

**STATE OF VERMONT
VERMONT SUPREME COURT
NOVEMBER TERM, 2024**

**Order Amending Rules 4.1(a)(2) and (3) and 4.3 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 4.1(a)(2) and (3) of the Vermont Rules for Family Proceedings be amended as follows (new matter underlined):

RULE 4.1. CASES INVOLVING MINOR CHILDREN

(a) Complaint; Service; Case Management Conference.

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(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 must be made, as provided in this paragraph.

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(I) In actions wherein a petition for special findings pursuant to 14 V.S.A. § 3098 has been filed, service of the petition may be waived by order of the court as provided in Rule 4.3(g).

(3) *Case Management Conference.* If either party is or may be obligated to pay child support to the other party or to the Office of Child Support, a case management conference will be held unless the conference is waived as provided in subparagraph (C) or (D). The purpose of the conference is to consider all financial and other issues pending between the parties to encourage settlement and clarify and simplify the issues for hearing.

(A) The conference will be conducted by a case manager assigned to the family division or by another family division staff member designated by the judge.

(B) The conference must be held after the date of service of process on the defendant and not later than the date set for hearing.

(C) If, before the scheduled date of the conference, the parties have filed and exchanged all information and material required under paragraph (b)(4), a stipulation approved by the court as to any issues that have been resolved, and a statement setting forth issues that have not been resolved, the presiding judge or magistrate or, if approved by the judge, the case manager, may waive the conference.

(D) If a party has filed a petition for special findings pursuant to 14 V.S.A. § 3098(c), the matter will immediately be set for hearing on the motion and the case manager conference postponed until the petition has been decided. If the petition is granted, the court may waive the conference.

Reporter's Notes—2025 Amendment

In 2020, the Vermont Legislature enacted legislation on proceedings related to vulnerable noncitizen children. 14 V.S.A. § 3098. The Vermont legislation applies in any court with jurisdiction over an unmarried individual or individuals under the age of 21 and not a citizen of the United States. In the family division this includes all proceedings governed by Rule 4.1 in which custody of a noncitizen child is at issue and a petition for special findings has been filed. The Federal Immigration and Nationality Act (INA) allows a noncitizen youth to file for Special Immigrant Juvenile Status (SIJS), which if granted, provides a pathway to permanent residency for the child. 8 U.S.C. § 1101 et seq. A filing for SIJS status with the U.S. Citizenship and Immigration Services (USCIS) must demonstrate that the child meets certain criteria one of which is that a state court with jurisdiction over the youth has made “special findings” in four specific areas: (1) the child is a dependent of the court or legally committed to or placed under custody of a state agency or an individual or entity appointed by the court; (2) the child has suffered from abuse, neglect, abandonment, or similar circumstances; (3) the child may not be viably reunified with one or both parents due to abuse, neglect, abandonment, or similar circumstances; and (4) that it is not in the child’s best interests to be returned to the child’s or the child’s parents previous country of national residence or habitual residence. 14 V.S.A. § 3098(c)(1)(A)-(D); see 8 U.S.C. § 1101(a)(27)(J). Section 3098 confers jurisdiction on Vermont courts to issue findings that address these four areas whenever a petition for special findings is filed.

Rule 4.1(a)(2)(I) is added to permit the court to waive service of the petition for special findings as provided in Rule 4.3(g). Section 3098(d) specifically authorizes the court to use any appropriate alternative method of service or to waive service altogether. The procedure for a motion to waive service is outlined in Rule 4.3(g). See Rule 4.3(g), Reporter’s Notes—2025 Amendment.

V.R.F.P. 4.1(a)(3)(D) is added to permit the postponement of a case manager conference in cases where a petition for special findings has been filed until the court has heard and decided the petition. A determination by the court with respect to findings related to a child’s status as a vulnerable noncitizen is critical to the ability of the case manager to conduct an appropriate conference. If the status is confirmed by special findings, a conference may not be necessary. Further, as the statute makes clear time is of the essence in many such cases. Section 3098(e)

requires the court to hear, adjudicate and issue findings on such petitions as soon as it is administratively feasible whenever it is in the best interest of the vulnerable noncitizen child.

