

**STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2012**

Order Promulgating Amendments to the Vermont Rules for Family Proceedings

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 4(b)(2)(A) and (B) of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 4. DIVORCE, ANNULMENT AND LEGAL SEPARATION; ABUSE PREVENTION

* * * * *

(b) Complaint; Service; Parties.

(1) *The Complaint.*

* * * * *

(2) *Commencement of Action; Service of the Complaint.*

(A) *Cases not involving minor children.* If neither party is nor may be obligated to pay child support to the other party or to the Office of Child Support, the action shall be commenced ~~and service shall be made~~ in accordance with Rules 3 ~~and 4~~ of the Vermont Rules of Civil Procedure. Service may be made by any appropriate procedure provided in subparagraph (B)(iii)-(vi).

(B) *Cases involving minor children.* If either party is or may be obligated to pay child support to the other party or to the Office of Child Support, the action shall be commenced and service shall be performed according to this paragraph.

(i) The complaint shall be filed and a hearing or case manager's conference shall be scheduled before the complaint is served. After filing, the family ~~court~~ division clerk shall complete a notice of hearing or notice of case manager's conference and shall attempt to schedule the hearing or case manager's conference so that it is held from 45 to 60 days after the summons and complaint were filed, unless because of unavailability of magistrates, judges, or case managers, or because of a subsequent failure to complete service, it is not practical to do so.

(ii) After a hearing or case manager’s conference has been scheduled, the clerk, or upon plaintiff’s request, the plaintiff’s attorney, shall provide for prompt service upon the defendant by one of the methods enumerated in (iii) through (vi).

(iii) Service may be made by personally serving the defendant by any method provided in V.R.C.P. 4(d), (e), or (k) with a summons and complaint and the notice of hearing or case manager’s conference signed by the clerk.

(iv) In the alternative, the summons, complaint and notice of hearing or case manager’s conference may be served by mailing them to the defendant at one or more of the addresses supplied by the plaintiff or by the defendant or otherwise, by certified mail, return receipt requested and delivery restricted to the addressee, the expense being paid by the plaintiff. If certified mail is refused by the defendant, the clerk may serve the notice of hearing or case manager’s conference, summons and complaint by mailing it to the defendant by ordinary first class mail and by certifying that such service has been made. ~~The clerk also may provide for service by mail pursuant to Vermont Rule of Civil Procedure 4(l).~~

(v) Service may be made by publication by order of the court, as provided in V.R.C.P. 4(g).

(vi) At any time, service may be made by sending to the defendant by ordinary first-class mail the summons and a request that the defendant waive service by any other method. The summons and request shall be accompanied by the complaint, the notice of hearing or case manager’s conference if applicable, and a waiver of service form. The defendant must sign and date the waiver of service and return it to the court no later than 20 days from the date the documents were mailed, or 60 days from that date if the defendant is addressed outside a state or territory of the United States. The defendant must answer the complaint within 20 days of the date that the defendant signed the waiver or, if the waiver is undated, within 20 days of the date that the waiver is filed with the court. Failure to comply with a request to waive service may result in the imposition of costs, including reasonable attorney’s fees, against the defendant for expenses incurred in effecting service by another means.

Reporter’s Notes—2012 Amendment

V.R.F.P. 4(b)(2) is amended to provide a method for waiver of service that is simpler to administer than that provided by V.R.C.P. 4(l), formerly incorporated in the Family Rule and to clarify the service provisions generally.

Subparagraph (A) providing for commencement of the action and service in cases where there is no child support obligation has been amended to eliminate the reference to service in accordance with V.R.C.P. 4 and to provide that service in such cases may be made by any of the methods for service in cases involving minor children set forth in subparagraph (B).

Subparagraph (B) has been divided for clarity into sub-subparagraphs that set out the provisions concerning scheduling in (i) and (ii) and provide for each method of service separately in (iii)-(vi). Sub-subparagraph (iii) retains the existing provision for personal service, adding specific references to the applicable provisions of V.R.C.P. 4. In (ii), the existing provision for service by certified mail is retained, with the alternative of service under V.R.C.P. 4(l) deleted in light of the new waiver provision in (vi). Subsubparagraph (v), incorporating the service by publication provisions of V.R.C.P. 4(g), is added to make clear that publication is available in a proper case.

Subsubparagraph (vi) adds a simplified substitute for V.R.C.P. 4(l) that is intended to save the time and expense of in-hand or certified mail service. The clerk or plaintiff's attorney may send the summons, complaint, and notice of hearing or case manager's conference to the defendant by ordinary first-class mail, with a request that defendant waive service by any of the other methods provided and a waiver of service form. The defendant is to sign and return the form within 20 days (60 days if outside the U.S.). Service is deemed complete on the return of the waiver, and defendant then has 20 days to file an answer. If defendant does not return the signed waiver, defendant may have to bear the costs of personal or certified mail service. While alternative use of V.R.C.P. 4(l) in magistrate's proceedings is still permitted by 4 V.S.A. § 466(e), new forms for use under the new rule will be provided, and presumably will be used by clerks and parties in lieu of the more complex Civil Rule.

2. That Rule 14(d) of the Vermont Rules for Family Proceedings be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 14. LITIGANT EDUCATION PROGRAMS IN FAMILY COURT

* * * * *

(d) **Waiver of Attendance.** Each program should contain appropriate provisions permitting the court to waive any requirement of attendance on a showing by a litigant of a constitutionally protected interest that would be invaded by participation in a particular program, ~~or~~ a personal disability or vulnerability that would render participation onerous or dangerous, or other good cause.

Reporter’s Notes—2012 Amendment

V.R.F.P. 14(d) is amended to add “other good cause” to the grounds for waiver of attendance at a litigant education program that are to be incorporated in the terms of each such program. The amendment, requested by the Family Division Oversight Committee, is to give the court discretion to recognize valid grounds for nonattendance other than constitutional interests, disability, or vulnerability in a spousal or other relationship.

3. That these rules, as amended, are prescribed and promulgated effective _____, 2012. The Reporter's Notes are advisory.

4. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2012.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice

Beth Robinson, Associate Justice