

FAMILY COURT RULES OF PRACTICE

I. GENERAL RULES

Rule 1.1. Adoption of Rules

The provisions contained in these Rules of Practice shall take effect on September 10, 1982. They may be cited as Family Court R.P. These rules were last amended on XXX.

Rule 1.2. Powers of Administrative Judge

Notwithstanding anything in these Rules of Practice to the contrary, the ~~C~~chief ~~J~~judge of the Family Court as the ~~A~~administrative ~~J~~judge, by virtue of Title 8, Chapter 10 as amended, shall continue to have and exercise the powers therein given to him or her.

Rule 1.3. Court Hours

Except in vacation and on holidays, the court shall ordinarily sit from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 4:30 p.m., Mondays through Fridays, unless the chief judge justice sitting upon a calendar shall order otherwise.

Rule 1.4. Agreements

All agreements of parties or attorneys touching the business of the court shall be in writing, unless orally made or assented to by them in the presence of the court when disposing of such business, or they agreements will be considered of no validity. Matters read into the record shall be reduced to writing and presented to the court for entry within ten (10) days or earlier if the case is continued for hearing prior thereto.

Rule 1.5. Appearances, Withdrawal, and Excuse of Attorneys

(a) **Appearances.** The attorney for a defendant or a self-represented litigant in any case shall forthwith file an his or her entry of appearance (which shall not be deemed to be an answer) with the ~~C~~clerk of the Family Court for the county wherein the action is pending and shall send a copy of ~~his or her~~ the entry of appearance to the opposing attorney or self-represented litigant counsel. ~~A pro se appearance by a party shall be in writing and contain his or her address and telephone number.~~

An entry of appearance shall contain the name, address, email address, bar number, and telephone number of the attorney or, if a self-represented litigant, contain the name, address, email address (if electing to utilize the electronic filing system), and telephone number of the self-represented litigant except where prohibited by federal or state law. The most current version of an entry of appearance is located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, Family Court.

(b) Designation of Trial Counsel. Upon entry of appearance, law firms must designate the name of trial counsel.

(c) Withdrawal of Attorney. No attorney appearing in any case will be allowed to withdraw without the consent of the court. Except where another attorney enters an appearance at the time of such withdrawal, all withdrawals shall be upon motion with reasonable notice to the party represented. No such motion shall be granted unless the attorney who seeks to withdraw shall file with the clerk the last known address of ~~his or her~~ the attorney's client, or the client files his or her address, and in either situation the address which is filed shall be the official address to which notices may be sent.

A motion for withdrawal shall be accompanied by an affidavit setting forth facts showing the military status of the client; or by a written statement of the client consenting to such withdrawal. No motion to withdraw an appearance will be granted if it appears that the client is in the military service of the United States, as defined in the Servicemembers Civil Relief Act (50 U.S.C.A. App. § 501, et seq.)~~Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto~~, unless the client consents thereto in writing; or another attorney appears of record ~~as counsel~~ at the time of such withdrawal.

In a case where a responsive pleading has been filed and the court allows an attorney is granted leave by the court to withdraw and no successor attorney has entered an appearance, the case shall proceed as an answered case and the parties no longer represented by an attorney counsel shall be deemed self-represented pro-se.

(d) Excuse From Court Attendance. ~~No attorney shall be excused from attendance upon the court except upon motion, save as is hereinafter provided. No such motion shall be heard and granted unless the attorney making such motion shall give notice of such hearing to the attorney of record of the adverse party in every cause assigned for trial during the period for which the excuse is requested, in which cause the moving attorney is an attorney of record. Said notice shall be served not less than five (5) days before the time specified for the hearing and in the same manner provided for in ordinary motions. Said motion, if granted, shall not work a continuance of any cause assigned for trial in which the attorney of record of the adverse party has not been notified as above provided.~~

(1) Except in an emergency, all motions by an attorney seeking to be excused from court attendance shall be filed with the chief judge within three (3) weeks of the first date for which the moving party is seeking to be excused. The motion shall include the following:

(A) The specific dates during which the moving attorney is seeking to be excused;

(B) A statement by the moving attorney that, at the time of the filing of the motion, there are no matters for which the moving attorney is the attorney of record that have been assigned for trial or hearing during the requested excusal period; and

(C) A certification by the moving attorney that a copy of the Motion to be Excused from Court Attendance was served in accordance with R.Dom.Rel.P. 5 on the opposing

counsel or a self-represented litigant in each active matter for which the moving attorney is attorney of record in the Family Court.

(2) No matter for which the moving attorney is the attorney of record may be assigned for hearing or trial during the requested excusal period.

(3) The most current version of a Motion to be Excused from Court Attendance is located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, Family Court.

(4) If no objection is filed with the chief judge by any opposing counsel or a self-represented litigant within five (5) days of the certification, then the moving party is not required to forward

(e) Illness or Absence of Attorney. In case of sudden illness of an attorney, or the attorney's absence from court from some other imperative and unforeseen cause, the court shall take such action, without notice, as shall appear reasonable in the circumstances.

Rule 1.6. Briefs and Memoranda

Every brief and memorandum filed with the court shall be printed or typewritten, shall be ~~on good paper and~~ distinctly legible, shall be signed by the attorney or a self-represented litigant presenting it, in accordance with Art. X, Rule 7 of the Rhode Island Supreme Court Rules Governing Electronic Filing, and shall contain:

- (1) ~~a~~A brief and concise statement of the case;:-
- (2) ~~¶~~The specific questions raised duly numbered;:- and
- (3) ~~¶~~The point made, together with the authorities relied on in support thereof.

In cases where it may be necessary for the court to go into an examination of record evidence, each party shall briefly specify in his or her brief the leading facts which the party deems established by the evidence, with a reference to the pages where the evidence of such facts may be found. ~~The size of the paper shall be 8 1/2 " x 11" with not less than one-inch margin on each side. The size of type to be used in printing briefs shall be that used in the text of the Rhode Island Reports, as near as may be.~~

~~Briefs shall be bound on the left side of the front page and not at the top.~~

For specific requirements, see the Family Court's Electronic Filing System Guidelines.

Rule 1.7. Filing of Documents Ancillary to a Complaint in Divorce Actions

~~(a) In addition to the complaint that is filed to commence a Divorce Action, a Separation Action and a Complaint Seeking Relief Without Commencement of Divorce, the following documents, available at the clerk's office must be filed: the Rhode Island Department of Health Divorce Record, Statement of Assets, Liabilities, Income and Expenses, Statement Listing~~

~~Children of the Marriage (in Duplicate), a Certificate of Marriage and The Family Counseling Service Form.~~

~~(b) No final judgment in divorce shall be entered unless the prevailing party or his or her attorney satisfies the court that the provisions of § 23-3-20(a) have been met. The divorce record form must be completely filled out.~~

For specific requirements, see the Family Court's Electronic Filing System Guidelines.

Rule 1.8. Separate and Apart Divorces Decision Pending Entry of Final Judgment and Final Judgment

(a) Separation of Parties as Ground for Divorce. Under the provisions of G.L. 1956 § 15-5-3, as amended, the prevailing party upon decision being granted in his or her favor, shall file the form entitled Decision Pending Entry of Final Judgment with the Clerk within thirty (30) days of the date of decision unless the court extends the time for the filing of the form. ~~and the~~ twenty (20) day waiting period as contained in G.L. 1956 § 15-5-3 said statute shall commence to run the day following the entry of said form the Decision Pending Entry of Final Judgment.

(b) For all Other Divorces. Under the provisions of G.L. 1956 § 15-5-23, no decree for a divorce shall become final and operative until three (3) months after the trial and decision. The form entitled Decision Pending Entry of Final Judgment shall be filed within thirty (30) days of the date of decision unless the court extends the time for the filing of the form. Final judgment from the bond of marriage may be entered ex parte and in chambers on the suggestion of the prevailing party at any time within thirty (30) days next after the expiration of three (3) months from the date of decision. After the expiration of the thirty (30) days, final judgment may be entered only in open court and on motion.

(c) Mandatory Statement on Decision Pending Entry of Final Judgment. A Decision Pending Entry of Final Judgment shall contain the following statement, prominently placed near the top of the first page: "This is NOT a final judgment of divorce. The parties remain legally married until entry by this court of a final judgment."

Rule 1.9. Notice by Publication [Reserved.]

