

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
PART V. RULES GOVERNING PRACTICE IN THE CHANCERY DIVISION,
FAMILY PART
CHAPTER I. ACTIONS COGNIZABLE; SCOPE AND APPLICABILITY OF RULES;
GENERAL PROVISIONS; PROCESS; VENUE; PLEADINGS;
PROCESS; APPEARANCES
RULE 5:4. PROCESS, PLEADINGS, APPEARANCES

Rule 5:4-1. Process

(a) Summons Generally. Except as otherwise provided by these rules with respect to a specific family action and except as otherwise provided by paragraph (b) of this rule, the summons in all civil family actions shall be in the form prescribed by R. 4:4-2 and shall be served in accordance with R. 4:4.

(b) Summons, Summary Family Actions. In every family action required or permitted by law or rule to proceed summarily, a summons shall issue either in addition to or in lieu of an order to show cause. The summons shall comply with the requirements of R. 4:4-2 except that in lieu of requiring an answer it shall notify the defendant to appear at the time, date and place therein set forth to answer the complaint, a copy of which shall be annexed thereto. It shall also notify the defendant that unless the defendant appears at the date, time and place set forth an order may be entered by default and, if appropriate, that a warrant may issue to compel the defendant's appearance. The summons shall be served in accordance with R. 4:4.

(c) Warrant. In criminal and quasi-criminal actions, the provisions of R. 3:3 insofar as applicable shall apply. A warrant may also issue where provided by rule or otherwise appropriate to compel appearance.

Note: Source-R. (1969) 4:78-1, 5:4-2(a), 5:4-3. Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b) amended July 13, 1994 to be effective September 1, 1994.

Rule 5:4-2. Complaint

(a) Complaint Generally.

(1) Caption. All family actions shall be captioned in the Chancery Division-Family Part.

(2) Contents. Every complaint in a family part action, in addition to the special requirements prescribed by these rules for specific family actions shall also include a statement of the essential facts constituting the basis of the relief sought, the statute or statutes, if any, relied on by the plaintiff, the street address or, if none, the post office address of each party, or a statement that such address is not known; a statement of any previous family actions between the parties; and, if not otherwise stated, the facts upon which venue is based. If a civil union or domestic partnership exists between the parties, it shall be stated in the complaint. When dissolution or termination of that relationship is sought, the complaint shall contain a separate cause of action seeking such relief.

In any action involving the welfare or status of a child, the complaint shall include the child's name, address, the date of birth, and a statement of where and with whom the child resides.

(b) Corespondent.

(1) Identification of Corespondent. In family actions in which adultery or deviant sexual conduct is charged, the pleading so charging shall state the name of the person with whom such conduct was committed, if known, and if not known, shall state any available information tending to describe the said person, and shall also state such designation of the time, place and circumstances under which the act or series of acts were committed as will enable the party charged therewith and the court to distinguish the particular offense or offenses intended to be charged. If it is stated that the name is unknown, it must be shown at the hearing that it was not known at the time of the filing of the pleading containing the charge.

(2) Notice to Corespondent. A person named as a corespondent in any pleading seeking or resisting relief on the ground of adultery or deviant sexual conduct shall, within 30 days after filing of such a pleading, be served by the party making the charge, either personally or by registered or certified mail to the corespondent's last-known address, return receipt requested, or, if the corespondent refuses to claim or to accept delivery, by ordinary mail, with a copy of such pleading and a written notice of the pendency of the action, of the charge, and of the right to intervene in accordance with R. 4:33. If the name and address of the corespondent are discovered thereafter and before the trial, the party making the charge shall give such notice forthwith. If the name and address of the corespondent appear at the trial, and such notice has not been given, an adjournment may be ordered and such notice given. An affidavit of compliance with the requirements of this rule shall be filed.

(c) Affidavit of Verification and Non-Collusion. There shall be annexed to every complaint or counterclaim for divorce, dissolution of civil union, termination of domestic partnership, or nullity an oath or affirmation by the plaintiff or counterclaimant that the allegations of the complaint or counterclaim are true to the best of the party's knowledge, information and belief, and that the pleading is made in truth and good faith and without collusion for the causes set forth therein.

