

I. Proposed Amendment to R. 5:4-4 - Service of process in Family Part summary actions; Initial complaints and applications for post-dispositional relief

▪ **Recommendation to standardize non-dissolution practice and post-disposition practice in all Family Part summary actions**

Administrative Director Grant referred a recommendation from the Conference of Presiding Judges to the Practice Committee, which relates to the modification of procedures and service of process rules for summary actions in the Family Part. In 2005, then Chief Justice Poritz created a ten member Statewide Bench-Bar Liaison Committee to review Family Division Standards and Best Practices. As a result, an ad hoc Judiciary committee was established to study the need for standardization of procedures for Family Part non-dissolution matters (FD docket). This review was extended to include domestic violence and kinship legal guardianship post-dispositional matters. The Conference of Family Presiding Judges endorsed and forwarded the recommendations of the ad hoc committee to Administrative Director Grant for consideration, and those recommendations have been referred to the Practice Committee.

Differentiating the practice between the dissolution case type (FM docket) and the other case types mentioned above was a concern, but due to the summary nature of non-dissolution matters, the Practice Committee concluded that Family Part summary actions should all be adjudicated in a consistent and efficient manner.

To that end, the Practice Committee was charged with the task of amending R. 5:4-4 to meet the following goals:

- Service by mail for initial complaints, currently authorized by R. 5:4-4, used for paternity and support cases, should also be used in all other non-dissolution matters and in domestic violence (FV docket) post judgment applications not involving active

- domestic violence restraints. The court rules should be revised to specify the application of *R. 5:4-4* to all pre and post-dispositional non-dissolution matters and domestic violence post-dispositional matters not involving restraints, such as child support or parenting time.
- The Practice Committee should consider recommending a court rule requiring litigants to perform a "Diligent Search" under certain circumstances. The process set forth in proposed *R. 5:4-4(c)*, which provides for diligent inquiry search procedures for child support enforcement actions should be replicated for initial custody matters when the custodial parent is unable to provide the court with the location of the non-custodial parent. A diligent search certification may be used in applications for modification of a prior order based upon the proposed amendment to *R. 5:4-4(b)* that deems service to an FD litigant's last known address as effective service of process.
 - The Judiciary should adopt the proposed process for diligent searches promulgated by the Administrative Director of the Courts. A rule recommendation regarding the requirement of a diligent search certification should include a publication requirement under certain circumstances.
 - When a child support obligee fails to notify the Probation Division of a change in address and a notice to appear has been served, a hold should be placed on the account until the obligee notifies the court of the address change. So as not to have disparate treatment of litigants, an entry of default should be allowed when either the obligor or the obligee has failed to comply with the requirement to notice the Probation Division of a change in address set forth in *R. 5:7-4(f)*.

- The application of the court rules should be expanded to provide that in matters where a child support order has been entered (regardless of whether a Probation Division support account has been established), all FD litigants' last known addresses of record can be utilized to effectuate service.

The Practice Committee recommends amending *R. 5:4-4*. This recommendation seeks consistency of process for summary actions. The Practice Committee inserted "post-dispositional" application for FD and FV actions where appropriate to distinguish such applications from initial complaints. The Practice Committee also inserted the citation to *R. 5:9A-2* in paragraph (a) to indicate that this rule applies to kinship legal guardianship matters, but not other matters involving the Division of Youth and Family Services (DYFS). The Practice Committee also clarified in subparagraph (b)(4) that an affidavit of non-military service is only required for initial complaints. The Practice Committee also inserted new paragraph (c), which sets forth diligent inquiry requirements for summary actions to ensure that diligent efforts are made to locate the other party if that party cannot be located. Subparagraph (c)(2) also requires the party to inquire with the United States Department of Defense, with respect to the affidavit of non-military service requirement. The Practice Committee, by its use of "post-dispositional application," distinguishes these applications from formal motions. The Practice Committee's intent was to ensure that the process for Family Part summary matters must be by post-dispositional application, and not formal motion. The procedure that must be followed for these summary actions is the same for all, whether it is filed by an attorney or a self-represented party. A formal motion is not necessary. Rule 5:8, Custody of Children, however, remains applicable. The Practice Committee believes that it is not necessary to create a separate process

for post-dispositional domestic violence (FV docket) applications and therefore has included them in this recommendation.

Furthermore, the Practice Committee inserted in paragraph (a) a description of summary actions to clarify the application of this service rule to include those enumerated cases.

The Practice Committee reviewed the rule as it relates to Probation-supervised matters and concluded that no additional drafting is required to address these cases.

The Practice Committee also relabeled "plaintiff" and "defendant" to "adverse party" where appropriate because either party may file an application under this rule.

Therefore, the Practice Committee recommends the following amendments to *R. 5:4-4* to improve and standardize non-dissolution applications:

R. 5:4-4

5:4-4. Service of Process in [Paternity and Support Proceedings; Kinship Legal Guardianship] Family Part Summary Actions; Initial Complaints and Applications for Post-Dispositional Relief

(a) Manner of Service. Service of process within this State for [paternity and support] Family Part summary actions, including initial complaints and applications for post-dispositional relief, shall be made in accordance with [Rule] R. 4:4-4, R. 5:9A-2, or paragraph (b) of this rule. [Substituted] For initial complaints, substituted or constructive service of process outside this State may be made pursuant to the applicable provisions in [Rule] R. 4:4-4 or [Rule] R. 4:4-5. Family Part summary actions shall include all non-dissolution initial complaints as well as applications for post-dispositional relief, and applications for post-dispositional relief under the Prevention of Domestic Violence Act. Applications for post-dispositional relief shall replace motion practice in Family Part summary actions. The court in its discretion, or upon application of either party, may expand discovery, enter an appropriate case management order, or conduct a plenary hearing on any matter.

(b) [Establishment of a Paternity or Support Order and Proceedings for Kinship Legal Guardianship –] Service by Mail Program. Service of process for [initial paternity and support complaints and in proceedings for kinship legal guardianship] Family Part summary actions may be effected as follows:

(1) [Initial] Service by Mail. The Family Part shall mail process simultaneously by both certified and ordinary mail to the mailing address of the [defendant] adverse party provided by the party filing the complaint or application for post-dispositional relief.

(2) Effective Service. Consistent with due process of law, service by mail pursuant to this rule shall have the same effect as personal service, and the simultaneous mailing

shall constitute effective service unless there is no proof that the certified mail was received, or either the certified or the regular mail is returned by the postal service marked "moved, unable to forward," "addressee not known," "no such number/street," "insufficient address," "forwarding order expired," or the court has other reason to believe that service was not effected. Process served by mail may be addressed to a post office box. Where process is addressed to the [defendant] adverse party at that person's place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the [defendant] adverse party to whom process was mailed.

(3) Ineffective Service. If service cannot be effected by mail or by other means permitted by court rules, the court shall dismiss the complaint or application for post-dispositional relief without prejudice, subject to reinstatement retroactive to the original filing date if service is subsequently effected.

(4) Affidavit or Certification of Non-Military Service. [No] For initial complaints, no order shall be entered by default until an affidavit or certification of non-military service, as prescribed in R. 1:5-7, is provided to the court. The forms and procedures to implement this rule shall be prescribed by the Administrative Director of the Courts.

(5) Vacating Defaults. If process is returned to the court by the postal service subsequent to entry of default and the certified mail receipt displays any of the notations listed in the paragraph (b)(2) of this Rule, or another reason exists to believe that service was not effected, the court shall vacate the order entered by default, immediately notify [plaintiff] the filing party or the attorney of the action taken, and reinstitute efforts to serve [defendant] the adverse party either by mail or personally. [A defendant] The adverse party may, at any time after an order has

been entered by default based on mailed service, file a motion or an application for post-dispositional relief, requesting that [a paternity or support] an order be vacated or modified based on the fact that [defendant] the adverse party was not served with process prior to entry of the order. A party alleging that process was not received must show that the address to which process was directed was not that person's address at the time that the order was entered. Upon such a showing, the court may conduct a hearing [or order paternity testing] to determine whether the order should be modified or vacated.

(c) Diligent Inquiry in Family Part Summary Actions

(1) For purposes of initial complaints or upon the filing of any application for post-dispositional relief in a Family Part summary action, where the adverse party cannot be located, the filing party must provide the last known home address and demonstrate, through diligent inquiry, that no current address is known for the adverse party. Where it appears to the court by affidavit or certification of diligent inquiry filed by the filing party that the adverse party cannot be located, the court may proceed to hear the matter. For initial complaints, nothing in this rule shall prohibit the court from ordering substituted service by publication in accordance with R 4:4-5(c).

(2) Such diligent inquiry efforts by the filing party should include, as appropriate, inquiries to the relatives and last known employers of the person, the U.S. Postal Service, the NJ Motor Vehicle Commission or the motor vehicle agency of the State where the person was last known to be living, and the United States Department of Defense. The affidavit or certification of diligent inquiry must be in the form as determined by the Administrative Director of the Courts.

(3) Vacating Default Orders. Vacating default orders shall be in accordance with paragraph (b)(5) of this rule. This request can be made by the filing of a motion or application for post-dispositional relief by a party or, by the court, on its own motion, during any enforcement proceeding. The party alleging that process was not received must demonstrate proof that the home address at the time the notice was sent was not that party's correct home address. The court may conduct a hearing, as it deems necessary, to determine if the order should be modified or vacated.

(d) Enforcement of a Support Order. For purposes of enforcing a support provision in an order or judgment, the court may deem due process requirements for notice and service of process to have been met with respect to the obligor on delivery of written notice to the most recent residential or employer address. If the obligor fails to respond to the notice and no proof is available that the obligor received the notice, the party bringing the enforcement action must show that diligent efforts have been made to locate the obligor by making inquiries to the U.S. Postal Service, the Motor Vehicle Commission, the Department of Labor, and the Department of Corrections. A certification documenting unsuccessful efforts to locate the obligor shall be provided to the court before any action adverse to the obligor is taken based on failure of the obligor to respond to a notice.

[(d)](e) General Appearance; Acknowledgment of Service. [A] For initial complaints, a general appearance or an acceptance of the service of a summons, signed or acknowledged on the record by [defendant's] the adverse party's attorney, or signed and acknowledged by [defendant] the adverse party or by a competent adult in [defendant's] the adverse party's household, or as otherwise provided in R. 4:4-4, shall have the same effect as if [defendant] the adverse party had been properly served.

Note: Adopted July 10, 1998 to be effective September 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004; new paragraph (b)(4) adopted, former paragraph (b)(4) redesignated as paragraph (b)(5), and paragraph (c) amended June 15, 2007 to be effective September 1, 2007; caption amended, paragraph (a) amended, paragraph (b) caption and introductory text amended, subparagraph (b)(1) caption and text amended, subparagraph (b)(2), (b)(3), (b)(4) and (b)(5) text amended, new paragraph (c) caption and text adopted, former paragraph (c) redesignated as paragraph (d), former paragraph (d) redesignated as paragraph (e), new paragraph (e) text amended _____ to be effective _____.