~~In those cases which qualify under the Rules of Domestic Relations Procedure for substituted service by publication, the following provisions are hereby made:~~

~~**(a) Form of Affidavit Required.** Whenever the adverse party to a complaint for divorce shall be or reside without this State, the plaintiff shall annex to the complaint an affidavit, in which it shall be stated where the adverse party resides or where he or she was last heard of by the plaintiff, and all knowledge, information and belief of the plaintiff as to the place at which the adverse party may be found at the time of the filing of such complaint, or that the plaintiff has no knowledge, information, or belief, as to the residence of the adverse party, or where he or she may be found, if such shall be the fact, in which event the plaintiff shall also state when and~~

~~where the adverse party was last heard of and the efforts which the plaintiff has made to ascertain the place of residence of such party.~~

~~**(b) Process Issued.** The clerk with whom such complaint and affidavit shall be filed, if the residence of the adverse party is disclosed in said affidavit, shall issue a summons to such adverse party, which summons shall be accompanied by a certified copy of the complaint and the summons shall be directed for service to any disinterested person and shall be served by delivering the said copy of the said complaint in hand to the said adverse party, whenever the adverse party may be without this State, and by reading the said summons in the adverse party's presence and hearing, or by leaving the said certified copy of the said complaint with a copy of the said summons for such adverse party at the adverse party's usual place of abode without this State, with some person living there of suitable age and discretion then residing therein, or by mailing a copy of the summons and complaint to the defendant by registered or certified mail, return receipt requested, or by any other method ordered by the court; and said disinterested person shall return said summons, having made oath thereon of the place where, the time when, and the manner in which he or she shall have made service of the said summons.~~

~~**(c) Notice by Publication.** If the affidavit annexed to any complaint for divorce or separation or relief without commencement of divorce proceedings shall state that the plaintiff has no knowledge, information or belief as to the residence of the adverse party, and it shall be made to appear to the satisfaction of the court that the plaintiff does not know the address nor the residence of the adverse party and has not been able to ascertain either after reasonable and due inquiry and search for six (6) months, the court may authorize notice by publication of the pendency of the complaint, and thereupon the clerk of the court with whom such complaint shall be filed shall notify such adverse party of the pendency of said complaint, and that he or she may appear and answer the same, by publishing a notice thereof for four (4) successive weeks in some newspaper of state wide circulation, and the notice of any complaint may be stated in general terms (see Appendix C), and by sending a summons, with a copy of the complaint, post paid, through the mail, directed to the adverse party at the place where the affidavit disclosed that he or she was last heard of, if he or she was last heard of by the plaintiff without this State; and the defendant shall have forty five (45) days from the date of the first published notice in which to make answer to the complaint.~~

~~**(d)** Under the provisions of § 15-5-14, the court may make such special orders in any case it deems necessary. This Rule shall not affect the powers of the Court under any provision of the General Laws of the State of Rhode Island Rules of Procedure, or the Family Court for Domestic Relations to make orders in any special case it deems necessary.~~

Rule 1.10. Printing or Typing Names as Well as Signatures on Pleadings

~~The original pleading or initial paper filed in any action and all orders and judgments shall not only bear the signature of the attorney or party presenting same but shall also bear his or her name in printed or typewritten form beneath the signature. Signatures on pleadings shall be in accordance with Art. X of the Rhode Island Supreme Court Rules Governing Electronic Filing.~~

Rule 1.11. Orders for Support

All ~~O~~rders for ~~S~~upport shall be in written form based upon findings of fact.

Rule 1.12. Hearings on Temporary Support, Etc. [Reserved.]

~~The attorney or party moving for an Order for Temporary Support, etc., shall obtain from the clerk's office either personally or by telephone the hearing date which shall be included in the Summons.~~

Rule 1.13. Omitted Counterclaim [Reserved.]

~~In the event that a pleader fails to set up a counterclaim in the nature of a cross complaint seeking a divorce, the court may grant leave to set up the counterclaim by amendment for any ground set forth in Rule 13(f) of the Rules of Domestic Relations Procedure, but may also grant leave to set up the counterclaim by way of amendment on a showing by affidavit or otherwise that the pleader delayed filing of such amendment in order to seek reconciliation between the parties or intended to withhold the allegations of the counterclaim in order to palliate or avoid exacerbation of relations between the parties. This ground may be allowed for amendment without regard to the lapse of time between the filing of the initial complaint and the filing of the motion to amend.~~

Rule 1.14. Contents of Court Judgments, Decrees, and Orders

All findings of fact made by a judicial officer judge must be incorporated into all court judgments and orders, before said documents are presented to the court to be entered.

Rule 1.15. Forms for Entry of Final Judgment [Reserved.]

