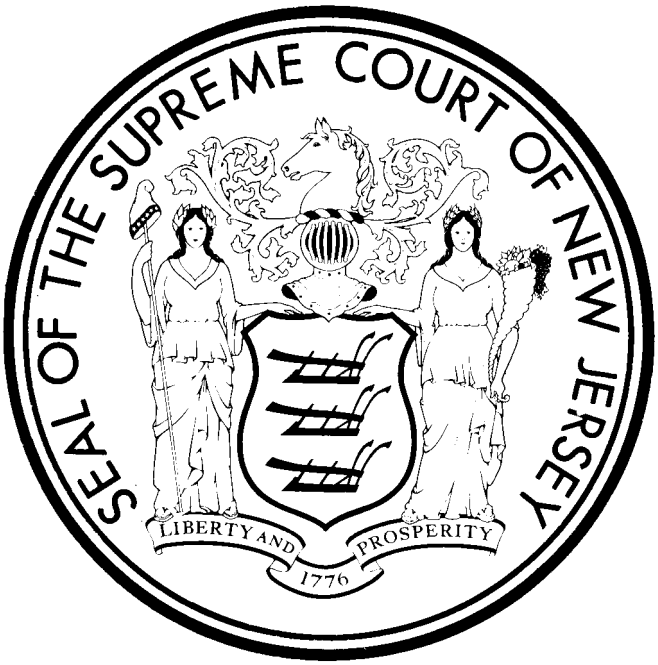
SUPREME COURT

FAMILY PRACTICE COMMITTEE



2002-2004 REPORT

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I. Proposed Rule Amendments Recommended for Adoption

A. Proposed Amendments to *R.* 5:12-4 – Case Management Conference, Hearings, or Trial and Appendix X-A – Case management Order

Discussion

R. 5:12-4 was amended in 1996 to require a that a case management conference be held early in the conduct of an abuse or neglect case and that the result should be a case management order, the form of which was set out in Appendix X-A of the Rules of Court. The Children-in-Court Subcommittee found that the contents of that order are out-of-date, and in general, the need for the particular form has been superseded by the more comprehensive Children-In-Court Standards and form orders developed by the Conference of Family Presiding Judges and approved by the Supreme Court of New Jersey. It is therefore recommended that the case management order be eliminated from the rule book and reference be made to the widely available standards, guidelines, and forms. To that end, the Family Practice Committee recommends amendment of the existing rule as follows:

Proposed Rule Change

5:12-4. Case Management Conference, Hearings, or Trial

(a) Prompt Disposition; Case Management Conference; Adjournments. Upon the return date, the court shall proceed to hear the matter forthwith. In abuse and neglect cases, the court shall request that the parents or guardians at their first appearance in court provide identifying information regarding any persons who may serve as alternative placement resources to care for the children. As soon as the litigants have retained counsel or have chosen to proceed pro se and no later than 30 days from the

return date, the court shall hold a case management conference or such other proceeding as may be appropriate, and shall enter [a case management order in the form set forth in Appendix X-A of these rules or in such other form as the court may direct] any necessary order pertaining to the safety and well-being of the child and the conduct of the case, in the form prescribed by the Administrative Director of the Courts. Thereafter, the court may on its own motion or that of any party, adjourn the matter from time to time as the interest of justice requires. The court may at any time enter such interim orders as the best interests of any child under its jurisdiction may require.

(b) . . . no change

(c) . . . no change

(d) . . . no change

(e) . . . no change

(f) . . . no change

(g) . . . no change

(h) . . . no change

(i) . . . no change

Note: Source-R. (1969) 5:7A-4. Adopted December 20, 1983, to be effective December 31, 1983; paragraphs (e) and (f) adopted November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (b) amended June 28, 1996 to be effective September 1, 1996; paragraph (g) adopted July 10, 1998 to be effective September 1, 1998; new paragraphs (h) and (i) adopted July 5, 2000 to be effective September 5, 2000[.]; paragraph (a) amended , 2004, to be effective , 2004. (Note: Appendix X-A is deleted.)

B. Proposed Amendments to *R.* 5:12-1 - Complaint

Discussion

The Children-in-Court Subcommittee considered the concern expressed by the Children-in-Court Improvement Committee regarding privacy of addresses listed within a Division of Youth and Family Services (DYFS) Complaint. Specifically, the Children-in-Court Improvement Committee is concerned that at the filing of a Complaint, DYFS may not know whether or not the parties named in the Complaint are victims of Domestic Violence. In addition, there are recognized concerns for the safety of any of the individuals whose whereabouts are currently required to be disclosed, including, children, caregivers, and others. Therefore, it is recommended by the Family Practice Committee that *R.* 5:12-1 be amended to delete the requirement that the address of the child, parents and others having custody of the child be alleged in the complaint. That information, necessary for the court to assure that proper notice is given and for the Law Guardian to locate the child, shall be provided as necessary, consistent with the practice already required by the Rule.

Additionally, in DYFS cases, continually changing circumstances arise, and even a short duration of pendency in litigation frequently generates a continuing need for preliminary relief. *See Kiernan v. Kiernan*, 355 *N.J. Super*. 89, 93 (App. Div. 2002). The Children-in-Court Subcommittee therefore recommends that it is appropriate for the rules governing DYFS cases to address procedures for temporary and preliminary relief. This proposed rule amendment addresses the distinction between findings which only support issuance of temporary and preliminary relief, and findings made by a preponderance of the evidence or clear and convincing evidence that a child has been

subjected to abuse or neglect. The latter findings, once made based upon competent evidence, constitute the law of the case on the issue of whether abuse or neglect occurred, regardless of the stage of the proceedings at which the findings were made.

As to the permissibility of court reliance on documents in lieu of live testimony in granting preliminary relief, *DYFS v. J.Y.* provides that specific findings supporting the temporary removal of a child without a hearing may be based on evidence such as "police reports or other law enforcement records, hospital records, school records or other professional reports containing information relevant to the child's health and safety or the parent's fitness or whereabouts." 352 *N.J. Super.* 245, 259-260 (App. Div. 2002). This is in accord with *R.* 5:12-4(d) and with *In re Cope,* 106 *N.J. Super.* 336 (App. Div. 1969) and its progeny. "The judge may also consider the testimony, under oath, of a DYFS representative . . . Such testimony may include hearsay statements, the judge must be satisfied that the evidence adduced provides a sufficiently reliable basis upon which to make required findings." *J.Y.,* 352 *N.J. Super.* at 259. In rendering its findings, the court must be guided by the overriding principle that "the safety of the child shall be of paramount concern." *Id.*

In considering whether to require live testimony at any stage in the proceeding, in order to avoid an "intolerable disruption in the operation of the [Division of Youth and Family Services]," the court shall consider whether material facts are in dispute and whether required findings can be made without live testimony. *See Cope*, 106 *N.J. Super.* at 343; *See also J.Y.,* 352 *N.J.Super*. 245 (App. Div. 2002) (in which no witnesses were called and in which the Appellate Division affirmed a fact finding based on documentary evidence and judicial notice of prior findings alone). The rule

proposed by the Family Practice Committee is consistent with practice in other civil matters governed by *R.* 4:52 and *R.* 4:67.

Proposed Rule Change

5:12-1. Complaint

(a) Form and Contents. All matters brought by the State of New Jersey, Division of Youth and Family Services, pursuant to N.J.S. 30:4C-1, et seq., or N.J.S. 9:6-8.21, et seq., shall be brought pursuant to *R.* 4:67 by complaint entitled in the name or names of the child or children, if known. No formal answer need be filed. The complaint shall allege (1) the name, age, and birthplace of the child in whose name the action is brought, (2) the names [and addresses] of the natural parents of the child, if known, (3) the names[, addresses,]and relationship of those having custody of the child at the time the action is brought, if different from the natural parents, (4) a brief statement of the facts upon which the complainant relies, and (5) the exact nature of the relief which the complainant seeks and the statutes relied upon.

(b) Statement as to Placement of Child. In addition to the information which is contained in the complaint, the Division of Youth and Family Services shall provide the court with a separate statement as to the addresses of the individuals named and the location of the placement of the child, including the name, address, telephone number, and relationship to the child of the temporary caregiver of each child in the case, and shall provide an additional statement regarding that placement information each time a child is placed with a new caregiver. Such statements shall be treated as confidential in the interest of the child and shall only be provided to the court and the law guardian assigned to represent the child.

(c) Signature[, emergent relief]. The Complaint shall be signed by the Attorney General or a designee, except in emergent matters, where the complaint may be signed by the Director of the Division of Youth and Family Services, or a designee. [The institution of actions which include a demand for emergent relief shall be in accordance with R. 4:52-1(a).]

(d) Emergent Relief. Temporary or preliminary relief may issue pursuant to R. 4:52-1(a). If it appears from specific facts shown by affidavit or verified complaint that the child[ren]'s life, safety or health will be in imminent danger before notice can be given or a hearing can be held, temporary relief may issue ex parte. Temporary or preliminary relief may issue upon a finding that there is reasonable cause to believe a child has been subjected to or will be at risk of abuse or neglect absent such relief.

(e) [(d)] . . . no change

(f) Testimony. At any stage of the proceeding at which non-consensual relief is being considered, oral testimony is not required but may be taken in the court's discretion. In deciding whether to require oral testimony at any stage of the proceeding, the court shall determine whether there are material facts in dispute and whether the required findings can be made by a preponderance of the evidence based upon reliable and relevant documents that all parties have had the opportunity to challenge. The court may rely on previous findings made in the same case, but only if the findings are based on competent evidence that all parties have had the opportunity to challenge.

Note: Source-R. (1969) 5:7A-1(a)(b). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended and paragraph (c) adopted June 28, 1996 to be effective September 1, 1996; paragraphs (b) and (c) redesignated as paragraphs (c)

and (d), and new paragraph (b) adopted July 5, 2000 to be effective September 5, 2000[.]; paragraphs (a), (b), (c) amended, former paragraph (d) redesignated as paragraph (e), and new paragraphs (d) and (f) added, , 2004, to be effective , 2004.

C. Proposed Amendments to *R.* 5:9A - Actions for Kinship Legal Guardianship and *R.* 5:4-4 - Service of Process in Paternity and Support Proceedings

Discussion

The adoption of *R.* 5:9A in 2002 recognized that, because it created a new cause of action, procedural rules and policies for matters under the Kinship Legal Guardianship statute, *N.J.S.A.* 3B:12A-1 et seq., would need to develop as a result of practical experience with those proceedings. The current practice, which is both fair and expeditious, is to allow the court to serve petitions on parties by regular and certified mail. In order to assure that these proceedings are in compliance with the rules governing service, it has been recommended to the Children-in-Court Subcommittee that there be specific provision, similar to the relaxation of personal service requirements in other family court matters, as represented by the adoption of *R.* 5:4-4 several years ago, clarifying what constitutes effective service in kinship matters.

Relaxed service provisions are provided for in kinship legal guardianship applications brought by the Division of Youth and Family Services since, pursuant to *N.J.S.A.* 30:4C-87, the parents already have been served with the initial complaint seeking custody or termination of parental rights. Regardless of whether kinship legal guardianship actions are filed by DYFS or private parties, when parents' whereabouts are unknown, the court may proceed to hear the case in accordance with *R.* 5:12-2. This is consistent with statutory provisions in private adoption filings (*N.J.S.A.* 9:3-45(c)) and termination of parental rights proceedings brought by DYFS (*N.J.S.A.*

30:4C-17) permitting the court to proceed against parents whose whereabouts are unknown if the plaintiff has made a diligent but unsuccessful search.

The Child Support Subcommittee also proposes a technical amendment to *R*. 5:4-4, deleting the language requiring inactivation of the complaint when service of process cannot be effected. As a practice, inactivation does not promote compliance with expedited process timelines. Ineffective service of process should no longer be interpreted to mean that the case should be inactivated. In order to promote compliance with expedited process timelines, dismissal without prejudice when service of process is not effected is appropriate when no other address is available for the defendant, i.e. location is an issue.

Proposed Rule Change

5:9A. Actions for Kinship Legal Guardianship

(a) An action seeking the establishment of a kinship legal guardianship relationship pursuant to N.J.S.A. 3B:12A-1 et seq. (L. 2001, c. 250) shall proceed in accordance with the act and with procedures and forms promulgated by the Administrative Director of the Courts.

(b) Except as provided in sub-paragraph (c), service of process in kinship legal guardianship proceedings shall be in accordance with R. 5:4-4(b) or pursuant to court order in accord with R. 4:4-4(b)(3).

(c) If, pursuant to N.J.S.A. 30:4C-87, the Division of Youth and Family Services seeks kinship legal guardianship as an alternative disposition to a complaint initiated by the Division pursuant to N.J.S.A. 9:6-8.21 or N.J.S.A. 30:4C-15, the Division shall not be required to file a new petition, but may amend the pending

complaint in accordance with the Rules of Court. Where it appears to the court by Affidavit of Diligent Inquiry filed in the action that any proper party, including a legal or putative parent, cannot be located, the court shall assume jurisdiction and proceed to summarily hear the matter pursuant to R. 5:12-2. It shall be sufficient to serve parties in default by certified and regular mail at their last known address.

Note: Adopted July 12, 2002 to be effective September 3, 2002; new paragraphs (b) and (c) added , 2004 to be effective , 2004.

Proposed Rule Change

5:4-4. Service of Process in Paternity and Support Proceedings; Kinship Legal Guardianship

(a) . . . no change

(b) Establishment of a Paternity or Support Order and Proceedings for Kinship Legal Guardianship -Service by Mail Program. Service of process for initial paternity and support complaints and in proceedings for kinship legal guardianship may be effected as follows:

(1) Initial Service by Mail. The Family Part shall mail process simultaneously by both certified and ordinary mail to the mailing address of the defendant provided by the party filing the complaint.

(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 defendant 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 defendant 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 [inactivate the complaint and attempt to verify the address by contacting plaintiff or the attorney filing the complaint or postal service and thereafter shall attempt to re-serve defendant by mail. If service of process still cannot be effected by mail, the court shall order that defendant be served personally or as otherwise provided in Rule 4:4-4 or Rule 4:4-5.] dismiss the complaint without prejudice, subject to reinstatement retroactive to the original filing date in the event service is subsequently effected.

(4) 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 plaintiff or the attorney of the action taken, and reinstitute efforts to serve defendant either by mail or personally. A defendant may, at any time after an order has been entered by default based on mailed service, file a motion requesting that a paternity or support order be vacated or modified based on the fact that defendant 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 or order paternity testing to determine whether the order should be modified or vacated.

(c) . . . no change

(d) . . . no change

Note: Adopted July 10, 1998 to be effective September 1, 1998; paragraph (b) amended , 2004 to be effective , 2004.

D. Proposed Amendments to *R.* 5:22-2 - Referral Without Juvenile's Consent

Discussion

R. 5:22-2 was comprehensively revised in the last cycle to reflect the most recent legislative amendments to the source statute, *N.J.S.A.* 2A:4A-26. This statute was again amended, effective April 14, 2003, to add the new first and second degree crimes of "computer criminal activity" (defined in *N.J.S.A.* 2C:20-25 and 2C:20-31) to the list of enumerated Chart I offenses. Thus, the statutory change necessitates the amendment of *R.* 5:22-2 by creating a new paragraph (D) to the (b)(2) and (b)(3) sections of the Rule.

The current rule provides that 16 and 17 year olds charged with a "Chart I Offense" fall within Prosecutorial Discretion. The term "Chart I Offense" is not found in the source statute, rather it is a product of case law. The Juvenile Subcommittee was concerned that the term "Chart I Offense" may not encapsulate the drug offenses and computer criminal activity subject to Prosecutorial Discretion. Therefore, the Subcommittee has determined that addition of the language "or Certain Other

Enumerated Offenses" to Section (b)(3)'s caption makes it clearer as to when Prosecutorial Discretion applies.

Additionally, the Subcommittee discovered an error in the current rule which needs to be corrected. The error was the omission of the language "including the immediate flight therefrom," as it pertains to certain Chart I offenses involving firearms. Therefore, section (b)(2)(B) and section (b)(3)(B) should be amended to include this language.

Proposed Rule Change

5:22-2. Referral Without Juvenile's Consent

(a) . . . no change

(b) Standards for Referral. The court shall waive jurisdiction of a juvenile delinquency action without the juvenile's consent and shall refer the action to the appropriate court and prosecuting authority having jurisdiction under the following circumstances:

(1) Judicial Discretion for Juveniles Age 14 or Older and Charged with a Chart 2 Offense. The juvenile must have been 14 years of age or older at the time of the alleged delinquent act and there must be probable cause to believe that he or she committed a delinquent act which if committed by an adult would constitute:

(A) a crime committed at a time when the juvenile had previously been adjudicated delinquent, or convicted of:

1. criminal homicide, other than death by auto; or

2. strict liability for drug-induced deaths; or

3. first degree robbery; or

4. carjacking; or

5. aggravated sexual assault; or

6. sexual assault; or

7. second degree aggravated assault; or

8. kidnapping; or

9. aggravated arson; or

(B) a crime committed at a time when the juvenile had previously been sentenced to and confined in an adult penal institution; or

(C) an offense against a person committed in an aggressive, violent, and willful manner, other than a Chart I offense enumerated in N.J.S.A. 2A:4A-26a(2)(a); or the unlawful possession of a firearm, destructive device or other prohibited weapon; or arson; or death by auto if the juvenile was operating the vehicle under the influence of an intoxicating liquor, narcotic, hallucinogenic, or habit-producing drug; or an attempt or conspiracy to commit any of these crimes; or

(D) a violation of (Leader of a Narcotics Trafficking Network), (Maintaining and Operating a CDS Production Facility), (Manufacturing, Distributing or Dispensing Narcotics), or an attempt or conspiracy to commit any of these crimes, other than where the violation, attempt or conspiracy involves the distribution for pecuniary gain of any controlled dangerous substance or controlled substance analog while on any school property or within 1000 feet of such school property; or

(E) a crime or crimes that are part of a continuing criminal activity in concert with two or more persons, when the circumstances show that the juvenile has knowingly devoted himself or herself to criminal activity as a source of livelihood; or

(F) theft of an automobile.

On a finding of probable cause for any of the offenses enumerated above, the burden is on the prosecution to show that the nature and circumstances of the charge or the juvenile's prior record are sufficiently serious that the interests of the public require waiver. Waiver shall not be granted, however, if the juvenile can show that the probability of his or her rehabilitation prior to reaching the age of 19 by use of the procedures, services, and facilities available to the court substantially outweighs the reasons for waiver.

(2) Judicial Discretion for Juveniles Age 14 or 15 and Charged with a Chart 1 Offense or with Certain Drug Offenses Committed Within a School Zone. The juvenile must have been 14 or 15 years old at the time of the alleged delinquent act and there must be probable cause to believe that he or she committed a delinquent act that if committed by an adult would constitute

(A) criminal homicide, other than death by auto; or strict liability for drug-induced deaths; or first degree robbery; or carjacking; or aggravated sexual assault; or sexual assault; or second degree aggravated assault; or kidnapping; or aggravated arson; or an attempt or conspiracy to commit any of these crimes; or

(B) possession of a firearm with a purpose to use it unlawfully against the person of another under subsection (a) of [;], or possession of a firearm while committing or attempting to commit, including the immediate flight therefrom: aggravated assault, aggravated criminal sexual contact, burglary or escape; or

(C) a violation of (Leader of a Narcotics Trafficking Network), (Maintaining and Operating a CDS Production Facility), (Manufacturing, Distributing

or Dispensing Narcotics), or an attempt or conspiracy to commit any of these crimes; and which violation, attempt or conspiracy involves the distribution for pecuniary gain of any controlled dangerous substance or controlled substance analog while on any school property or within 1000 feet of such school property[.]; or

(D) Computer criminal activity which would be a crime of the first or second degree pursuant to section 4 or section 10 of P.L.1984.c.184 (C.2C:20-25 or C.2C:20-31).

On a finding of probable cause for any of these enumerated offenses, there is a rebuttable presumption that waiver will occur. The juvenile can rebut this presumption only by demonstrating that the probability of his or her rehabilitation prior to reaching the age of 19 by use of the procedures, services or facilities available to the court substantially outweighs the reasons for waiver.

(3) Prosecutorial Discretion for Juveniles Age 16 or Older and Charged with a Chart I Offense or Certain Other Enumerated Offenses. The juvenile must have been 16 years of age or older at the time of the alleged delinquent act and there must be probable cause to believe that he or she committed a delinquent act that if committed by an adult would constitute

(A) criminal homicide, other than death by auto; or strict liability for drug-induced deaths; or first degree robbery; or carjacking; or aggravated sexual assault; or sexual assault; or second degree aggravated assault; or kidnapping; or aggravated arson; or

(B) possession of a firearm with a purpose to use it unlawfully against the person of another under subsection (a) of [;], or possession of a firearm

while committing or attempting to commit, including the immediate flight therefrom: aggravated assault, aggravated criminal sexual contact, burglary or escape; or

(C) a violation of (Leader of a Narcotics Trafficking Network), (Maintaining and Operating a CDS Production Facility), or (Weapons Possession While Committing Certain CDS Offenses)[.]; or

(D) Computer criminal activity which would be a crime of the first or second degree pursuant to section 4 or section 10 of P.L.1984.c.184 (C.2C:20-25 or C.2C:20-31).

On a finding of probable cause for any of these enumerated offenses, no additional showing is required for waiver to occur. Jurisdiction of the case shall be transferred immediately.

(4) Judicial Discretion for Juveniles Age 16 or 17 and Charged with Certain Drug Offenses Committed Within a School Zone. The juvenile must have been 16 years of age or older at the time of the alleged delinquent act and there must be probable cause to believe that he or she committed a delinquent act that if committed by an adult would constitute

(A) a violation of (Manufacturing, Distributing or Dispensing Narcotics), or an attempt or conspiracy to commit this crime; and which violation, attempt or conspiracy involves the distribution for pecuniary gain of any controlled dangerous substance or controlled substance analog while on school property or within 1000 feet of such school property.

On a finding of probable cause for any such offense, there is a rebuttable presumption that waiver will occur. The juvenile can rebut this presumption only by

demonstrating that the probability of his or her rehabilitation prior to reaching the age of 19 by use of the procedures, services and facilities available to the court substantially outweighs the reasons for waiver.

(c) . . . no change

(d) . . . no change

Note: Source--R. (1969) 5:9-5(b), (c). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b)(2)(E) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b)(2)(F) and (b)(4) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (b)(2)(D), (E) and (F) amended, paragraph (b)(2)(G) adopted June 28, 1996 to be effective September 1, 1996; paragraphs (b) and (b)(1) amended, former paragraphs (b)(2), (b)(3), and (b)(4) deleted, new paragraphs (b)(2), (b)(3), and (b)(4) added July 10, 2002 to be effective September 3, 2002[.]; paragraphs (b)(2)(B), (b)(2)(C), (b)(3), (b)(3)(B) and (b)(3)(C) amended and new paragraphs (b)(2)(D) and (b)(3)(D) added ,2004 to be effective , 2004. .

E. Proposed Amendment to *R.* 5:24-4 - Order of Disposition

Discussion

This rule deals generally with the form of the court's order following disposition of a juvenile delinquency matter and the information which accompanies the order to the receiving agency or institution which will be involved in the treatment and/or supervision of the child. Paragraph (b) of the rule requires a pre-disposition report (PDR) to be prepared whenever a juvenile is committed to a correctional institution. Essentially this information is used by the Juvenile Justice Commission (JJC) during its intake/classification process.

The Juvenile Subcommittee reported that while this procedure has generally worked well, there have been some problems. For instance, the Juvenile Intensive Supervision Program (JISP) is a dispositional option which requires its own pre-

disposition writing. This JISP report is very comprehensive and could easily be used in lieu of the PDR. In fact, this is most often what happens. There are, however, some counties who feel that the mandatory language of the rule requires a PDR as well if the court is also entertaining a possible commitment to secure confinement.

Another area of concern is the Violation of Probation (VOP) process. Whenever a Notice of Violation of Probation is filed, it is accompanied by a VOP Summary. Recently, Probation has comprehensively revised the VOP Summary format to include more of the information which routinely is contained in the PDR. Since the VOP process is designed to adjudicate expeditiously, it is expected that this Summary could replace the PDR and achieve greater efficiency. It would, however, require some relaxation of the current rule.

Not infrequently, the court may be considering between various out of home placements or, in the alternative, to a possible reformatory commitment. These could include: (1) DYFS residential placements; (2) inpatient substance abuse programs; (3) JJC non-secure residential group centers (i.e., "Fields" programs); and (4) shelters or group homes. Often, however, the court is given very little notice when a bed becomes available, and with the expectation that the bed must be filled within 24-48 hours, or lost. While the court will almost always have substantial and useful information readily available, there simply is not enough time to do a formal PDR without the risk of losing the bed.

Since each of these several examples is different, it would be impractical to list each as an exception to the PDR requirement. The Family Practice Committee,

therefore, recommends that paragraph (b) of the rule should be amended to allow for the preparation of the PDR "or other functional equivalent."

Proposed Rule Change

5:24-4. Order of Disposition

(a) . . . no change

(b) Order of Probation or Commitment. If a juvenile is placed on probation or is committed, the order of the court shall have attached thereto a memorandum containing such information as may assist the receiving agency or institution in the treatment of the juvenile. Before a juvenile is committed to a correctional institution a pre-disposition investigation and report or other functional equivalent shall be made and considered by the court. If the court commits a juvenile to a correctional institution and the maximum authorized term is less than three years the commitment order shall state what the degree of the offense and the sentence maximum would have been had the juvenile committed the offense as an adult.

(c) . . . no change

Note: Source--R. (1969) 5:9-10(a), (b), (c). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (c) amended July 13, 1994 to be effective September 1, 1994[.]; paragraph (b) amended _____, 2004 to be effective _____, 2004.

F. Proposed Amendments to *R.* 5:3-3 - Appointment of Experts

Discussion

The Custody and Parenting Time Subcommittee considered amendments to *R.* 5:3-3 to address issues regarding the following: (1) disputes between parenting experts; (2) inclusion in mental health reports of discussion of statutory criteria; (3) non-partisan

parenting evaluations; and (4) providing court appointed expert reports to the courts. A summary of this dialogue is included in the full report of the Custody and Parenting Time Subcommittee, annexed here to as **Appendix A**.

A new paragraph (b) has been added to *R.* 5:3-3 dealing specifically with evaluations in custody/parenting disputes. The first sentence of proposed paragraph (b) requires mental health experts to conduct non-partisan best interests evaluations, regardless of the identity or position of the litigant that engaged them. It reaffirms the professional protocol of mental health groups that require parenting evaluations to be done non-partisanly, based solely on the best interests of the child, regardless of which litigant retained the professional. The Rule amendment underscores and reinforces the need for mental health experts to provide opinions based solely on the prevailing legal standard: what is best for the child.

The second sentence of proposed paragraph (b) makes clear that each expert must include in their reports to the court, reference to the statutory criteria that courts must consider when assessing custody and parenting decisions. Those criteria are identified in *N.J.S.A.* 9:2-4, and although they are not exclusive, it is important that the reports of experts provided to the court contain discussion of statutorily mandated criteria, as well as, any other information or factors the mental health expert believes pertinent to the case.

The last two sentences of proposed paragraph (b) provide a discretionary tool to judges to facilitate resolution of parenting disputes if each expert has a different opinion about what is best for the child. Pursuant to the Rule, the court may direct the experts to consult and confer in an attempt to make a common recommendation. However,

communications between the experts are privileged and non-evidential, in the nature of settlement discussions. If the experts do make a common recommendation, which is not accepted by a litigant, or do not make a common recommendation, neither the unacceptable common recommendation, nor the identity of the party rejecting the recommendation, nor the experts' communications about these issues, can be introduced into evidence at any trial. The integrity of the experts' individual reports will remain, if the case cannot be settled. If there is a disagreement between the experts and/or the parties, then the court will make the decision, not the experts.

The proposed rule amendment is intended to provide the courts with another judicial tool to use at their discretion to attempt to facilitate resolution. It is commonly believed high conflict custody cases are a danger to children and litigants. "High Conflict Custody Cases: Reforming the System for Children Conference Report and Action Plan," *Family Law Quarterly*, Volume 34, Number 4, Winter 2001 at 593. (conference sponsored by the American Bar Association Family Law Section and The Johnson Foundation, Wingspread Conference Center, Racine Wisconsin, September 8-10, 2000.) This tool is intended to help judges promote appropriate resolutions, without sacrificing due process procedural rights and the right of each litigant to a trial.

Also, the prior Rule required submission of a completed court's expert's report to the court and the parties. There is a perception that it is fundamentally unfair to submit only the court's expert's report and not the reports of privately retained experts. If the court's expert's report is going to be available to the court before trial, then all experts' reports that are completed also should be available to the court. This is particularly important, since the Rule makes clear that the court is not to entertain any presumption

in favor of its own expert's findings. Although experts' reports are hearsay, it is customary, as a matter of convenience, for the court to have copies of all experts' reports as testimony proceeds. The amendment is an attempt to create a level playing field with respect to this issue, so that all available experts' reports are to be submitted to the court upon completion.

Additionally, the General Procedures & Rules Subcommittee was asked to consider the problem of enforcing an obligation for litigants to bear the cost of fees of joint experts. This Subcommittee has specifically concluded that the Rules should be amended to specifically empower the court to direct that the cost of joint experts should be paid consistent with the terms of an Order that would be entered.

The General Procedures & Rules Subcommittee recommends the addition of a new subpart to *R.* 5:3-3 entitled "Appointment of Experts." The Subcommittee recommends that a new paragraph (i) should be adopted to cover not only court appointed experts but joint experts agreed upon by the parties. The Subcommittee recommends the deletion of the sentence, "The Court may also direct who shall pay the costs of such examination" from *R.* 5:3-3(a) and the sentence, "The Court may also direct who shall pay the cost of such expert appraisal or report" from *R.* 5:3-3(c)(former paragraph (b)). In lieu of those provisions, a new paragraph (i) should be added which would provide:

> When the court directs the appointment of either a medical, psychological or social expert pursuant R.5:3-3(a); an economic expert pursuant to R.5:3-3(b) or should the parties agree upon the selection of an expert consistent with R. 5:3-3(c), the court may also direct who shall pay the cost of such examination or report and may direct who shall pay the cost of such examination, appraisal or report.

While considering this general issue, the Subcommittee also considered whether it would be appropriate to change the reference in part a of the subject rule's title from "psychological" expert" to a more general "mental health experts."

Based on the Subcommittees' reports, the Family Practice Committee proposes the following amendments to *R.* 5:3-3.

Proposed Rule Change

5:3-3. Appointment of Experts

(a) Medical, [Psychological] Mental Health and Social Experts. Whenever the court, in its discretion, concludes that disposition of an issue will be assisted by expert opinion, and whether or not the parties propose to offer or have offered their own experts' opinions, the court may order any person under its jurisdiction to be examined by a physician, psychiatrist, psychologist or other health or mental health professional designated by it. No such appointment, however, shall be made of an expert who is providing or has provided therapy to any member of that person's family. [The court may also direct who shall pay the cost of such examination.] The court may also require a social investigation by a probation officer or other person at any time during the proceeding before it.

(b) Custody/Parenting Disputes: Mental health experts who perform parenting/custody evaluations shall conduct strictly non-partisan evaluations to arrive at their view of the child's best interests, regardless of by whom by they are engaged. They should consider and include reference to criteria set forth in N.J.S.A. 9:2-4, as well as any other information or factors they believe pertinent to each case. If the mental health professionals reach different opinions concerning the parenting/custody

arrangements that are in the best interests of the children, the Court may direct them to confer in an attempt to make a common recommendation. Neither the refusal of either party to accept any common recommendation, nor the discussions of the experts shall be communicated to the Court in any fashion, and shall not be introduced into evidence.

(c) [(b)] Economic Experts. Whenever the court concludes that disposition of an economic issue will be assisted by expert opinion, it may in the same manner as provided in Paragraph (a) of this rule appoint an expert to appraise the value of any property or to report and recommend as to any other issue, and may further order any person or entity to produce documents or to make available for inspection any information or property, which is not privileged, that the court determines is necessary to aid the expert in rendering an opinion. [The court may also direct who shall pay the cost of such expert appraisal or report.]

(d) [(c)] Selection of Experts. Experts appointed hereunder may be selected by the mutual agreement of the parties or independently by the court. The court shall establish the scope of the expert's assignment in the order of appointment. Neither party shall be bound by the report of the expert so appointed.

(e) [(d)] Investigation by Experts. Any expert appointed by the court shall be permitted to conduct an investigation independently to obtain information reasonable and necessary to complete his or her report from any source, and may make contact directly with any party from whom information is sought within the scope of the order of appointment. The parties shall be entitled to have their attorneys and/or experts present during any examination by a court appointed expert. The expert shall not communicate with the court except upon prior notice to the parties and their attorneys

who shall be afforded an opportunity to be present and to be heard during any such communication between the expert and the court. A request for communication with the court may be informally conveyed by the expert by letter or telephonic means, whereafter further communications with the court, which may be conducted informally by conference or conference call, shall be done only with the participation of the parties and their counsel.

(f) [(e)] Submission of Report. Any finding or report by an expert appointed by the court shall be submitted upon completion to both the court and the parties. At the time of submission of the Court's experts' reports, the reports of any other expert may be submitted by either party to the Court and the other parties. The parties shall thereafter be permitted a reasonable opportunity to conduct discovery in regard thereto, including, but not limited to, the right to take the deposition of the expert.

(g) [(f)] Use of Evidence. An expert appointed by the court shall be subject to the same examination as a privately retained expert and the court shall not entertain any presumption in favor of the appointed expert's findings. Any finding or report by an expert appointed by the court may be entered into evidence upon the court's own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties.

(h) [(g)] Use of Private Experts. Nothing in this rule shall be construed to preclude the parties from retaining their own experts, either before or after the appointment of an expert by the court, upon the same or similar issues.

(i) When the court appoints a medical, mental health or social expert pursuant to R.5:3-3(a); an economic expert pursuant to R.5:3-3(b) or should the parties agree upon

the selection of an expert consistent with R.5:3-3(c), the court may also direct who shall pay the cost of such examination or report and may direct who shall pay the cost of such examination, appraisal or report.

Note: Source -- R. (1969) 5:3-5, 5:3-6. Adopted December 20, 1983, to be effective December 31, 1983; caption amended, former rule redesignated paragraph (a) and paragraph (b)(1), (2), (3), (4) and (5) adopted November 7, 1988 to be effective January 2, 1989; former paragraphs (b)(1), (2), (3), (4), and (5) captioned and redesignated as (c), (d), (e), (f) and (g) respectively June 29, 1990 to be effective September 4, 1990; paragraph (a) amended January 21, 1999 to be effective April 5, 1999[.]; paragraph (a) amended; former paragraphs (b), (c), (d), (e), (f) and (g) redesignated as paragraphs (c), (d), (e), (f), (g) and (h) respectively; redesignated paragraph (c) amended; new paragraph (b) and (i) added , 2004 to be effective , 2004.

G. Proposed Amendments to *R.* 5:8-1 – Investigation Before Award

Discussion

The Custody and Parenting Time Subcommittee discussed several amendments to *R.* 5:8-1 including: (1) complexities which arise when a referral to mediation, by virtue of *R.* 5:8-1, stays the commencement of parenting evaluations for a 60 day period of mediation, unless the parties otherwise agree; (2) time periods for mediation; (3) investigations by the Family Division; and (4) technical corrections. The discussion of the Subcommittee is set out in the full report of the Custody and Parenting Time Subcommittee in **Appendix A**.

First, the proposed rule amendment includes a reference to a proposed amendment to *R.* 5:8-6 with respect to the extension of the time periods for mediation.

Second, the proposed rule amendment provides that, in connection with a Family Division investigation, if one of the parties lives outside of the county of venue within New Jersey, then the county of residence of that person shall conduct the investigation

and forward the report to the county of venue. This is intended to make the investigation more efficient and economical. Currently, the Rule continues to provide that if one of the parties resides out of the country or State, then the investigation of the parties shall be conducted for the Family Division by the Probation Office of the county of the home state of the child.

Third, the proposed rule amendment also makes clear that Probation Officers not qualified as mental health professionals by licensure, experience and training, should not make best interest recommendations. The current *R.* 5:8-1 recognizes that the Family Division is to conduct necessary investigations as to the character and fitness of the parties. Probation Officers and other Family Division staff are aptly suited to gather social history and report on physical evidence pertaining to home surroundings, housing, and other objective facts. However, Probation Officers not qualified as mental health professionals by virtue of licensure, experience and training should not make best interest recommendations or recommendations regarding character and fitness. The Rule is intended to be consistent with Directive #01-02, issued April 2, 2002 by Richard J. Williams, Administrative Director.

Finally, *R.* 5:8-1 has been technically corrected by adding the phrase "parenting time/visitation" to define the disputes about which courts may order hearings. The same recommended amendment has been made to *R.* 5:8-6, as set forth under Heading H, *infra.* Current *R.* 5:8-1 and *R.* 5:8-6 reference only disputes about custody of children, whereas *R.* 5:8-5 and *R.* 5:8A and *R.* 5:8B reference both custody and parenting time issues. Since many disputes between parents are about timesharing,

rather than actual custodial designation, it was felt important to define the disputes uniformly in all pertinent Rules.

Proposed Rule Change

5:8-1. Investigation Before Award

In family actions in which the court finds that the custody of children and/or parenting time issues [is] are a genuine and substantial issue the court shall refer the case to mediation in accordance with the provisions of R. 1:40-5. During the mediation process, the parties shall not be required to participate in custody evaluations with any expert. The parties may, however, agree to do so. The mediation process shall last no longer than two months from the date it commences or is ordered to commence, whichever is sooner. As set forth in R. 5:8-6, t [T]he court, on good cause shown, may extend the time period. The date for conclusion of mediation shall be set forth in any Case Management Order(s). If the mediation is not successful in resolving custody issues, the court may before final judgment or order require an investigation to be made by the Family Division of the character and fitness of the parties, the economic condition of the family and the financial ability of the party to pay alimony or support or both. Any recommendations as to character and fitness of the parties must be made by mental health professionals qualified by licensure, experience and training. In other family actions the court may, if the public interest so requires, order such an investigation. The court may continue any family action for the purpose of such investigation, but shall not withhold the granting of any temporary relief by way of alimony, support or *pendente lite* orders pertaining to parenting issues under R. 5:5-4 and R. 5:7-2 where the circumstances require. Such investigation of the parties shall be

conducted by the Family Division which [of the county of venue, notwithstanding that one of the parties may live in another county, and the Family Division] shall file its report with the court no later than 45 days after its receipt of the judgment or order requiring the investigation, unless the court otherwise provides. If one of the parties lives outside the county of venue within New Jersey, then the county of residence shall conduct the investigation and forward the report to the county of venue within the time frame set forth above. Such investigation of the parties shall be conducted by the probation office of the county of the home state of the child, notwithstanding that one of the parties may live in another country or state.

Note: Source--R. (1969) 4:79-8(a). Adopted December 20, 1983, to be effective December 31, 1983; amended November 7, 1988 to be effective January 2, 1989; amended July 14, 1992, to be effective September 1, 1992; amended September 17, 2001 to be effective immediately; amended July 12, 2002 to be effective September 3, 2002[.]; amended , 2004 to be effective , 2004.

H. Proposed Amendments to *R.* 5:8-6 – Trial of Custody Issue

Discussion

In conjunction with the proposed rule amendments for *R.* 5:8-1, set forth in Heading G, *supra*, the Custody and Parenting Time Subcommittee proposes amendments to *R.* 5:8-6 regarding the extension of time periods.

This proposed rule amendment acknowledges that increased time is needed, both to complete parenting evaluations and schedule trials, in view of the provisions of *R.* 5:8-1 that mandate at least two months of mediation, during which evaluations are not to occur absent consent. *R.* 5:8-1 was amended in 2002 to make clear that mediation and custody/parenting evaluations have different dynamics and should not occur at the same time. In mediation, the parties attempt to conciliate and compromise and their

communications are confidential, whereas in evaluations, they are seeking to advocate their positions, fully aware that what they say will be utilized by experts to form an opinion.

Since the amendment to *R.* 5:8-1 in 2002, which allowed for at least two months of mediation before evaluations could begin, it became clear that if mediation failed, it was practically impossible to complete necessary forensic investigations and to schedule a custody trial six months after the filing of the last responsive pleading. Such trial dates would have absolutely no credibility. Since the first Case Management Conference does not occur until thirty days after issue is joined, if mediation was then ordered and continued for two months, there would be only three months to complete custodial evaluations and conduct discovery, prior to hearing.

Therefore, this proposed rule amendment clarifies that the court may schedule a hearing pertaining to custody and parenting issues, six months after the completion of mediation, or six months after the first Case Management Conference, if there is no mediation. This should usually be more than ample time to conduct mediations/evaluations and other necessary discovery regarding parenting issues. The rule amendment indicates that absent good cause shown to the contrary, the total time period for mediation and evaluations should be no longer than six months from the first Case Management Conference and that if there is no mediation, the time period for completion of evaluations should be no longer than four months from the first Case Management Conference, unless good cause is shown to the contrary. The rule contains a safety valve paralleling the safety valve set forth in *R.* 5:8-1, which allows the court on good cause to extend the time periods for both mediations and evaluations.

The amended rule continues to provide to the court discretion for the best interests of children and, within the context of the Rule timelines, to conduct a parenting/custody hearing before the final hearing of the entire family action. The proposed amendment to *R.* 5:8-6 also makes clear that hearings are not required on every *pendente lite* parenting/visitation dispute. Hearings on such issues will occur only if the court deems then necessary, based upon the facts alleged.

Proposed Rule Change

5:8-6. Trial of Custody Issue

Where the Court finds that the custody of children and parenting time/visitation [is a] are genuine and substantial issues, the court [shall set a hearing date no later than six months after the last responsive pleading] may schedule a hearing date six months after the completion of mediation contemplated by R. 5:8-1, or six months after the first Case Management Conference if, there is no mediation. Ordinarily, unless good cause is shown to the contrary, the time period for mediation and evaluation should not be longer than six months from the first Case Management Conference. If the parties engage in mediation, then the Court may extend reasonably the time period for commencement of trial to allow completion of necessary forensic evaluations. If there is no mediation, then unless good cause is shown to the contrary, the time period for completion of forensic evaluations should be no longer then four months from the first Case Management Conference. All Case Management Orders will identify scheduled completion dates for mediation and forensic evaluations.

The court may, in order to protect the best interests of the children, conduct the hearing in a family action prior to a final hearing of the entire family action. Any

judgment or order pursuant to this hearing shall be treated as a final judgment or order for custody. Hearings on pendente lite disputes about custody and parenting time/visitation plans will occur only if the Court deems them necessary.

As part of the custody hearing, the court may on its own motion or at the request of a litigant conduct an in camera interview with the child(ren). In the absence of good cause, the decision to conduct an interview, shall be made before trial. If the court elects not to conduct an interview, it shall place its reasons on the record. If the court elects to conduct an interview, it shall afford counsel the opportunity to submit questions for the court's use during the interview and shall place on the record its reasons for not asking any question thus submitted. A stenographic or recorded record shall be made of each interview it its entirety. Transcripts thereof shall be provided to counsel and the parties upon request and payment for the cost. However, neither parent shall discuss nor reveal the contents of the interview with the children or third parties without permission of the court. Counsel shall have the right to provide the transcript or its contents to any expert retained on the issue of custody. [Any judgment or order pursuant to this hearing shall be treated as a final judgment or order for custody.]

Note: Source--R. (1969) 4:79-8(f). Adopted December 20, 1983, to be effective December 31, 1983; amended July 14, 1992 to be effective September 1, 1992; amended July 12, 2002 to be effective September 3, 2002[.]; amended _____, 2004 to be effective _____, 2004.

I. Proposed Amendments to *R.* 5:7-4 - Alimony and Child Support Payments

Discussion

Background

In the last cycle, the amendment to *R.* 5:7-4(b) eliminated the requirement to transfer enforcement responsibility to the county where the obligor resides if different

from the county of venue. The subcommittee revisited this amendment to determine if it was premature. Although the intent to make the amendment was not clearly articulated in the prior cycle, the discussion revealed overwhelming support to retain the amendment. The sentiment was that the amendment was overdue and would result in more efficient processing of support judgments and orders administered by the Probation Division. The practice of transferring cases contributed to delays in timely establishing of the support obligation on ACSES, in distributing payments to the obligee and triggering needed enforcement.

Revisions to *R.* 5:7-4

The Child Support Subcommittee examined the amendment to *R.* 5:7-4(b) adopted in the last cycle that eliminated the requirement that enforcement occur in the county of the obligor's residence. The Subcommittee concluded that the amendment did not go far enough and further revisions are proposed to effectuate the changes now that the obligor's county of residence is not the basis for allocating the county Probation Division responsible for enforcement of the case.

It is clear that although not all the pieces were in place when *R.* 5:7-4 was amended, there is a general sense that transferring cases based solely the location of the obligor's residence contributed to less effective and efficient administration of the case to the detriment of the parties and created issues for the state in meeting its Title IV-D requirements.

The Subcommittee also considered a letter submitted to the Family Practice Committee by a practitioner which proposed certain amendments to *R.* 5: 7-4(b).

After much discussion, the Subcommittee, made the following recommendations which are incorporated in the proposed rule amendment to *R.* 5:7-4:

1. Notice provisions should be consolidated in one section of the Rules. The proposed change to *R.* 5:7-4 consolidates Notices formerly in *R.* 5:7-4(e).

2. The Subcommittee does not believe it is necessary to include the address of the Family Support Payment Center in the Rule. When the order is established the obligor is given instructions as to how to make payments and the address.

3. The Subcommittee does note that since New Jersey implemented centralized collections, the language in the Rule as to payments to Probation needed clarification as to their role in administering and enforcing the orders or judgments. This is included in proposed revisions to *R.* 5:7-4(b). The Subcommittee acknowledges that the Temporary Support Order and the Uniform Summary Order will need to be reviewed to be consistent with the proposed revisions to *R.* 5:7-4. The notice provisions should also be reviewed and a copy should be provided to parties when the notices are not contained on the back of the order. The review of the Uniform Summary Order and notices to parties is still in progress and should continue.

4. The Subcommittee discussed the issue of post-judgment interest and considered relocating from *R.* 5:7-5(g) into the proposed *R.* 5:7-5(e) language as to post-judgment interest to be part of the notices to litigants. The practitioner's letter indicated that a prior reference in *R.* 5:7-4(b) that provided that post-judgment interest "shall" attach to past due child support was preferable to the current "are subject to" post-judgment interest rates. The Title IV-D Agency (Division of Family Development-DFD) sought language that was permissive rather than mandatory and

indicated that they wanted to include specifically in the Rule, *N.J.S.A.* 2A: 17-56.20 as statutory authority to set the interest rates for post-judgment Title IV-D child support judgments.

