

IN THE FAMILY COURT OF THE STATE OF DELAWARE

ORDER AMENDING RULES 5, 53.1, 77, 86, 87.2, 90.1, 101, 104.1, 104.2, AND 112

OF THE FAMILY COURT RULES OF CIVIL PROCEDURE

This 22nd day of September 2021, **IT IS ORDERED THAT:**

1. Rule 5 shall be amended as follows:

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

(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: ~~by delivering a copy to the party or by mailing it to the party at the party's last known address or, if no address is known, by leaving it with the Clerk.~~

(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.

2. Rule 53.1 shall be amended as follows:

Rule 53.1. Appeals from commissioners' orders.

(d) The other party shall have ~~40~~ 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.

3. Rule 77 shall be amended as follows:

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

(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 so removed, the Clerk shall notify the parties by mail to remove them forthwith; and if they are not removed within 15 days from the date of mailing said notice, the Clerk may obtain an order of the Court for their disposition. 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 ~~immediately under the caption of the case:~~

(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 name, 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.

4. Rule 86 shall be amended as follows:

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.

5. Rule 87.2 shall be amended as follows:

Rule 87.2. Venue and Transfer of action between counties.

~~(a) Case heard where filed; exception.—A petition may be filed with the Court in any county within the State. The petition will initially be referred to and heard by the Court in that county where the cause of action arose (petition is filed). In any action before the Court that is begun in a county other than the one in which the respondent resides, or in a custody or child support action, where the children are located, the Court may on its own motion or on the motion of a party or counsel, transfer the matter to the Court in the county of the respondent's residence, or in a custody or child support action, where the children are located. Certified copies of all court and social records pertaining to the action shall accompany the case on transfer.~~

~~(b) Other exceptions.—A like transfer may be made if (1) the respondent moves, or in a custody action, the location of the children changes to another county during the pendency of the action, or (2) other proceedings involving the respondent are pending in the Court in another county, or (3) the disposition of the action by the Court in one county directs care or supervision of any party by the Court in another county, or (4) as otherwise directed by a judge in the original county.~~

(a) 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.

6. Rule 90.1 shall be amended as follows:

Rule 90.1. Records; privacy.

(d) Examination of court records is also governed by instructions to the Clerk from the Court. 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.

7. Rule 101 shall be amended as follows:

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. ~~Except upon prior approval of the Court upon special application, the Clerk shall not accept for filing any petition not in conformity with this requirement.~~ 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) Two conformed copies of the complaint shall be filed along with the original.~~

~~(f)~~ (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.

~~(g) Where there is a prayer for child support, Rule 16(a) Rules 16(a) and 16.1(a) shall be applicable and compliance is required.~~

~~(h) Where there is a prayer for child custody, the affidavit required by 13 Del. C. Section 1909 shall be filed with the pleading and Rule 16(b) Rules 16(b) and 16.1(b) shall be applicable and compliance is required.~~

~~(i) When there is a prayer for property division, alimony, attorney's fees and/or costs, Rule 16(c) shall be applicable and compliance is required.~~

~~(j) Any other paper required in proceedings involving a child shall be filed with the proper pleading and the Clerk of the Court shall apprise the bar in writing, in advance, of any such required filing.~~

8. Rule 104.1 shall be amended as follows:

Rule 104.1. Scheduling; notice of hearings.

~~(a) Contested divorce and annulment proceedings shall be heard by the Court at a time convenient for the Court and the parties.~~

~~(b) Uncontested divorces and annulment proceedings shall be heard in each county on a regular schedule set by the Court. The Court may, prior to any regular divorce day, set a different or special hearing day.~~

~~(c)~~ (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 ~~without requiring further request.~~

~~(d)~~ (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.

~~(e)~~ (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 ~~at least seven (7) days~~ prior to the date of the scheduled uncontested divorce or annulment hearing.

~~(f)~~ (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.

~~(g)~~ (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.

~~(h) Motions will be heard at a time scheduled by the Court.~~

~~(i) Pursuant to 13 Del. C. Section 1516(b), hearings in uncontested divorce proceedings may be conducted by a master in accordance with 10 Del. C. Section 913.~~

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

9. Rule 104.2 shall be amended as follows:

Rule 104.2. Decrees of divorce and annulment.

(b) A decree may incorporate by reference a ~~pre-nuptial or post-nuptial~~ 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.

10. Rule 112 shall be amended as follows:

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 and/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.

11. These amendments shall be effective December 1, 2021, which is at least 30 days after notice to members of the Bar.

BY THE COURT:

/s/ Michael K. Newell 9/22/21
Michael K. Newell
Chief Judge

/s/ Kenneth M. Millman 9/15/21
Kenneth M. Millman
Judge

/s/ Mark D. Buckworth 9/9/21
Mark D. Buckworth
Judge

/s/ Peter B. Jones 9/16/21
Peter B. Jones
Judge

/s/ Mardi F. Pyott 8/6/21
Mardi F. Pyott
Judge

/s/ Robert B. Coonin 9/16/21
Robert B. Coonin
Judge

/s/ Arlene Minus Coppadge 9/15/21
Arlene Minus Coppadge
Judge

/s/ Joelle P. Hitch 8/6/21
Joelle P. Hitch
Judge

/s/ Paula T. Ryan 9/2/21
Paula T. Ryan
Judge

/s/ Felice G. Kerr 8/3/21
Felice G. Kerr
Judge

/s/ Jennifer B. Ranji 8/3/21
Jennifer B. Ranji
Judge

/s/ Natalie J. Haskins 9/2/21
Natalie J. Haskins
Judge

/s/ Janell S. Ostroski 9/9/21
Janell S. Ostroski
Judge

/s/ Louann Vari 9/2/21
Louann Vari
Judge

/s/ James G. McGiffin, Jr. 8/4/21
James G. McGiffin, Jr.
Judge

/s/ Mary S. Much 8/10/21
Mary S. Much
Judge

/s/ Michael W. Arrington 8/4/21
Michael W. Arrington
Judge