~~In cases of Divorce, Separation, and Relief Without Commencement of Divorce, the final judgment shall be prepared by counsel on 8 1/2 " x 11" sized paper in the exact form as set out in Domestic Relations Rules of Procedure, Appendix of Forms, Forms 26 and 28. In cases of Separate and Apart, counsel shall prepare the interlocutory judgment on 8 1/2 " x 11" sized paper in the exact form entitled Decision Pending Entry of Final Judgment as set out in Domestic Relations Rules of Procedure, Appendix of Forms, Form 25. After the expiration of twenty (20) days from the entry of the Decision Pending Entry of Final Judgment (Form 25) and no appeal having been taken, or no extension of any appeal having been granted, counsel shall prepare the final judgment on 8 1/2 " x 11" sized paper in the exact form as set out in Domestic Relations Rules of Procedure, Appendix of Forms, Form 27. Judges of the court will not enter final judgments that are not prepared in the aforesaid format.~~

Rule 1.16. Attorneys and Self-represented Litigants Presenting Documents - Signature Required

All documents brought to a judicial officer judge of the court for signature must be signed by the attorney or a self-represented litigant presenting the document.

Rule 1.17. Interchangeability of Terms – Final Decree – Final Judgment – Interlocutory Decree – Interlocutory Judgment [Reserved.]

~~In actions granting a divorce an interlocutory judgment may be denominated “Interlocutory Decree” and a final judgment may be denominated “Final Decree.” In all other instances, the term “Judgment” shall be used to denominate the document which evidences the act of the court finally adjudicating the rights of parties to the action.~~

~~An “Interlocutory Judgment” or “Interlocutory Decree” shall contain the following statement, prominently placed near the top of the first page: “This is NOT a final judgment or decree of divorce. The parties remain legally married until entry by this court of a final decree or judgment.”~~

Rule 1.18. Taking of Blood Tests

Under the authority of G.L. 1956 § 15-8-11, any party to a paternity action may file a motion requesting that blood tests be taken provided that the party so moving must file ~~his or her~~ the motion within ten (10) days after the filing of his or her answer, except the time may be extended for good cause.

Rule 1.19. Discovery – Seventy-Five (75) Days to Complete the Process [Reserved.]

~~In any action under the Rules of Domestic Relations Procedure relating to discovery, the moving party shall have seventy five (75) days from the filing of his or her complaint or counterclaim in which to complete the discovery process; however, for good cause shown, the court may extend the time in which to complete the process.~~

Rule 1.20. Statement of Assets, Etc. - Failure to File

In any Domestic Relations action where the plaintiff has complied with the requirements of either Rule 64(b) or Rule 64A(b) of the Rules of Domestic Relations Procedure and the defendant has not filed an affidavit containing a statement of the defendant's current assets, liabilities, income, and expenses, the plaintiff may proceed with the hearing on his or her ~~M~~motion or ~~C~~complaint; however, for good cause shown, the court may extend the time in which to file the said statement.

Rule 1.21. Standard Language for Judgments and Orders Relating to Wage Assignment [Reserved.]

~~The Defendant (“Obligor”) shall execute an assignment of his or her salary and earnings, currently due or to become due in the future from any of the obligor's employers, in favor of the “Clerk of Family Court,” and in such amount as will be sufficient to meet the support payments imposed by this Court.~~

II. CALENDARS AND SESSIONS OF THE COURT

Rule 2.1. No Assignment of Cases on Certain Days

Cases will not be assigned for hearing upon any legal holiday, Good Friday, ~~Commencement Day at Brown University, Commencement Day at Providence College,~~ or upon any day within the period from December 19th to New Year's Day, each day inclusive. Matters deemed by the court to be urgent may be heard on such days. ~~Jury cases will not be assigned for trial on Saturday.~~

Rule 2.2. Family Court Sessions

~~The Family Court will be in session Mondays through Fridays for the entire calendar year for the hearing of all matters within the jurisdiction of the court.~~

Specific ~~A~~assignment dates for the hearing of all matters in ~~the counties of Providence/Bristol and Bristol, Kent, Newport, and Washington Counties~~ shall be available to all interested parties at the ~~C~~clerks' offices of the various counties and on the Rhode Island Judiciary's website at www.courts.ri.gov.

Rule 2.3. Automatic Continuance Where Session Cancelled

If for any reason sessions of the Family Court in any County are cancelled, unless otherwise ordered by the ~~C~~court or the parties otherwise stipulate with the court's approval, all matters shall automatically be continued for four (4) weeks and all outstanding orders which would by their own terms have expired on the day such session was cancelled shall automatically be continued in full force and effect for the same period. The ~~C~~clerk shall note in the docket of each case the fact of the cancellation of such session.

If the court decides to reschedule such matters in a manner different from the procedure established in the previous paragraph, the court will promulgate an administrative order to that effect and post ~~same in the various clerk's offices~~ the order on the Rhode Island Judiciary's website at www.courts.ri.gov.