However, the interest issue presented more questions than answers. Both AOC and DFD expressed the need to study the issue of post-judgment interest and Title IV-D matters. It is important to review the issues carefully and address questions of interpretation. The Subcommittee believes that it is premature to recommend changes to the rules without understanding the reasons for the changes and the impact the changes may have on child support judgments being judgments by operation of law, per *N.J.S.A.* 2A:17-56.23a, and post-judgment interest in general. DFD indicates that the post-judgment issue has no impact on the ACSES certification and thus would not impact federal funding. Therefore, the Subcommittee recommends that this issue be carried to the next cycle.

5. General language was inserted, rather than specifying the division responsible for establishing new support cases on ACSES to facilitate options that involve the staff of the judiciary, including the Family, Probation and Finance Divisions.

6. In *R.* 5:7-4(c) the language was changed to conform to changes in paragraph (b) and to provide general language as to payments pending further review and revisions to the Uniform Summary Support Order.

Proposed Rule Change

5:7-4. Alimony and Child Support Payments

(a) . . . no change.

(b) Payments Through the Probation Division] Payments Administered By the Probation Division. [The judgment or order shall provide that payments be made to the New Jersey Family Support Payment Center. When an obligor's county of residence changes,]The responsibility for the administration and enforcement of the ~~such~~ judgment or order, including the transfer of responsibility, shall be governed by the policies established by the Administrative Director of the Courts. Alimony, maintenance or child support payments not presently [made through] administered by the Probation Division shall be so made upon application of either party to the [Probation Division] court unless the other party, upon application to the court, shows good cause to the contrary. In non-dissolution support proceedings, the court shall record its decision using the Uniform Order for Summary Support shown in Appendix XVI of these Rules. Upon the signing of any order that includes alimony, maintenance, child support or [health insurance] medical support provisions to be administered by the Probation Division, the court shall, immediately after the hearing, send to the appropriate [Probation Division] judicial staff one copy of the order which shall include [statements] a Confidential Litigant Information Sheet in the form prescribed in Appendix (to be assigned) prepared by the parties or their attorneys providing the names, dates of birth, Social Security Numbers, and mailing addresses of the parents and the children; the occupation and driver's license number of the parent who is ordered to pay support; the policy number and name of the health insurance provider of

the parent who is ordered to insure the children; and, if income withholding is ordered, the name and address of the obligor's employer. When a party or attorney must prepare a formal written judgment or order pursuant to a judicial decision that includes alimony, maintenance or child support or [health insurance] medical support provisions to be administered by the Probation Division, the court shall, on the date of the hearing, record the support and health insurance provisions on a Temporary Support Order using the form prescribed in Appendix XVII of these Rules and shall immediately have such order and a Confidential Litigant Information Sheet in the form prescribed in Appendix (to be assigned)(if it has not yet been provided by the parties or counsel) delivered to the [Probation Division] appropriate judicial staff so that a support account can be established on the Automated Child Support Enforcement System (ACSES). [The Probation Division shall establish a support account] A probation account shall be established on ACSES within eight business days of the date the court order was signed. Demographic information provided on the [Temporary Support Order] Confidential Litigant Information Sheet shall be [limited to that which is] required to establish [an ACSES] a probation account and send case initiation documents to the parties and the obligor's employer. [In addition to the information provided to the court with the final order or judgment as required by this paragraph, the parties and their attorneys shall provide additional family and benefit information at the request of the Probation Division.] The Temporary Support Order shall remain in effect until a copy of the final judgment or order is received by the Probation Division. [After a judgment or order is entered and the Probation Division has established an ACSES support account, the obligor shall notify the appropriate Probation Division of any change of

employer, health insurance provider or address and the obligee shall notify the Probation Division of a change of address or a change in the status of the children as may be required in the order or judgment within 10 days of the change, and any judgment or order that includes alimony or support shall so provide. Failure to provide information as to change of employer, health insurance provider or address shall be considered a violation of the order.] Judgments or orders amending the amounts to be paid through the Probation Division shall be treated in the same manner.

(c) Payments to the New Jersey Family Support Payment Center. A judgment or order for payment of any support administered by the Probation Division, shall be deemed to provide that payments are payable to the New Jersey Family Support Payment Center.

(d) [(c)] . . . no change.

(e) [(d)] All Notices Applicable to All Orders and Judgments That Include Child Support Provisions. The judgment or order shall include notices stating: (1) that, if support is not paid through immediate income withholding, the child support provisions of an order or judgment are subject to income withholding when a child support arrearage has accrued in an amount equal to or in excess of the amount of support payable for 14 days. The withholding is effective against the obligor's current and future income from all sources authorized by law; (2) that any payment or installment of an order for child support or those portions of an order that are allocated for child support shall be fully enforceable and entitled to full faith and credit and shall be a judgment by operation of law on or after the date it is due; (3) that no payment or installment of an order for child support or those portions of an order that are allocated

for child support shall be retroactively modified by the court except for the period during which the party seeking relief has pending an application for modification as provided in N.J.S.A. 2A:17-56.23a; (4) that the occupational, recreational, and professional licenses, including a license to practice law, held or applied for by the obligor may be denied, suspended or revoked if: 1) a child support arrearage accumulates that is equal to or exceeds the amount of child support payable for six months, or 2) the obligor fails to provide health care coverage for the child as ordered by the court within six months, or 3) a warrant for the obligor's arrest has been issued by the court for obligor's failure to pay child support as ordered, or for obligor's failure to appear at a hearing to establish paternity or child support, or for obligor's failure to appear at a child support hearing to enforce a child support order and said warrant remains outstanding; (5) that the driver's license held or applied for by the obligor may be denied, suspended, or revoked if 1) a child support arrearage accumulates that is equal to or exceeds the amount of child support payable for six months, or 2) the obligor fails to provide health care coverage for the child as ordered by the court within six months; [and] (6) that the driver's license held or applied for by the obligor shall be denied, suspended, or revoked if the court issues a warrant for the obligor's arrest for failure to pay child support as ordered, or for failure to appear at a hearing to establish paternity or child support, or for failure to appear at a child support hearing to enforce a child support order and said warrant remains outstanding; [(e) Additional Notices for Orders and Judgments Payable Through the Probation Division. Orders and judgments payable through the Probation Division shall include notices, in addition to those listed in paragraph (d), stating: (1)] <u>(7)</u> that the amount of child support and/or the addition of

a health care coverage provision in Title IV-D cases shall be subject to review, at least once every three years, on written request by either party to the Division of Family Development, P.O. Box 716, Trenton, NJ 08625-0716 and adjusted by the court, as appropriate, or upon application to the court; [(2)] (8) that the parties are required to notify the appropriate Probation Division of any change of employer, address, or health care coverage provider within 10 days of the change and that failure to provide such information shall be considered a violation of the order; [(3)] (9) that, in accordance with N.J.S.A. 2A:34-23b, the custodial parent may require the non-custodial parent's health care coverage provider to make payments directly to the health care provider by submitting a copy of the relevant sections of the order to the insurer; [and (4)] (10) that Social Security numbers are collected and used in accordance with section 205 of the Social Security Act (42 U.S.C. 405), that disclosure of an individual's Social Security number for Title IV-D purposes is mandatory, that Social Security numbers are used to obtain income, employment, and benefit information on individuals through computer matching programs with federal and state agencies, and that such information is used to establish and enforce child support under Title IV-D of the Social Security Act (42 U.S.C. 651 et seq.); and [(5)] (11) that after a judgment or order is entered and a probation support account has been established, the obligee and the obligor shall notify the appropriate Probation Division of any change of employer, health insurance provider or address and the obligee and obligor shall notify the Probation Division of a change of address or a change in the status of the children as may be required in the order or judgment within 10 days of the change, and any judgment or order that includes alimony, maintenance or child support shall so provide. Failure to provide

information as to change of employer, health insurance provider, address or status of the children shall be considered a violation of the order.

[(e)]

Note: Source--R. (1969) 4:79-9(a). Adopted December 20, 1983, to be effective December 31, 1983; amended November 2, 1987 to be effective January 1, 1988; amended January 5, 1988 to be effective February 1, 1988; amended June 29, 1990 to be effective September 4, 1990; caption and text amended October 5, 1993 to be effective October 13, 1993; caption amended, text amended and redesignated as paragraphs (a), (b), and (d), captions of paragraph (a) through (e) and text of paragraphs (c) and (e) adopted July 13, 1994 to be effective September 1, 1994; paragraph (d) amended March 15, 1996 to be effective immediately; paragraph (b) amended June 28, 1996 to be effective immediately; caption of paragraph (d) and text of paragraphs (d) and (e) amended May 25, 1999 to be effective July 1, 1999; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July 12, 2002 to be effective September 3, 2002[.]; paragraph (b) amended, new paragraph (c) added, former paragraphs (c) and (d) redesignated as paragraphs (d) and (e), and former paragraph (e) deleted , 2004 to be effective , 2004.

J. Proposed Amendments to Appendix XVII – Temporary Support Order, *R.* 5:7-4

Discussion

The Conference of Family Presiding Judges and the Conference of Family Division Managers approved a revised version of the Temporary Support Order, and submitted it to the Family Practice Committee for consideration. The Temporary Support Order is crucial to the expedited processing of matrimonial cases as well as to the enforcement of alimony, maintenance and child support orders. Changes in the body of the order preserve the confidentiality of the document by removing sensitive information, such as Social Security Numbers, included in the current version of the *R.* 5:7-4 (b) Temporary Support Order in Appendix XVII. The use of the revised Temporary Support Order in conjunction with the Confidential Litigant Information Sheet will ensure timely establishment of the case on ACSES within the 8 day time-frame required by New Jersey's expedited process, as well as, responsive enforcement with timely issuance of wage withholding orders and other automated processes. In reviewing the revised Temporary Support Order, the Child Support Committee noted

and incorporated additional changes necessitated by proposed revisions to *R.* 5:7-4. The proposed amendments to Appendix XVII, Temporary Support Order, *R.* 5:7-4 are attached here to as **Appendix C**.

K. Proposed Amendments to *R.* 5:7-6 - Consolidated Enforcement and Modification Proceedings

Discussion

The Child Support Subcommittee reviewed the necessity of serving Probation with motions to modify child support. *R.* 5:7-6 requires that when enforcement is pending and a motion to modify is filed in the county of venue and enforcement is administered through Probation in a different county, Probation should be served with the motion to modify filed in county of venue when the enforcement county differs and requires a certification of arrears to be provided to the court. This matter was brought to the attention of the Subcommittee by a practitioner who believes that it is excessive to require the entire motion be served on the Probation Division and that a payment history, rather than a certification of arrears would be useful since if the relief is granted, the arrears may need to be adjusted anyway. In a letter dated January 10, 2003, the attorney opined that the requirements of this Rule should be placed in *R.* 5:5-4, Motions in Family Actions.

The Subcommittee agreed that serving Probation the motion by certified and regular mail was excessive and that Probation would not need the entire motion with certification, Case Information Statement, etc. Probation needs to be put on notice as to the possible modification and enforcement and this could be accomplished by providing the notice of motion with the return date and relief sought. Regular mail should be sufficient. Probation reviewed the proposed revisions.

When the county of venue and the county administering the enforcement of a case, are different, and motions to enforce and to modify the order are pending, the proposed changes relax *R.* 5:7-4 by not requiring that the entire motion be served on Probation via certified and regular mail. The proposed change requires that Probation be provided notice by sending via regular mail a copy of the Notice of Motion without the certifications and supporting documents. This will allow Probation to be alerted to the pending motion and the return date. Rather than require Probation to provide a certification of arrears, the proposed rule change requires a payment history to be provided instead under these circumstances.