(d) Counterclaim. A counterclaim may state any family cause of action, and any other cause or causes of action which exist at the time of service of the counterclaim. A counterclaim not stated in an answer may be filed by leave of the court at any time prior to final judgment. Failure to counterclaim for divorce, dissolution of civil union, termination of domestic partnership, or nullity shall not bar such cause of action. In any action involving the welfare or status of a child the counterclaim shall include the child's name, address, date of birth and a statement of where and with whom the child resides.

(e) Amended or Supplemental Complaint or Counterclaim in Dissolution Matters. In any action for divorce, dissolution of civil union, termination of domestic partnership, nullity, or separate maintenance, a supplemental complaint or counterclaim may be allowed to set forth a cause of action which has arisen or become known since the filing of the original complaint, and an amended complaint or counterclaim may be allowed

to change the action from the originally pleaded cause to any other cognizable family or family type action.

(f) Affidavit or Certification of Insurance Coverage. The first pleading of each party shall have annexed thereto an affidavit listing all known insurance coverage of the parties and their minor children, including but not limited to life, health, automobile, homeowner's and renter's insurance and any umbrella policy related thereto, long-term care, and disability insurance. The affidavit shall specify the name of the insurance company, the policy number, the named insured and, if applicable, other persons covered by the policy; a description of the coverage including the policy term, if applicable; and in the case of life insurance, an identification of the named beneficiaries. The affidavit shall also specify whether any insurance coverage was canceled or modified within the ninety days preceding its date and, if so, a description of the canceled insurance coverage. Insurance coverage identified in the affidavit shall be maintained pending further order of the court. If, however, the only relief sought is dissolution of the marriage or civil union, or a termination of a domestic partnership, or if a settlement agreement addressing insurance coverage has already been reached, the parties shall annex to their pleadings, in lieu of the required insurance affidavit, an affidavit so stating. Nevertheless, if a responding party seeks financial relief, the responding party shall annex an insurance-coverage affidavit to the responsive pleading and the adverse party shall serve and file an insurance-coverage affidavit within 20 days after service of the responsive pleading. A certification in lieu of affidavit may be filed.

(g) Confidential Litigant Information Sheet. All pleadings of each party to any proceeding involving alimony, maintenance, child support, custody, parenting time, visitation or paternity shall be accompanied by a completed Confidential Litigant Information Sheet in the form prescribed by the Administrative Director of the Courts. The form shall be provided at the time of the filing of any pleading but shall not be affixed to the pleadings. The information contained in the Confidential Litigant Information Sheet shall be maintained as confidential and shall be used for the sole purposes of establishing, modifying, and enforcing orders. The Administrative Office of the Courts shall develop and implement procedures to maintain the Confidential Litigant Information Sheet as a confidential document rather than a public record. The Confidential Litigant Information Sheet shall contain a certification consistent with R. 1:4-4(b). No copy thereof shall be served on any opposing party.

(h) Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives. The first pleading of each party shall have annexed thereto an affidavit or certification in the form prescribed in Appendix XXVII-A or XXVII-B of these rules that the litigant has been informed of the availability of complementary dispute resolution ("CDR") alternatives to conventional litigation, including but not limited to mediation, arbitration, and collaborative law (New Jersey Family Collaborative Law Act, N.J.S.A. 2A:23D-1 through -18), and that the litigant has received descriptive material regarding such CDR alternatives.

(i) Complaint in Non-Dissolution Matters. Non-dissolution actions shall commence with the filing of a verified complaint/counterclaim form promulgated by the Administrative Director of the Courts, except that attorneys may file a non-conforming

complaint, which must have appended to it a completed supplement promulgated by the Administrative Director of the Courts.

In any action involving the welfare or status of a child, the complaint shall include the child's name, address, the date of birth, and a statement of where and with whom the child resides.

In any non-dissolution action involving the support of a child in which paternity was previously acknowledged by the parents, a copy of the Certificate of Parentage or other written acknowledgment of paternity shall be filed with the complaint for support.

(j) Designation of Complex Non-Dissolution Matters. In any non-dissolution action, any party or attorney seeking to designate a case as complex may submit that request in a verified complaint/counterclaim form promulgated by the Administrative Director of the Courts or in writing to the court prior to the first hearing. The procedure for the assignment of non-dissolution matters to the complex track is set forth in R. 5:5-7(c).

