

IN THE FAMILY COURT OF THE STATE OF DELAWARE
ORDER AMENDING RULES 19, 26, 30, 37, 40, 42.2, 45, 52, 53.1, 56, 59 AND 63
OF THE FAMILY COURT RULES OF CIVIL PROCEDURE

This 14th day of June 2020, **IT IS ORDERED THAT:**

1. Rule 19 shall be amended as follows:

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

(2) ~~second~~, 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) ~~third~~, whether a judgment rendered in the person's absence will be adequate; and

(4) ~~fourth~~, 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.

2. Rule 26 shall be amended as follows:

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.

(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, not privileged, which that is relevant to any party's claim or defense and proportional to the needs of the case, the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party 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. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(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.

3. Rule 30 shall be amended as follows:

Rule 30. Depositions upon oral examination.

(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) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the State of Delaware and will be unavailable for examination unless the person's deposition is taken before the expiration of the 30 day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.~~ Omitted

~~(3) The Court may for cause shown enlarge or shorten the time for taking the deposition.~~ Omitted

4. Rule 37 shall be amended as follows:

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. -- ~~An application~~ 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. ~~An application~~ 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.

5. Rule 40 shall be amended as follows:

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 ~~judge or master~~ 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) ~~should the reason involve a conflict with a case scheduled in another court,~~
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, along with the date that the case was scheduled in the other court;

(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) Where a scheduling conflict exists, the parties or their attorneys shall supply the information required by and the determination shall be made in accordance with the provisions of the Statement of the Judicial Conference in Respect to Scheduling Conflicts adopted by the Judicial Conference on June 2, 1976, which provides as follows: The Courts comprising the Judicial Conference are greatly concerned about the increasing number of requests by attorneys for continuances based upon conflicts in their schedules. The Conference, therefore, wishes to remind each attorney of [t]his responsibility to keep a close personal check on [t]his trial schedule. 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 without the necessity of a continuance of either matter. If the scheduling conflict cannot be resolved, the Judge or Judges judicial officer to whom the conflicting cases are assigned (or the Clerk if a Judge 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., the caption, nature and subject matter of the conflicting cases, the names of all attorneys involved in each, and a statement of (a) the reasons why the conflict cannot be resolved, (b) the relative importance of the conflicting cases, (c) the relative inconvenience to parties, witnesses, and others if a continuance is granted, (d) the dates on which each court fixed the trial dates and whether the court which created the scheduling conflict was aware that a conflict was being created, (e) whether the other parties (or attorneys) object to the continuance, and (f) other information which will be helpful to the Judge or Judges in deciding which of the conflicting matters should take precedence. It is expected that the Judges will then confer and attempt to arrive at a harmonious ruling on the request consistent with the interests of justice. If the Judges involved cannot agree as to an appropriate resolution of the conflict, then priority shall be given to criminal cases over civil cases and to constitutional courts (excluding Justice of the Peace Courts) over statutory courts.~~

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

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

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

~~(e)~~ (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.

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

~~(g)~~ (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 subparagraph (1) 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.

6. Rule 42.2 shall be amended as follows:

Rule 42.2. Type of trial; record.

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

7. Rule 45 shall be amended as follows:

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.

(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 produce 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 ~~et~~ 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.

8. Rule 52 shall be repealed as follows:

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

~~(a) Property distribution cases. — In all property distribution cases, the Court shall:~~

~~(1) Act upon the request of either party.~~

~~(2) After the necessary factual record has been made, make findings as to the value of all marital property, including the identity and value of each significant item of property, and the nature of title thereto.~~

~~(3) Determine how the marital property shall be apportioned or assigned to each spouse.~~

~~(i) In making such determination, the Court shall require the party making the request to prove by a preponderance of the evidence the reasons why it should be so awarded, to whom, and the value to be assigned.~~

~~(ii) In making such determination (particularly when the grant of a request will result in a transfer of title to property from one spouse to~~

~~the other), the Court shall apply the statutory factors in 13 Del. C. Section 1513.~~

~~(4) After making the determination required by (3) above, make such order as is necessary to implement its conclusions, regardless of how title is held. (5) Award property as titled if the party making the request does not meet the requisite burden of proof.~~

~~(6) Consider relevant factors as outlined in 13 Del. C. Section 1513, supported by the evidence.~~

~~(b) Alimony cases.— The Court shall include in any decision:~~

~~(1) The facts supporting a determination of dependency.~~

~~(2) The amount of each payment.~~

~~(3) The frequency of each payment.~~

~~(4) The length of time such payments shall continue.~~

~~(5) The relevant factors as outlined in 13 Del. C. Section 1512(c), supported by the evidence.~~

~~(c) Child support cases.— The Court, in order to provide a uniform, equitable approach in applying Delaware law to all child support cases, shall consider the following:~~

~~(1) Each support obligor's monthly net income.~~

~~(2) The absolute minimum amount of income each support obligor must retain to function at maximum productivity.~~

~~(3) The number of support obligor's dependents in an effort to apportion the amount available for support as equally as possible between or among said dependents according to their respective needs.~~

~~(4) The primary child support needs and the primary support obligation of each obligor.~~

~~(5) The available net income for a Standard of Living Adjustment (SOLA) to be paid by each support obligor after meeting their own primary needs and those of dependents.~~

~~(6) A consideration of the factors set forth in 13 Del. C. Section 514.~~

9. Rule 53.1 shall be amended as follows:

Rule 53.1. Appeals from commissioners' orders.

(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.

10. Rule 56 shall be replaced as follows:

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.

11. Rule 59 shall be amended as follows:

Rule 59. New trials and rearguments:

(b) Time and procedure for motion. -- The motion for a new trial shall be served and filed not later than ~~40~~ 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 ~~judge or master~~ judicial officer involved.

(c) On initiative of Court. -- Not later than ~~40~~ 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 ~~40~~ 15 days after entry of the judgment.

(e) Rearguments. -- A motion for reargument shall be served and filed within ~~40~~ 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 ~~judge or master~~ judicial officer involved.

12. Rule 63 shall be amended as follows:

Rule 63. Inability of a ~~judge~~ judicial officer to proceed.

If a trial or hearing has been commenced and the ~~judge~~ judicial officer is unable to proceed, any other ~~judge, master or commissioner~~ judicial officer may proceed with it upon certifying familiarity with the record and ~~determining~~ 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 ~~judge, master or commissioner~~ judicial officer may also recall any other witness.

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

BY THE COURT:

/s/ Michael K. Newell 6/14/20
Michael K. Newell
Chief Judge

/s/ Kenneth M. Millman 6/12/20
Kenneth M. Millman
Judge

/s/ Peter B. Jones 6/4/20
Peter B. Jones
Judge

/s/ Robert B. Coonin 6/12/20
Robert B. Coonin
Judge

/s/ Joelle P. Hitch 6/4/20
Joelle P. Hitch
Judge

/s/ Felice G. Kerr 6/4/20
Felice G. Kerr
Judge

/s/ Natalie J. Haskins 6/11/20
Natalie J. Haskins
Judge

/s/ Mark D. Buckworth 6/12/20
Mark D. Buckworth
Judge

/s/ Mardi F. Pyott 6/5/20
Mardi F. Pyott
Judge

/s/ Arlene Minus Coppadge 6/11/20
Arlene Minus Coppadge
Judge

/s/ Paula T. Ryan 6/5/20
Paula T. Ryan
Judge

/s/ Jennifer B. Ranji 6/4/20
Jennifer B. Ranji
Judge

/s/ Janell S. Ostroski 6/5/20
Janell S. Ostroski
Judge

/s/ Louann Vari 6/4/20
Louann Vari
Judge

/s/ James G. McGiffin, Jr. 6/11/20
James G. McGiffin, Jr.
Judge

/s/ Mary S. Much 6/4/20
Mary S. Much
Judge

/s/ Michael W. Arrington 6/4/20
Michael W. Arrington
Judge