(v) Meaningfully contributed financially or in-kind to the care of the child and whether those contributions were realized within the child's primary residence;

(vi) Been incarcerated, institutionalized, hospitalized, or otherwise involuntarily absent from the workforce.

(2) The party seeking support has:

(i) Exercised due diligence in pursuing legal remedies;

(ii) Made requests for assistance that have gone unheeded;

(iii) Incurred debt to compensate for the lack of support from the other parent.

(3) The child or children have special financial needs;

(4) The parents' finances have been intermingled including if the child has resided in a home to which the parent has provided material support; and

(5) The parties have or had a formal or informal support agreement and whether the agreement was honored.

(c) Retroactivity prior to the filing date shall not be awarded for any period of incarceration subject to the exceptions contained in Rule 501(k), or incident to foster care placement.

(d) Retroactive support should be repaid at a rate equal to 20% of the most recent calculation of current support (but not less than $20) if:

(1) Current support is ongoing;

(2) Current support is not ongoing, but the subject child or children reside in the home of obligated parent; or

(3) Current support is not ongoing, but the retroactive support is owed to the State. However, when imposing a payment term in a case where all arrears have been assigned to the State of Delaware, and the individual has other child support accounts owed to private individuals or other States, then the repayment element of the obligation owed to the State of Delaware should be $20 per month.

(4) In addition to any other repayment term, genetic test costs should be paid at the rate of $20 per month.

In all other instances repayment shall approximate the amount that would have been due if current support had been ongoing. If a calculation is performed, it should be based upon the obligated parent's income alone with a 50% primary share and increased by 20% to simulate an arrears

payment. Deviation may occur by agreement, upon subsequent or repeated contempt for non-payment, or for good cause shown.

History.

Adopted Nov. 8, 2018, effective Feb. 1, 2019; Dec. 6, 2022, effective Feb. 1, 2023.

Rule 510. Overpayments.

(a) *Credit in the context of an ongoing support obligation.* Whenever a net account credit arises in favor of the obligated parent, the arrears balance should be set at zero and:

(1) Current support shall be deferred for the period of time necessary to exhaust the credit based upon the current support obligation appropriate under these Rules. This may be subsequently modified if circumstances warrant a modification of the underlying current support obligation.

(2) If deferral of current support would be a hardship upon the household of the support recipient and sufficient time remains on the obligation, the Court may instead partially defer the obligation by 20% to 50% until the credit is exhausted.

(3) If there is not sufficient time remaining on the obligation to exhaust the credit, the Court shall defer the obligation as in subsection (a) of this Rule, and estimate the likely termination date of the obligation and the credit balance likely to remain at termination. In estimating the termination date, the Court may presume that a child emancipates for child support purposes on June 1 following the child's 18th birthday. However, if a child was born in June, July or August, the presumed date is the child's 18th birthday. This should be adjusted in accordance with the child's actual circumstances.

(b) *Change of placement.*

(1) If the credit arises in the context of a change of placement to the obligated parent, then the credit shall be converted into a past due support balance in favor of that parent and enforceable as such.

(2) If the credit arises in the context of a change of placement to a third party, then the credit shall be converted to a past due balance in favor of the obligated parent. However, the credit may be reduced to the extent the support recipient remitted the support proceeds to the new custodian or guardian, or expended the proceeds to the benefit of the child or children.

(c) *Termination.* If the credit arises in the context of the emancipation or death of the final child of the order, then the credit shall be established as a past due support obligation in favor of the obligated parent and enforceable as such. This includes when the credit had been previously estimated as in subsection (a)(3) of this Rule. The actual amount of the credit may vary depending upon the circumstances.

History.

Adopted Nov. 8, 2018, effective Feb. 1, 2019.

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