The rule amendment proposed by the Family Practice Committee is as follows:

Proposed Rule Change

5:7-6. Consolidated Enforcement and Modification Proceedings

(a) Where an order or judgment requires [payment] administration of support or alimony through a [p]Probation [office] Division in a county other than the county of venue and where motions are pending both for modification and enforcement of the order or judgment, all such motions shall be heard in the county of venue. [Prior to such hearing, the amount of arrearages shall be fixed in the county where payments are required to be made either by certification of the probation office or, if its certification is contested, by the court in that county.] Where motions are pending both for modification and enforcement, prior to such a hearing, a [certification of arrears] payment history shall be forwarded by the probation office to the court of original venue with copies to parties and counsel seven (7) days prior to the return date.

(b) Where any judgment or order [requires payment] is administered through a

probation office, notice of all motions for modification or enforcement shall be provided to probation by [serving] mailing a copy of the Notice of Motion without the certifications and supporting documentation by [both] regular [and certified] mail [upon] to the Probation Division administering the case.

Note: Source--R. (1969) 4:79-9(c). Adopted December 20, 1983, to be effective December 31, 1983; former rule amended and redesignated paragraph (a) and paragraph (b) adopted November 1, 1985 to be effective January 2, 1986[.]; paragraphs (a) and (b) amended , 2004 to be effective , 2004.

L. Proposed Amendment to Appendix IX-B, Use of Child Support Guidelines

Discussion

In the 2000-2002 Family Practice Committee cycle, an amendment was adopted to exclude federal and state earned income tax credits from income used to calculate child support and to treat said income as means-tested income. Appropriate line instructions were amended with the exception of the line instructions for the sole and shared parenting worksheets in Appendix IX-B, *Lines 1 through 5* that inadvertently were not submitted. Therefore, the Child Support Committee proposes a technical amendment to Appendix IX-B, for both the sole and shared worksheet line instructions, to delete "earned income credit" under *Sources of Income, item "t."*

Additionally, the 2000-2002 Family Practice Committee Report recommended two changes to the Child Support Guidelines. One involved the earned income credit discussed above and the second recommendation was to remove the language "welfare and other public assistance" from the listings of non-taxable income sources found in the Guidelines. The Family Practice Committee adopted the change in order to clarify that welfare and public assistance are means-tested income and should not

be used in calculating child support awards. The change was made as to the sole-parenting instructions in Appendix IX-B but was not accomplished for the shared-parenting line instructions. Therefore, the Child Support Committee proposes a technical amendment to Appendix IX-B, for purposes of properly amending the shared parenting line instructions.

Proposed Amendments

Appendix IX-B

LINE INSTRUCTIONS FOR THE SOLE-PARENTING WORKSHEET

Caption . . . no change

Lines 1 through 5 – Determining Income

Gross income . . . no change

Sources of Income

(a) through (s) . . . no change

(t) income tax credits or rebates ([including] excluding the state and federal Earned Income Credit and the N.J. homestead rebate)

LINE INSTRUCTIONS FOR THE SHARED-PARENTING WORKSHEET

Caption . . . no change

Lines 1 through 5 – Determining Income

Gross income . . . no change

Sources of Income

(a) through (s) . . . no change

(t) income tax credits or rebates ([including] excluding the state and

federal Earned Income Credit and the N.J. homestead rebate)

Income from self-employment or operation of a business . . . no change

Sporadic Income . . . no change

Military pay . . . no change

In-Kind income . . . no change

Alimony, Spousal Support, and/or Separate Maintenance Received . . . no change

Types of Income Excluded from Gross Income . . . no change

Collecting and Verifying Income Information . . . no change

Taxable and Non-Taxable Income – Before determining Net Income, gross income must be separated into taxable and non-taxable portions to ensure that withholding taxes are deducted only from taxable gross income. Generally, the types of income listed below are not subject to tax. Other types of income may be non-taxable depending on the status of the taxpayer or the source of income. For more information on taxable and non-taxable income, refer to IRS Publication 525 (Taxable and Non-Taxable Income) or, for New Jersey income taxes, see N.J.S.A. 54:6-1 or NJ-WT. The following items are considered income to parents, but should not be used to calculate withholding or income taxes when determining net income.

1. *Income Not Subject to Federal Income Tax*

(a) through (h) . . . no change

[i. Welfare and other public assistance benefits]

[j] <u>i.</u> Life insurance proceeds paid due to death of the insured;

[k] j. Social Security benefits. However, if the taxpayer has income of more than $25,000 if single or $32,000 if married and filing a joint return some of the benefits may be taxable (see IRS Publication 915);

[l] k. Casualty insurance and other reimbursements; and

[m] l. Earnings from tax-free government bonds or securities.

M. Proposed Amendment to *R.* 5:3-5 – Attorney Fees and Retainer Agreements in Civil Family Actions; Withdrawal

Discussion

The General Procedures & Rules Subcommittee has addressed the importance of family lawyers complying with the mandate of *R.* 1:40-1 which in part reads, "Attorneys have a responsibility to become familiar with available CDR programs and inform their clients of them."

The Subcommittee believes that the appropriate time for an attorney to advise a client of the option of available CDR programs is at the time the attorney is retained. *R.* 5:3-5(a) defines the minimal standards for what retainer agreements must include. The Subcommittee recommends that as Requirement 10, the following should be added, "… (10) The availability of Complementary Dispute Resolution (CDR) Programs." An example of a possible sentence to be added within retainer agreements would be, "The client hereby acknowledges the attorney having advised of the availability of Complementary Dispute Resolution (CDR) Programs including but not limited to mediation and arbitration."

Additionally, the Subcommittee reviewed the applicable rules for attorney withdrawal. *R.* 1:11-2(a) (1) and (2) generally permits the withdrawal of attorneys of

civil matters prior to the earlier of the pretrial conference or the fixing of the trial date. *R.* 1:11-2(a) specifically exempts civil family actions by its reference to *R.* 5:3-5(d). *R.* 5:3-5(d) permits an attorney to withdraw from representation prior to the fixing of the trial date or the MESP hearing whichever is earlier upon the client's consent. If the client does not consent, the attorney may withdraw only on leave of court as provided by *R.* 5:3-3(d) (2). That rule provides that after the fixing of the trial date or the fixing of the MESP panel hearing whichever is earlier, an attorney may withdraw from the action only by leave of court on motion on notice to all parties.

The General Procedures & Rules Subcommittee is mindful that, with the advent of Best Practices and aggressive case management, Matrimonial Early Settlement Panel Hearings take place sooner than ever before and sometimes trial dates are frequently fixed at the time of the original case management order. The Subcommittee recommends that both *R.* 5:3-5(d)(1) and (2) be amended to reflect that withdrawal upon the client's consent may take place prior to ninety (90) days before the fixing of the trial date or the occurrence of the Matrimonial Early Settlement Panel Hearing whichever is earlier. If there is no consent, a motion would be required for permission to withdrawal within ninety (90) days of the date of trial or after the occurrence of the Matrimonial Early Settlement Panel Hearing.

Proposed Rule Change

5:3-5. Attorney Fees and Retainer Agreements in Civil Family Actions; Withdrawal

(a) . . . no change

(1) through (9) . . . no change

(10) The availability of Complementary Dispute Resolution (CDR) Programs including but not limited to mediation and arbitration.

(b) . . . no change

(c) . . . no change

(d) Withdrawal from Representation.

(1) An attorney may withdraw from the representation ninety (90) days prior to the [fixing of the trial date or] date fixed for trial or prior to the Matrimonial Early Settlement Panel hearing, whichever is earlier, upon the client's consent in accordance with R. 1:11-2(a)(1). If the client does not consent, the attorney may withdraw only on leave of court as provided in subparagraph (2) of this rule.

(2) After [the fixing of the trial date] ninety (90) days prior to the date fixed for trial or the Matrimonial Early Settlement Panel hearing, whichever is earlier, an attorney may withdraw from the action only by leave of court on motion on notice to all parties. The motion shall be supported by the attorney's affidavit or certification setting forth the reasons for the application and shall have annexed the written retainer agreement. In deciding the motion, the court shall consider, among other relevant factors, the terms of the written retainer agreement and whether either the attorney or the client has breached the terms of that agreement; the age of the action; (the imminence of the Matrimonial Early Settlement Panel hearing date) or the trial date, as appropriate; the complexity of the issues; the ability of the client to timely retain substituted counsel; the amount of fees already paid by the client to the attorney; the likelihood that the attorney will receive payment of any balance due under the retainer agreement if the matter is tried; the burden on the attorney if the withdrawal application is not granted; and the prejudice to the client or to any other party.

Note: Adopted January 21, 1999 to be effective April 5, 1999; paragraph (b) amended July 5, 2000 to be effective September 5, 2000[.]; subparagraph (a)(10) added; subparagraphs (d) (1) and (d)(2) amended , 2004 to be effective , 2004.

N. Proposed Amendment to *R.* 5:5-2 – Case Information Statement and Appendix V - Family Part Case Information Statement

Discussion

Reserved from the 2000-2002 Final Report of the General Procedures & Rules Subcommittee was consideration of possible modifications to the Case Information Statement (CIS) form. Specifically, the Subcommittee's 2000-2002 final report to the Family Practice Committee commented, "[i]n conducting its traditional supervision of the CIS form, the subcommittee recommends its consideration during the 2002-2004 Rules Cycle." This year, the Subcommittee has undertaken a thorough analysis of the form and recommends the following modifications.

Globally, the Subcommittee recommends that *R.* 5:5-2(c) should be amended to require the filing of CIS's thirty (30) rather than twenty (20) days following the filing of an Answer or Appearance.

Additionally, the Subcommittee has, during its deliberations attempted to revise the form of the CIS to be more responsive to current needs and to the issues that frequently now present themselves to the Family Part. A copy of the proposed revised CIS is attached hereto as **Appendix D**. For ease of reference, the CIS page numbers listed below in the brief description of the recommended changes refer to the form of the revised CIS. It is not the intention of this report to provide an official commentary about the recommendations. Instead, it is the purpose of this portion of this Report to highlight the changes that have been recommended as follows:

Page 1 (Caption):

The Subcommittee recommends insertion into the upper left hand corner of a separate line for counsel's or a pro se litigant's telephone number and fax number. The Subcommittee recognizes that use of fax machine is now common place both for counsel and for the court and having the fax number appear will assist counsel and the court.

Page 1 (Notice Provision):

The amount of time to file a CIS after the filing of the Appearance or Answer has increased from 20 days to 30 days. See the proposed rule change that appears below this commentary.

Page 1 (Part A):

The Subcommittee recommends that the phrase "Birthdate of Spouse" be deleted and the phrase "Birthday of Other Party" be substituted in Part A "Case Information".

Page 1 (Issues in Dispute):

The Subcommittee recommends the addition of the phrase "Parenting Time" to the list of possible "Issues in Dispute." This recommendation is made because frequently while custody is not in dispute parenting time is in dispute. This recommendation is consistent with present statutory and case law.

Page 2: Part B- Miscellaneous Information:

The Subcommittee recommends that the heading in Section B (1) should be revised from "Name and Address Of Your Employer (Provide Name and Address of Business if Self- Employed)" to "Information About Employment (Provide Name & Address of Business, if Self-Employed)." Similarly, the phrase "Name of

Employer/Business" should be substituted for the prior listing of simply "Name of Employer." Although the Subcommittee recommends inclusion of the employer's/business' address, the Subcommittee considered but did not include the telephone number of the business/employer.

Page 2: Miscellaneous Information (Insurance Information):

The Subcommittee has rewritten B (2) so that the question now reads:

> Do you have Insurance obtained through Employment and/or Business? [ ] Yes [ ] No. Type of Insurance: Medical [ ] Yes [ ] No; Dental [ ] Yes [ ] No; Prescription Drug [ ] Yes [ ] No; Life [ ] Yes [ ] No; Disability [ ] Yes [ ] No; Other (explain). Is insurance available through Employment and/or Business? [ ] Yes [ ] No Explain:

The Subcommittee has also included a question whether insurance is available through employment/business.

The Subcommittee has deleted reference to the attachment of the Affidavit of Insurance Coverage as required by *R.* 5:4-2(f) from page 2 of the CIS but has included it as item on page 9 of an expanded checklist.

Attachment of Confidential Litigant Information Sheet.

The Subcommittee recommends the attachment of the Confidential Litigation Information Sheet with an appropriate block indicating whether that sheet has been filed.

List of Pending/Past Family Actions and Attachment of Orders:

The Subcommittee slightly modified past instructions and now recommends the requirement that there be attached, a list of all prior/pending family actions involving support, custody or domestic violence, with the docket number, county, state and disposition reached together with copies of all Orders in effect.

Page 2: "Present Earned Income and Expenses"

The Subcommittee recommends use of weekly rather than monthly income figures within Part C (2) "Present Earned Income and Expenses." It is suggested that because the child support guidelines worksheet requires consideration of weekly rather than monthly figures, the inclusion of weekly figure will prove helpful.

Page 3: "Your Year-to-Date Earned Income:"

The Subcommittee recommends the modification of the title adding the word "Current" so that the title reads "Your Current Year-To-Date Earned Income."

Page 3: Additional "Other Deductions:"

The Subcommittee has added additional sub categories to the "Other deduction" category and has revised others. Thus the Pension/Profit Sharing Plan line has been split into two lines referencing "401(k) Plans" and "Pension/Retirement Plans." The Subcommittee has also added a line entitled "Other Plans – Specify;" a line for "Charity" and has added a second line for "Other" thereby providing flexibility to those who have taken other types of deductions. Deleted have been references to "Profit Sharing Plan;" "Savings/Bond Plan" and "Retirement Fund Payments."

Page 3: Net Average Earned Income Per Week:

In Part C (3) subpart 4, the Subcommittee has added a line to reflect "Net Average Earned Income Per Week" with the qualification "annualized year to date income."

Page 3: Your Year-to-Date Unearned Income:

The Subcommittee has added the words "From All Sources" and has added definition by containing the instruction, "… including income from unemployment,

disability and/or social security payments, interest, dividends, rental income and any other miscellaneous unearned income."

Page 4: Additional Information:

In the prior version of the CIS form, three limited questions were posed. This has now been significantly expanded.

Part D-Monthly Expenses:

The Subcommittee has recommended the most sweeping change to the Part D "Monthly Expenses" or what is popularly known as "the Budget" since the adoption in the early 1980's of the Preliminary Disclosure Statement and later the Case Information Statement Form. In large measure these changes have been made to make the budget form more helpful to the Court and litigants given the present status of the law concerning the significance now attached to the "marital lifestyle." **Most significantly, the headings of the two columns contained within the budget have been revised to reflect in the left hand column JOINT MARITAL LIFESTYLE FAMILY WITH ____ CHILDREN AND the right hand column CURRENT LIFE STYLE YOURS AND _____ CHILDREN.** The instructions have similarly been modified to reflect the revised budget's intent. As revised, the amended instructions read:

> Joint Marital Life Style should reflect standard of living established during marriage. Current expenses should reflect the current life style. Do not repeat those income deductions listed on Part C-3.

Pages 5-6: Changes Within Budget Form:

Within the body of the CIS Monthly Expenses Form, the legends which appear next to real estate taxes and homeowners insurance have been amended from the former form "Unless included with mortgage payment" to read "If not included w/mortgage

payment." The former "repairs and maintenance" budget line item has been split into two separate budgetary categories.

In Schedule B: Transportation, "Registration, License, Maintenance" has been made into two separate categories: "Registration, License" and "Maintenance."

In Schedule C: Personal, the supplemental legend "not listed elsewhere" has been added to the "Debt Service" line item.

New language appears between Schedule C and the Summary of Monthly expenses which reads as follows: "Please note: If you are paying expenses for spouse and children not reflected in this budget, attach schedule of such payments."

Pages 7 and 8: Balance Sheet of Family Assets and Liabilities:

Expanded/modified legends appear next to various classifications of assets/liabilities. These revisions have been made to coincide with the types of assets/liabilities frequently encountered in dissolution matters. Additionally, contingent liabilities although included in the list of liabilities have been specifically deleted from the total.

Page 9 – The List of Required Attachments:

The list has been expanded to summarize all of the attachments required by the other provisions contained within the CIS.

It is the Family Practice Committee's hope that this revised Case Information Statement form will assist the court and counsel in dispensing justice. It is the hope that this revision which is intended to more closely address the importance of lifestyle questions will be particularly useful.

Proposed Rule Change

5:5-2. Case Information Statement

(a) . . . no change

(b) Time and Filing. Except as otherwise provided in R.5:7-2, a case information statement or certification that no such statement is required under subparagraph (a) shall be filed by each party with the clerk in the county of venue within [20] 30 days after the filing of an Answer or Appearance. The case information statement shall be filed in the form set forth in Appendix V of these rules. The court on either its own or a party's motion may, on notice to all parties, dismiss a party's pleadings for failure to have filed a Case Information Statement. If dismissed, said pleadings shall be subject to reinstatement upon such conditions as the court may deem just.

Note: Source -- R. (1969) 4:79-2. Adopted December 20, 1983, to be effective December 31, 1983; amended January 10, 1984, to be effective April 1, 1984; paragraphs (b) and (e) amended November 5, 1986 to be effective January 1, 1987; paragraphs (b) and (e) amended November 2, 1987 to be effective January 1, 1988; paragraphs (a) and (e) amended November 7, 1988 to be effective January 2, 1989; paragraph (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended January 21, 1999 to be effective April 5, 1999; paragraph (e) amended July 12, 2002 to be effective September 3, 2002[.]; paragraph (b) amended ,2004 to be effective , 2004.

O. Proposed Amendment to *R.* 1:6-3 – Filing and Service of Motions and Cross-Motions and *R.* 5:5-4 – Motions in Family Actions

Discussion

Since the adoption of revised *R.* 1:6-3, there has been much discussion between the family Bench and Bar as to the wisdom of the current rule when applied to Family Part matters. Many judges, litigants and attorneys view the Rule as overly restrictive forcing an otherwise unnecessary second court appearance to resolve the unrelated cross-motion even though the issue(s) would have been susceptible to easy resolution at

the first hearing. Resolution of this issue also focuses upon the salutary goal of reducing litigant's costs in divorce as well as maximizing use of the valuable court time. Balancing all relevant concerning consideration, the subcommittee recommends exempting Family Part matters from *R.* 1:6-3 and the creation of a parallel Family Part Rule in Part V.

Accordingly, the General Procedures & Rules Subcommittee recommends the addition of language to *R.* 1:6-3(b) exempting Family Part Motions from the general rule that a cross motion must relate to the subject matter of the original Motion by inserting a cross reference to a new provision that should be added to *R.* 5:5-4. The added language to *R.* 5:5-4(b) should provide that the court shall consider a non-related cross-motion if there will be no prejudice to the parties. The amendment should reduce the necessity of multiple appearances on sequential motion dates. The Subcommittee is confident that in Family Part motions, the court will be able to discern when there is or is not prejudice. In many instances, although not directly related to the subject matter of the original motion, easy response is possible. It is also assumed that when there is true objection, the responding counsel or litigant will so state. Indeed, it is perceived that in many instances, litigants would prefer to resolve all issues rather than arbitrarily have to return to court on a subsequent motion date to have a matter decided which could have been resolved at the first appearance.

Additionally, the General Procedures & Rules Subcommittee has considered an issue related to the page limit rule which appears within *R.* 5:5-4 which sets forth page limits applicable to Certifications filed with Family Part Motions. The Subcommittee was specifically directed to the absence within the existing Rule of references to

exhibits appended to a motion and whether the page limit requirements apply to attached exhibits.

The Subcommittee is mindful that in the Final Report of the Supreme Court Special Committee on Matrimonial Litigation from which the page limit rule was adopted, the following commentary with regard to exhibits appeared:

> To aid the Bar in understanding the recommendation contained herein, page totals control whether one or several certifications are filed. For example, counsel might choose to submit either one certification consisting of 15 pages or two certifications having a total of 15 pages. *The exhibits attached to certifications are not included within the page totals.* (emphasis added).

The Subcommittee has also carefully considered whether Certified Statements taken by persons other than the affiant whose affidavit is being filed should be counted within the page limits prescribed by the Rule. The Subcommittee responds in the affirmative in those instances in which the Certified Statement has not been previously submitted to the court. Based on the aforegoing, the Subcommittee recommends the addition of new paragraph (h) to *R.* 5:5-4 to address the applicability of page limitations set out in *R.* 5:5-4 (b) (redesignated as paragraph (c)) to Exhibits.

Finally, the Subcommittee recommends technical amendments to *R.* 5:5-4(c) (redesignated as paragraph (d)) and *R.* 5:5-4(d) (redesignated as paragraph (e)). The text of *R.* 5:5-4(c) (redesignated as paragraph (d)) should be modified to contain all basic rules applicable to the filing of Family Part motions. Similarly, the text of *R.* 5:5-4(d) (redesignated as paragraph (e)) should be expanded so as to require in the Notice that is to appear on motions all applicable time deadlines not only as to post but also pre-judgment motions. It is recommended that these paragraphs contain in one place all timing rules pertaining to both pre and post-judgment Family Part motions. This is

important because although *R.* 5:5-4(a) incorporates by reference the provisions of *R.* 1:6-2(b) nowhere in the Part V rules is there specific reference to the time constraints contained in *R.* 1:6-3. No reference to *R.* 1:6-3 appears in *R.* 5:5-4(a); *R.* 5:5-4(b) (redesignated as paragraph (c)) or *R.* 5:5-4(c) (redesignated as paragraph (d)). Counsel and litigants should be able to look to one place within the Part V rules where all rules concerning the time for filing Family Part motions may be found.

Similarly, although this would cause a lengthening of the notice requirements, the advance notice rule *R.* 5:5-4(d) (redesignated as paragraph (e)) does not, for example, contain reference to reply Certifications four (4) days prior to the return date of the motion.

The drafting of the formal language of the rule would not be difficult once the concept has been accepted that *R.* 5:5-4(c) (redesignated as paragraph (d)) should be a fully self-contained rule indicating the timing for all Family Part motions both pre and post-judgment whether for enforcement or otherwise and similarly that the notice required by *R.* 5:5-4(d) (redesignated as paragraph (e)) be similarly comprehensive.

Proposed Rule Change

1:6-3. Filing and Service of Motions and Cross-Motions

(a) . . . no change

(b) Cross-Motions. A cross-motion may be filed and served by the responding party together with that party's opposition to the motion and noticed for the same return date only if it relates to the subject matter of the original motion. <u>Except as otherwise provided in R. 5:5-4(family actions)</u>, a cross-motion relating to the subject matter of the original motion shall, if timely filed pursuant to this rule, relate back to the date of the

filing of the original motion. The original moving party's response to the cross-motion shall be filed and served as provided by paragraph (a) for reply papers. The court may, however, on request of the original moving party, or on its own motion, enlarge the time for filing an answer to the cross-motion, or fix a new return date for both. No reply papers may be served or filed by the cross-movant without leave of court.

(c) . . . no change

Note: Source--R.R. 3:11-1, 4:6-3(a); amended July 24, 1978 to be effective September 11, 1978; amended July 16, 1979 to be effective September 10, 1979; amended July 16, 1981 to be effective September 14, 1981; amended November 1, 1985 to be effective January 2, 1986; amended June 29, 1990 to be effective September 4, 1990; amended July 13, 1994 to be effective September 1, 1994; amended and paragraphs (a), (b) and (c) designated July 10, 1998 to be effective September 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July 12, 2002 to be effective September 3, 2002[.]; paragraph (b) amended , 2004 to be effective , 2004.