Note: Source - R. (1969) 4:77-1(a)(b)(c)(d), 4:77-2, 4:77-3, 4:77-4, 4:78-3, 5:4-1(a) (first two sentences). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b)(2) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a)(2) and (d) amended November 2, 1987 to be effective January 1, 1988; paragraphs (b)(2) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a)(2) amended July 10, 1998 to be effective September 1, 1998; new paragraph (f) adopted January 21, 1999 to be effective April 5, 1999; paragraph (f) caption and text amendment July 12, 2002 to be effective September 3, 2002; new paragraph (g) adopted July 28, 2004 to be effective September 1, 2004; new paragraph (h) adopted July 27, 2006 to be effective September 1, 2006; paragraph (h) amended October 10, 2006 to be effective immediately; paragraph (g) amended June 15, 2007 to be effective September 1, 2007; paragraphs (g) and (h) amended July 16, 2009 to be effective September 1, 2009; paragraphs (c), (d), (e), (f) and (g) amended July 21, 2011 to be effective September 1, 2011; paragraph (g) amended July 9, 2013 to be effective September 1, 2013; subparagraph (a)(2) amended, paragraph (e) caption amended, paragraph (h) amended, and paragraphs (i) and (j) adopted July 27, 2015 to be effective September 1, 2015; subparagraph (a)(2) and paragraph (f) amended July 28, 2017 to be effective September 1, 2017.

Rule 5:4-3. Answer, Acknowledgment, Appearance

(a) Generally. Except as otherwise provided by paragraph (b) hereof or by any other rule or statute, a defendant in a family action shall file an answer in accordance with R. 4:5-3 or a general appearance and, without filing an answer, be heard on issues of custody of children, parenting time or visitation, alimony, child support, equitable distribution, counsel fees and other issues incidental to the proceeding. A defendant may also file an acknowledgment of service in accordance with R. 4:4-6.

(b) Summary Actions. In summary family actions in which the process fixes a return day, the defendant need not file an answer, appearance or acknowledgment in order to be heard if the defendant appears on the return day.

Note: Source-R. (1969) 4:78-2, 4:79-1; 5:3-2 (second sentence). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 5, 2000 to be effective September 5, 2000.

Rule 5:4-4. Service of Process in Family Part Summary Actions; Initial Complaints and Applications for Post-Dispositional Relief

(a) Manner of Service. Service of process within this State for Family Part summary actions, including initial complaints and applications for post-dispositional relief, shall be made in accordance with R. 4:4-4, R. 5:9A-2, or paragraph (b) of this rule. For initial complaints, substituted or constructive service of process outside this State may be made pursuant to the applicable provisions in R. 4:4-4 or R. 4:4-5. Family Part summary actions shall include all non-dissolution initial complaints as well as applications for post-dispositional relief, applications for post-dispositional relief under the Prevention of Domestic Violence Act, and all kinship legal guardianship actions. 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) Service by Mail Program. Service of process for Family Part summary actions may be effected as follows:

(1) Service by Mail. The Family Part shall mail process simultaneously by both certified and ordinary mail to the mailing address of the 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 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 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. 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 the filing party or the attorney of the action taken, and reinstitute efforts to serve the adverse party either by mail or personally. 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 an order be vacated or modified based on the fact that 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 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 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.

(e) General Appearance; Acknowledgment of Service. For initial complaints, a general appearance or an acceptance of the service of a summons, signed or acknowledged on the record by defendant's attorney, or signed and acknowledged by

defendant or by a competent adult in defendant's household, or as otherwise provided in R. 4:4-4, shall have the same effect as if defendant 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) and amended July 21, 2011 to be effective September 1, 2011.

Rule 5:4-5. Issuance of Summons for Dissolution Complaints

Plaintiff shall cause a summons to issue within sixty (60) days after the filing of a dissolution complaint. Should plaintiff fail to issue a summons within sixty (60) days from the date of the filing of a dissolution complaint, defendant may seek dismissal of the complaint or such other relief as is just and equitable. Such dismissal shall be without prejudice unless otherwise specified in the order.

Note: Adopted July 28, 2017 to be effective September 1, 2017.