STATE OF VERMONT
SUPREME COURT
AUGUST TERM, 2020

Order Promulgating Administrative Order No. 50

1. Pursuant to the Vermont Constitution, Chapter II §§ 30 and 37, it is hereby ordered that Administrative Order No. 50 be promulgated to read as follows:

PILOT PROJECT FOR SERVICE BY OFFICE OF CHILD SUPPORT

§ 1. Policy and Goals.

The judiciary and the Office of Child Support (OCS) have cooperated to explore means to more efficiently provide service to defendants in cases filed where OCS is providing services under Title IV-D of the federal Social Security Act, which established a Child Support Enforcement Program. See 33 V.S.A. § 4101(a) (designating OCS as agency responsible for Title IV-D). The advent of e-filing provides an opportunity for OCS rather than the court to be responsible for service in cases where it is providing Title IV-D services, a system that potentially will effectuate service with much greater efficiency. Thus, in cases in Windham and Windsor Units, where efiling has been implemented, OCS will be required to effect service as detailed in §§ 2 and 3.

§ 2. Suspension of Rule.

In any action filed under Vermont Rule of Family Proceedings 4.1 in Windham and Windsor Units, Rule 4.1(a)(2) of the Vermont Rules for Family Proceedings will be amended to read as follows (deleted matter struck through; new matter underlined):

RULE 4.1. CASES INVOLVING MINOR CHILDREN

(a) **Complaint; Service; Case Management Conference.**

(2) Commencing an Action; Service. 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 must be commenced, and service of process must be made, as provided in this paragraph.

(A) The complaint must be filed and a hearing or case manager's conference must be scheduled before the complaint is served.

(B) After filing, the family division clerk will complete a notice of hearing or notice of case manager's conference and must 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.

(C) After a hearing or case manager's conference has been scheduled, <u>prompt service on the defendant must be made as follows:</u>

<u>(i) by a designated representative of the Office of Child Support (OCS) when OCS is providing Title IV-D services on a case;</u>

<u>(ii) in all other cases by</u> the clerk, or upon request, the plaintiff's attorney~~, must make prompt service on the defendant~~.

(D) 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, complaint, and the notice of hearing or case manager's conference signed by the clerk.

(E) 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 plaintiff must pay the expense.

(F) If certified mail is refused by the defendant, ~~the clerk may serve~~ the notice of hearing or case manager's conference, summons, and complaint may be served by mailing it to the defendant by ordinary first-class mail and by certifying that such service has been made. Any service must be made:

(i) by a designated representative of the Office of Child Support (OCS) when OCS is providing Title IV-D services on a case;

(ii) in all other cases by the clerk.

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

(H) At any time, service may be made by delivering to the defendant by any method chosen by the plaintiff the summons and a request that the defendant waive service by any other method. The summons and request must 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 21 days from the date the documents were delivered, or 60 days from that date if the documents and request are delivered to the defendant outside a state or territory of the United States. If the defendant answers the complaint, the defendant must do so within 21 days of the date that the defendant signed the waiver or, if the waiver is undated, within 21 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.

§ 3. Service by Email.

Service by OCS under the revised provisions of V.R.F.P. 4.1(a)(2) in § 2 may be made on a self-represented party by delivering to the self-represented party the summons, complaint, and notice of hearing or case manager's conference if applicable by email. This method of service is only permissible if the self-represented party has completed a notice of appearance form choosing to be served by email. The form must specify the name of the party electing to be served by email as well as the party's email address.

When service is made by email, the following applies:

a) OCS must follow any applicable rules regarding electronic transmission of confidential documents.

b) Any party wishing to alter the method of service provided under this rule must immediately notify OCS, the court, and the other party of any relevant change, including changes in email address.

c) Service by email to an email address provided pursuant to this rule is complete upon transmission, provided that such service is not effective if the sending party learns that the attempted service did not reach the receiving party.

d) Any certificate of service filed with the court must indicate the method by which the document was served. If the document was served by email, the certificate of service should specify the email address or addresses to which it was sent.

2. That this order will become effective on October 1, 2020.

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

Done in chambers at Montpelier, Vermont this 7th day of August 2020.

Signed by the Vermont Supreme Court

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice