

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 5:1. COGNIZABILITY OF ACTIONS; SCOPE AND APPLICABILITY OF RULES

Rule 5:1-1. Scope and Applicability of Rules

The rules in Part V shall govern family actions. All family actions shall also be governed by the rules in Part I insofar as applicable. Civil family actions shall also be governed by the rules in Part IV insofar as applicable and except as otherwise provided by the rules in Part V. Criminal and quasi-criminal family actions shall also be governed by the rules in Part III insofar as applicable except as otherwise provided by the rules in Part V. Juvenile delinquency actions shall be governed by the rules in Part III insofar as applicable and except as otherwise provided by the rules in Part V.

Note: Source - new. Adopted December 20, 1983, to be effective December 31, 1983; amended January 5, 1998 to be effective February 1, 1998.

Rule 5:1-2. Actions Cognizable

The following actions shall be cognizable in the Family Part:

(a) Civil Family Actions Generally. All civil actions in which the principal claim is unique to and arises out of a family or family-type relationship shall be brought in the Family Part. Such actions shall include all actions and proceedings provided for in Chapters II and III of Part V; all civil actions and proceedings formerly designated as matrimonial actions; actions that arise under the Domestic Partnership Act, N.J.S.A. 26:8A-1 et seq.; actions arising under N.J.S.A. 37:1-28 et seq. relating to civil unions; all civil actions and proceedings formerly cognizable in the Juvenile and Domestic Relations Court; and all other civil actions and proceedings unique to and arising out of a family or a family-type relationship.

(b) Juvenile Delinquency Actions.

(c) Criminal and Quasi-Criminal Actions.

(1) Criminal actions brought pursuant to N.J.S. 2C:24-5 (willful nonsupport) shall be prosecuted in the Family Part subject to transfer to the Law Division pursuant to R. 3:1-5(b) in the event the defendant is entitled to and demands trial by jury.

(2) All other indictable offenses pending in the Law Division may be transferred to the Family Part for trial and disposition pursuant to R. 3:1-5 provided that (A) the gravamen of the offense charged arises out of a family or a family-type relationship between the defendant and a victim, (B) the defendant has waived trial by jury pursuant to R. 1:8-1, (C) the defendant and the prosecutor have both consented to such transfer.

(3) Any non-indictable offense or violation pending in the municipal court and any indictable offense within the trial jurisdiction of the municipal court may be transferred for trial and disposition to the Family Part pursuant to R. 5:1-3(b) provided that the gravamen of the offense or violation arises out of a family or family-type relationship between the defendant and a victim.

Note: Source-new. Adopted December 20, 1983, to be effective December 31, 1983; paragraph (c)(1) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended June 15, 2007 to be effective September 1, 2007.

Rule 5:1-3. Transfer of Actions to and from the Family Part

(a) Civil Actions. The transfer of civil family actions to or from the Family Part to or from any other trial division or part of a trial division of the Superior Court shall be governed by R. 4:3-1(b).

(b) Criminal and Quasi-Criminal Actions.

(1) The transfer of criminal actions between the Law Division and the Family Part shall be governed by R. 3:1-5.

(2) The transfer of proceedings pending in a municipal court shall be on motion made by the defendant, the complaining witness or the municipal prosecutor. If there is a pending Family Part matter the motion shall be made to the judge assigned to that case and if no judge has been assigned, then to the presiding judge of that vicinage. If there is no pending Family Part matter, then the motion should be made to the presiding judge of the Family Part where the municipal court is located.

(c) Juvenile Delinquency Actions. The transfer of juvenile delinquency actions between the Family Part and other courts shall be governed by R. 5:23. The referral of a juvenile delinquency action to the Law Division for prosecution as in the case of an adult shall be governed by R. 5:22.

Note: Source-new. Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b)(2) amended November 1, 1985 to be effective January 2, 1986.

Rule 5:1-4. Differentiated Case Management in Civil Family Actions

(a) Case Management Tracks; Standards for Assignment. Except for summary actions, every civil family action shall be assigned, subject to reassignment as provided by paragraph (c) of this rule, to one of the following tracks:

(1) Priority Track. The action shall be assigned to the priority track if it involves contested custody or parenting time issues.

(2) Complex Track. The action shall be assigned to the complex track for judicial management if it appears likely that it will require a disproportionate expenditure of court and litigant resources in preparation for trial and at trial because of the number of parties involved, the number of claims and defenses raised, the legal difficulty of the issues presented, the factual difficulty of the subject matter, the length and complexity of discovery, or a combination of these or other factors.

(3) Expedited Track. The action shall be assigned to the expedited track if it appears that it can be promptly tried with minimal pretrial proceedings, including discovery. Subject to re-assignment as provided by paragraph (c) of this rule, a dissolution action shall be assigned to the expedited track if (A) there is no dispute as to either the income of the parties or the identifiable value of the assets and no issue of custody or parenting time has been raised; (B) the parties have had a marital, domestic partnership or civil union relationship for less than five years and have no children; (C) the parties have entered into a property settlement agreement; or (D) the action is uncontested.

(4) Standard Track. Any action not qualifying for assignment to the Priority Track, Complex Track, Expedited Track, or Arbitration Track shall be assigned to the Standard Track.

(5) Arbitration Track. At any point in a proceeding, the parties may agree to execute a Consent Order or Agreement to arbitrate or resolve the issues pending before the court pursuant to the Uniform Arbitration Act, N.J.S.A. 2A: 23B-1, et seq., the New Jersey Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A:23A-1, et seq., or any other agreed upon framework for arbitration of disputes between and among parties to any proceeding arising from a family or family-type relationship except as provided in R. 5:1-5(a)(1). If the parties elect to arbitrate, the litigation shall be assigned to the Arbitration Track, and the arbitration shall proceed pursuant to R. 5:1-5. Issues not resolved in the arbitration shall be addressed in a separate mediation process or by the court after the disposition of the arbitration.

(b) Procedure for Track Assignment. The Family Presiding Judge or a judge designated by the Family Presiding Judge shall make the track assignment as soon as practicable after all parties have filed Family Case Information Statements required by R. 5:5-2 or after the case management conference required by R. 5:5-7, whichever is earlier. The track assignment, however, shall not precede the filing of the first responsive pleading in the action. In making the track assignment, due consideration shall be given to an attorney's request for track assignment. If all the attorneys agree on a track assignment, the case shall not be assigned to a different track except for good cause shown and after giving all attorneys the opportunity to be heard, in writing or orally. The good cause exception shall not apply to a case assigned to the Arbitration Track. If it is not clear from an examination of the information provided by the parties which track assignment is most appropriate, the case shall be assigned to a track other than the Arbitration Track that affords the greatest degree of management. The parties shall be advised promptly by the court of the track assignment.

(c) Track Reassignment. Except with respect to assignment to the Arbitration Track, an action may be reassigned to a track other than that specified in the original notice to the parties either on the court's own motion or on application of a party. Unless the court otherwise directs, such application may be made informally to the Family Presiding Judge or to a judge designated by the Family Presiding Judge and shall state with specificity the reasons therefor. An action assigned to the Arbitration Track may be reassigned to the track assignment most appropriate if the parties mutually elect to opt out of the Arbitration Track by Consent Order or Agreement.

Note: Adopted January 21, 1999 to be effective April 5, 1999; paragraph (b) amended August 1, 2006 to be effective September 1, 2006; subparagraph (a)(3) amended July 21, 2011 to be effective September 1, 2011; subparagraph (a)(4) amended, new subparagraph (a)(5) adopted, and paragraphs (b) and (c) amended July 27, 2015 to be effective September 1, 2015.

Rule 5:1-5. Arbitration

(a) Scope of Rule. This Rule applies to all Agreements to Arbitrate ("Agreements") and all Consent Orders to Arbitrate ("Consent Orders"), including but not limited to those entered into pursuant to the Uniform Arbitration Act, N.J.S.A. 2A:23B-1 et seq., the New Jersey Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A:23A-1 et seq., or any other agreed upon framework for arbitration or resolution of disputes between and among parties to any proceeding heard in the family part, except: (A) the entry of the final judgment of annulment or dissolution of relationship; (B) actions involving the Division of Child Protection and Permanency; (C) domestic violence actions; (D) juvenile delinquency actions; (E) family crisis actions; and (F) adoption actions, which may not be arbitrated.

(b) Prerequisites.

(1) Arbitration Questionnaire. Prior to the execution of any Agreement or entry of a Consent Order, each party shall review and execute the Arbitration Questionnaire, which is set forth in Appendix XXIX-A, and each party's questionnaire shall be attached to the Agreement or Consent Order.

(2) Agreement or Consent Order.

(A) Insofar as an Agreement or Consent Order relates to a pending family proceeding, the Agreement or Consent Order shall state:

(i) the parties understand their entitlement to a judicial adjudication of their dispute and are willing to waive that right;

(ii) the parties are aware of the limited circumstances under which a challenge to the award may be advanced and agree to those limitations;

(iii) the parties have had sufficient time to consider the implications of their decision to arbitrate; and

(iv) the parties have entered into the Agreement or Consent Order freely and voluntarily, after due consideration of the consequences of doing so.

(B) In addition, in all family proceedings involving child-custody and parenting-time issues, the Agreement or Consent Order shall provide that:

(i) a record of all documentary evidence shall be kept;

(ii) all testimony shall be recorded verbatim; and

(iii) the award shall state, in writing, findings of fact and conclusions of law with a focus on the best-interests of the child standard.

(C) Further, in all family proceedings involving child support issues, the Agreement or Consent Order shall provide that the award shall state, in writing, findings of fact and conclusions of law with a focus on the best-interests standard, and consistent with R. 5:6A and Rules Appendix IX.

(D) Appendix XXIX-B is a template form of agreement to arbitrate pursuant to N.J.S.A. 2A:23B-1 et seq.

(E) Appendix XXIX-C is a template form of agreement to resolve disputes pursuant to N.J.S.A. 2A: 23A-1 et seq.

(F) Appendix XXIX-D is a form arbitrator/umpire disclosure.

(3) Certification. If the parties have entered into an Agreement or Consent Order to arbitrate or an arbitration award has issued, the certification filed pursuant to R. 4:5-1(b)(2) shall so state.

(c) Arbitration Track. Any action pending at the time that an Agreement or Consent Order to arbitrate is reached shall be placed on the Arbitration Track referenced in R. 5:1-4 for no more than one year following Arbitration Track assignment, which term may be extended by the court for good cause shown. Cases assigned to the Arbitration Track should be given scheduling consideration when fixing court appearances in other matters.

Note: Adopted July 27, 2015 to be effective September 1, 2015.