III. RECORDS

Rule 3.1. Docketing

All cases shall be docketed and numbered consecutively in the classes to which they respectively belong. ~~The classes will include the following: Indictments and Informations; Complaints; Recognizances; Scire Facias on Recognizances; Complaints for Divorce; Juvenile Petitions; Petitions for Adoption; Miscellaneous Complaints and Proceedings.~~

Rule 3.2. ~~Minutes on Papers~~ [Reserved.]

No minutes relating to a case standing to a jury, other than a file mark, shall be made on the papers therein; and no such papers shall be given to a jury except those which directly relate to the issues involved in the trial. Proper minutes in such cases shall be made by the clerks.

Rule 3.3. Matters Not for Publication

~~Matters of record involving scandal or immoral practices shall not be furnished by the court for publication or given out for inspection to anyone except to the parties in interest or their representatives. Matters of record which are sealed by the court pursuant to statute or court order shall not be furnished by the court for publication or given out for inspection to anyone except as provided by statute, by these Rules of Practice as specified herein, or by order of the court.~~

Rule 3.4. Transcripts

Policies and procedures regarding the ordering, payment, and delivery of transcripts are promulgated by the Supreme Court Finance and Budget Office of the Administrative Office of State Courts. The most current version of the transcript policy and procedure is located on the Judiciary's website at www.courts.ri.gov under the heading of Quick Links on the home page.

~~(a) In proceedings to prosecute a Bill of Exceptions or an Appeal to the Supreme Court, the Family Court shall allow not more than sixty (60) days for the delivery of the transcript of evidence by the stenographer to the attorney or party requesting such transcript.~~

~~(b) If the transcript is not delivered by the stenographer to the attorney or party requesting the same within said sixty (60) days or lesser period, the Chief Judge of the court, or some judge or judges of said court designated by the Chief Judge, may extend the time for the delivery of such transcript to the attorney or party requesting the same for periods of fifteen (15) days or such longer period as may be necessary in the discretion of said Judge. Extensions in counties outside of Providence may be granted by Judges sitting in said counties.~~

~~(c) If the transcript is not delivered by the stenographer to the attorney or party requesting the same within sixty (60) days, or lesser period, and it becomes necessary to extend the time of such delivery, said stenographer shall retire from service in court upon the termination of the trial in which said stenographer shall be then engaged, and shall not resume service in said court until said transcript shall have been delivered to the attorney or party requesting the same; Provided That the Chief Judge of the Family Court, or, in his or her absence, any judge of said Court designated by him or her, if the business of the court requires, may order said stenographer at any time to resume service in said court.~~

~~(d) Each stenographer of the court and stenographer for occasional service shall file in the Office of the Administrative Clerk on the 1st day of each month, excepting the month of August, a complete list of all cases from any county ordered transcribed and uncompleted by said stenographer, with the date of the order and the extension or extensions allowed by the court.~~

~~(e) During the vacation period the senior judge sitting shall perform the duties of the Chief Judge hereunder and may grant such extensions as to him or her shall seem reasonable under the~~

~~circumstances, but such extensions shall be in conformity with the object of these rules, namely, the prompt completion of all records ordered.~~

~~(f) This order shall apply to cases in all counties.~~

~~(g) The Chief Judge of the court shall have general oversight of all matters pertaining to the stenographic force of the court.~~

Rule 3.5. Removal of Inactive Cases from Files

The clerk is hereby authorized from time to time in his or her discretion to remove from the active files in all counties and to transfer to inactive files to be maintained elsewhere, ~~or~~ at the judicial record center, or at any place that may be authorized by the court, the papers in all cases which have been pending upon any docket for five (5) years or longer and which appear to have become inactive. The papers in any case so transferred may be at any time upon motion of either party or in the clerk's discretion be returned to the active files. Upon the implementation of electronic filing, court records shall be maintained in accordance with the Rhode Island Judiciary Records Retention Schedule.

Rule 3.6. Notation of Assignments When Closing Cases [Reserved.]

~~Counsel when filing any orders or agreements disposing of pending actions are required to note on said order whether the case stands assigned and if so to what date and calendar.~~

Rule 3.7. Flat Filing [Reserved.]

~~The files in the Domestic and Juvenile Clerks' Offices shall be kept under the system commonly known as "flat filing". All papers presented for filing shall be printed or typewritten on 8 1/2 " x 11" paper, not folded and without legal "backs" attached. Caption, case number, attorney's name, address, identification number and telephone number shall appear on the face of all papers filed.~~