2. That Rule 4.3 of the Vermont Rules for Family Proceedings be amended as follows (new matter underlined):

RULE 4.3 SPECIAL PROCEDURES

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(g) Procedure to Waive Service by Court Order in Actions Subject to 14 V.S.A. § 3098.

- (1) *Motion to Waive Service.* In an action under Rules 4.1 or 4.2 wherein a petition for special findings pursuant to 14 V.S.A. § 3098 is filed, the petitioner may file a motion to waive service. The motion shall be accompanied by an affidavit setting forth:
- (A) The names of the child’s parents, if known. If unknown, the motion shall so specify.
 - (B) The location of each parent including each parent’s current address, if known. If unknown, the motion shall so specify.
 - (C) If the name or location of a parent is unknown, a detailed description of efforts that have been made to identify the parent or determine the parent’s location including the parent’s address and country of residence.
 - (D) The reasons why service cannot with due diligence be made by any other prescribed method including service by publication.
- (2) *Order to Waive Service.* If the court determines pursuant to 14 V.S.A. § 3098(d) that service of the petition cannot with due diligence be made by any other prescribed method, the court shall issue findings and a written order.

Reporter’s Notes—2025 Amendment

In 2020, the Vermont Legislature enacted legislation on proceedings related to vulnerable noncitizen children. 14 V.S.A. § 3098. The Vermont legislation applies in any court with jurisdiction over an unmarried individual or individuals under the age of 21 and not a citizen of the United States. In the family division this includes all proceedings governed by Rule 4.1 in which custody of a noncitizen child is at issue and a petition for special findings has been filed. The federal Immigration and Nationality Act (INA) allows a noncitizen youth to file for Special Immigrant Juvenile Status (SIJS), which, if granted, provides a pathway to permanent residency for the child. 8 USC § 1101 et seq. A filing for SIJS status with the U.S. Citizenship and Immigration Services (USCIS) must demonstrate that the child meets certain criteria one of which is that a state court with jurisdiction over the youth has made “special findings” in four

specific areas: (1) the child is a dependent of the court or legally committed to or placed under custody of a state agency or an individual or entity appointed by the court; (2) the child has suffered from abuse, neglect, abandonment, or similar circumstances; (3) the child may not be viably reunified with one or both parents due to abuse, neglect, abandonment or similar circumstances; and (4) that it is not in the child's best interests to be returned to the child's or the child's parents previous country of national residence or habitual residence. 14 V.S.A. § 3098(c)(1)(A)-(D); see also 8 U.S.C. § 1101(a)(27)(J). Section 3098 confers jurisdiction on Vermont courts to issue findings that address these four areas whenever a petition for special findings is filed.

Section 3098(d) specifically authorizes the court to use any appropriate alternative method of service or to waive service altogether. This authorization to permit a waiver of service applies only to the petition for special findings and reflects a recognition by the Legislature that in a majority of SIJS cases one or both parents are located outside of the United States making it difficult to locate foreign addresses, particularly if a parent has abandoned the family and may have fled to another country. In addition, in many cases there is a heightened need for expedited treatment by the court as reflected in 14 V.S.A. § 3098(e).

Because petitions for special findings pursuant to § 3098 are by their nature "special procedures" and because a request to waive service altogether is not available in any other proceeding under Rule 4.0, the procedure related to motions to waive service is set forth as an amendment to Rule 4.3, Special Procedures. The procedure requires that the motion be accompanied by an affidavit describing any efforts that have been made to complete service and explaining why service cannot be made by any other prescribed method. This requirement reflects the due process principle that service should only be waived in extreme cases where no alternative method of service will be effective.

3. That this amendment be prescribed and promulgated, effective on January 3, 2025. The Reporter's Notes are advisory.

4. That this Order must be promulgated without using an effective date of January 1 or July 1 as ordinarily required by Administrative Order 11, § 9, because there is an immediate need for rules to comply with the statutory requirements of 14 V.S.A. § 3098, including waiver of service.

5. 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 4th day of November, 2024.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice