

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2022

Order Amending Rule 18(d)(2) of the Vermont Rules for Family Proceedings

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

1. That Rule 18(d)(2) of the Vermont Rules for Family Proceedings be amended to read as follows (new matter underlined):

RULE 18. MEDIATION

(d) **Conduct of Mediation.** In a mediation ordered under subdivision (b),

(1) *Appointment of Mediator.*

(A) If both parties are represented by counsel, the mediation will be conducted by an individual mediator of the parties' choice. If the parties do not agree on a mediator, or if one or more of the parties is self-represented, the mediator will be appointed under subparagraph (B) of this paragraph.

(B) If the mediation cannot be conducted by a mediator chosen as provided in subparagraph (A) of this paragraph, the mediation will be conducted by an individual mediator from the Family Division Mediation Program's list of mediators, acceptable to the court and the parties. If the parties are not in agreement, the court may appoint a mediator from the Mediation Program list. If no mediator on the Mediation Program's list is available to conduct the mediation, the court may designate another mediator with credentials comparable to the minimum requirements for inclusion on the list, including domestic-violence training.

(2) The mediation will be carried out on a schedule prepared by the parties in consultation with the mediator and approved by the court unless the court subsequently, on the request of the parties and mediator, approves a modification. Parties may participate in mediation using remote technology at the discretion of the mediator or by order of the court.

(3) The mediator will meet with each party separately prior to the mediation and may meet with any party separately at any time during the mediation.

(4) The parties are expected to attend all mediation sessions and to mediate in good faith. Attorneys may attend mediation sessions with their clients.

(5) If at any time the mediator determines that the issues are not suitable for mediation, the mediator may refer the matter back to the court to be determined in further proceedings as ordered by the court.

(6) The mediator has no authority to make a decision or impose a settlement upon the parties. Any settlement must be voluntary. The parties may reach a partial settlement of the issues and preserve the right to litigate remaining issues. In the absence of settlement, the parties retain their rights to a resolution of all issues through litigation.

(7) Any agreement reached by the parties through the mediation process on all or some of the disputed issues must be reduced to writing, signed by each party and the mediator, and filed with the court by the parties within 14 days after the date of the last signature.

(8) If no settlement is reached by the date specified in the schedule approved or modified under paragraph (2), the parties must notify the court in writing. The matter will then be determined by the court as provided in any agreement reached in the mediation and approved by the court or, in the absence of agreement, as ordered by the court.

Reporter's Notes—2022 Amendment

Rule 18(d)(2) is amended to clarify that mediation can take place either in person or using remote technology.

A.O. 49 was initially issued March 16, 2020, in response to the state of emergency resulting from the pandemic. Paragraph 13 of A.O. 49 authorized remote participation in mediation by video or telephone without a stipulation or court order. Further, in anticipation that at some point A.O. 49 would no longer be necessary, the Supreme Court requested that the Advisory Committee on Rules for Family Proceedings consider whether there should be a permanent change to Rule 18 related to remote participation. After considering responses from attorneys who practice family law to a Vermont Bar Association survey and responses from family mediators, the Committee concluded that both in person and remote participation in mediation should be permissible in family proceedings subject to V.R.F.P. 18 at the discretion of the mediator.

2. That these amendments be prescribed and promulgated, effective on _____. The Reporter's Notes are advisory.

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.

Dated in Chambers at Montpelier, Vermont, this ____ day of _____, 2022.

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Vacancy, Associate Justice

PROPOSED