5:5-4. Motions in Family Actions

(a) . . . no change

(b) Cross-Motions. Cross-motions may include subject matter not directly addressed in the originally filed motion provided such consideration will not prejudice the parties or the administration of justice.

(c) [(b)] . . . no change

(d) [(c)] Time for Service and Filing. A notice of motion, except for motions brought pursuant to R. 1:10-3 and motions involving the status of a child, filed more than 45 days after the entry of the written judgment of divorce or annulment, other than an ex parte motion, shall be served and filed, together with supporting affidavits and briefs, when necessary, not later than 29 days before the time specified for the return date. For example, a motion must be served and filed on the Thursday for a motion date falling on a Friday 29 days later. Any opposing affidavits, cross-motions or

objections shall be served and filed not later than 15 days before the return date. For example, a response must be served and filed on a Thursday for a motion date falling on a Friday 15 days later. Answers or responses to any opposing affidavits and cross-motions shall be served and filed not later than 8 days before the return date. For example, such papers would have to be served and filed on a Thursday for a motion date falling on the Friday of the following week. If service is made by mail, 3 days shall be added to the above time periods.

All other motions shall be served and filed with supporting affidavits and briefs, when necessary, in accordance with R. 1:6-3(a).

(e) [(d)] Advance Notice. Every motion shall include the following language: NOTICE TO LITIGANTS: IF YOU WANT TO RESPOND TO THIS MOTION YOU MUST DO SO IN WRITING. This written response shall be by affidavit or certification. (Affidavits and certifications are documents filed with the court. In either document the person signing it swears to its truth and acknowledges that they are aware that they can be punished for not filing a true statement with the court. Affidavits are notarized and certifications are not.) If you would also like to submit your own separate requests in a motion to the judge you can do so by filing a cross-motion. Your response and/or cross-motion may ask for oral argument. That means you can ask to appear before the court to explain your position. However, you must submit a written response even if you request oral argument. Any papers you send to the court must be sent to the opposing side, either to the attorney if the opposing party is represented by one, or to the other party if they represent themselves.

The response and/or cross-motion must be submitted to the court by a certain date. All pre-divorce motions, all enforcement motions (also known as motions for enforcement of litigants' rights, R. 1:10-3), or motions that deal with the status of children must be filed 16 days before the return date. (Since most motion days are on a Friday, motion papers must be filed on the Wednesday 16 days before.) [Therefore, a] A response and/or cross motion must be filed eight days (Thursday) before the return date. Answers or responses to any opposing affidavits and cross-motions shall be served and filed not later than 4 days (Monday) before the return date. No other response is permitted without permission of the court. All post-judgment motions, including all motions for modification of alimony, child support, custody, or parenting time/visitation must be filed 29 days (Thursday) before the (Friday) return date. [Therefore, a] A response and/or cross-motion must be filed 15 days (Thursday) before the return date. Answers or responses to any opposing affidavits and cross-motions shall be served and filed not later than 8 days (Thursday) before the return date. No other response is permitted without permission of the court. If you mail in your papers you must add three days to the above time periods.

Response to motion papers sent to the court are to be sent to the following address: _____. Call the Family Division Manager's office (_____) if you have any questions on how to file a motion, cross-motion or any response papers. Please note that the Family Division Manager's office cannot give you legal advice.

(f) [(e)] . . . no change

(g) [(f)] . . . no change

(h) Exhibits. Exhibits attached to certifications shall not be counted in determining compliance with the page limits contained in this Rule. Certified statements not previously filed with the Court shall be included in page limit calculation.

Note: Source--R. (1969) 4:79-11. Adopted December 20, 1983, to be effective December 31, 1983; amended November 2, 1987 to be effective, January 1, 1988; former rule amended and redesignated paragraph (a) and paragraph (b) adopted June 29, 1990 to be effective September 4, 1990; paragraph (b) amended and paragraph (c) adopted June 28, 1996 effective as of September 1, 1996; captions of paragraphs (a) and (b) amended and paragraph (d) adopted July 10, 1998 to be effective September 1, 1998; new paragraph (b) added and former paragraphs (b), (c), and (d) redesignated as paragraphs (c), (d), and (e) January 21, 1999 to be effective April 5, 1999; paragraph (d) amended July 5, 2000 to be effective September 5, 2000; new paragraph (f) added July 12, 2002 to be effective September 3, 2002[.]; new paragraphs (b) and (h) added, former paragraphs (b), (c), (d), (e) and (f) redesignated as paragraphs (c), (d), (e), (f) and (g), and redesignated paragraphs (d) and (e) amended _____, 2004 to be effective _____, 2004.

P. Proposed Amendment to *R.* 5:5-5 – Participation in Early Settlement Programs

Discussion

The General Procedures & Rules Subcommittee is mindful that the Conference of Family Presiding Judges has under consideration for future attention and possible action the adoption of uniform policies and procedures to be implemented statewide for Matrimonial Early Settlement Panel (MESP) programs. The Subcommittee encourages the Conference in this regard and is prepared to extend whatever assistance it can from its members in that endeavor.

That having been said, however, the Subcommittee recommends the immediate implementation of a limited rule revision which would have as its purpose, assuring that Early Settlement Panels have, in advance of a panel hearing, some form of submission setting forth the basic facts of a matter and each litigant's proposed

resolution of all contested issues. The Subcommittee is unanimously of the view that the MESP program which the Subcommittee recognizes as a huge success can only achieve its full potential if Panelists have the benefit of submissions prior to the panel hearing date. Specifically, the Subcommittee recommends that panel submissions should be in the Panelists hands not later than five (5) days prior to the panel session and that a copy of those submissions for monitoring purposes only should also be submitted to ESP Program Administrator in the county of venue.

The appropriate way to implement this would be an addition to *R.* 5:5-5. The amendment would call for the addition of one added sentence. That sentence would require that, not later than five (5) days prior to the scheduled panel hearing, the parties provide a submission to the Panelists with a copy of the submission forwarded to the MESP coordinator in the county of venue.

The Subcommittee is mindful that the exact procedures for how an MESP is conducted and the minimum requirements for what must be submitted to the Panel vary from vicinage to vicinage. The Subcommittee leaves for the later consideration by the Conference of Family Presiding Judges the minimum standard of what the form of submission should entail or, alternatively or additionally expresses its willingness to consider the issue in its 2004-2006 Term.

It is the purpose of this recommendation which is perceived as non-controversial to begin the process of "fine tuning" what is an excellent procedure but which lacks consistency from vicinage to vicinage.

Proposed Rule Change

5: 5-5. Participation in Early Settlement Programs

All vicinages shall establish an Early Settlement Program, in conjunction with the County Bar Associations, and the Presiding Judges, or designee, shall refer appropriate cases including post-judgment applications to the program based upon review of the pleadings and case information statements submitted by the parties. Parties to cases which have been so referred shall participate in the program as scheduled. The failure of a party to participate in the program or to provide a case information statement or such other required information may result in the assessment of counsel fees and/or dismissal of the non-cooperating party's pleadings. Not later than five (5) days prior to the scheduled panel session, each party shall be required to provide a submission to the designated panelists with a copy to the ESP coordinator in the county of venue.

Note: Source--R. (1969) 4:79-4. Adopted December 20, 1983, to be effective December 31, 1983; amended January 10, 1984, to be effective April 1, 1984; amended November 1, 1985 to be effective January 2, 1986; amended November 5, 1986 to be effective January 1, 1987[.]; amended , 2004 to be effective , 2004.

Q. Proposed Amendment to R. 1:5-7 - Non-Military Service Affidavits

Discussion

The General Procedures & Rules Subcommittee considered the expedited request of the Administrative Director of the Courts to review the requirement that Non-Military Service Affidavits must be derived from personal knowledge. This issue was brought to the attention of the Family Practice Committee based upon a concern that such affidavits today commonly state that "the affiant has no knowledge that the defendant is in the armed forces" or that "defendant has never told plaintiff that he/she is currently in the service." As implemented by a 1969 Notice to the Bar, 92 *N.J.L.J.* 793 (1969), affidavits are insufficient unless they are made on personal knowledge.

In order to assure compliance with the 1969 Notice to the Bar, the subcommittee recommends that the Rule be amended to include language making it very clear that the affiant has personal knowledge of the facts represented. The additional language proposed would add at the end of the existing Rule, "Such affidavit must be based upon personal knowledge of the affiant..." If there does not exist personal knowledge, the party taking the affidavit must take such steps as are needed to obtain a statement from the Department of Defense or the various military services that the defendant is not in military service. These additions to the existing rule will emphasize that all Affidavits of Non-Military Service must be made on personal knowledge.

The Administrative Director also asked the Civil Practice Committee and the Special Civil Part Practice Committee to review *R.* 1:5-7. The Family Practice Committee, after reviewing the proposed recommended amendments to *R.* 1:5-7 made by the Civil Practice Committee and the Special Civil Part Practice Committee, suggests a slightly different rule amendment as set forth below. The unanimous Family Practice Committee adopted the concept of the recommended rule amendment.

Proposed Rule Change

1:5-7. Non-Military Affidavit

An affidavit of non-military service of each defendant, male or female, when required by law, shall be filed before entry of judgment by default against such defendant. Such affidavit may be included as part of the affidavit of proof. <u>Such affidavit must be based upon personal knowledge of the affiant or upon a statement obtained from the Department of Defense or each branch of the armed forces that defendant is not in military service.</u>

Note: Source--R.R. 7:9-3; amended ,2004 to be effective ,2004.

R. Proposed Amendments to R. 5:4-2 – Complaint, *R.* 1:5-6 - Filing, and *R.* 5:5-3 - Financial Statement in Summary Support Actions

Discussion

The Administrative Director, by memorandum dated July 29, 2002, implemented an interim procedure for the gathering of demographic information on litigants through the use of the Confidential Litigant Information Sheet (CLIS). By memorandum dated July 31, 2002, the Director requested an expedited consideration by the Family Practice Committee, of a possible new court rule to require the completion of the CLIS by litigants. To effect the implementation of the CLIS, the Practice Committee, based on the recommendation of its Child Support Subcommittee, recommends the addition of a new paragraph to R. 5:4-2 that would, (1) require that the CLIS be filed with the first pleading of any party in any proceeding involving alimony, maintenance, or child support, (2) deem the CLIS to be confidential due to the nature of the information recorded on the document, and (3), for that reason, that while it is to be filed with the pleadings, it should not be affixed to the pleadings. Additionally, the Committee recommends appropriate changes to R. 1:5-6(c) ("Filing") Nonconforming Papers and R. 5:5-3 ("Financial Statement in Summary Support Actions"). The proposed new language for R. 1:5-6(c)(1)(C) would require that the clerk treat filings without the completed CLIS as nonconforming papers. The proposed new language in R. 5:5-3 would reference the change to R. 5:4-2 to alert parties in summary actions to submit the completed CLIS with this form unless filed with the complaint.

Proposed Rule Change

5:4-2. Complaint

(a) through (f) … no change

(g) Confidential Litigant Information Sheet. The first pleading of each party to any proceeding involving alimony, maintenance or child support shall be accompanied by a completed Confidential Litigant Information Sheet in the form prescribed in Appendix [xxxx]. The form shall be provided at the time of the filing of the first 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 support 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.

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) added , 2004 to be effective , 2004.

Proposed Rule Change

1:5-6. Filing

(a) …no change

(b) …no change

(c) Nonconforming Papers. The clerk shall file all papers presented for filing and may notify the person filing if such papers do not conform to these rules, except that

(1) the paper shall be returned stamped "Received but not Filed (date)" if it is presented for filing unaccompanied by any of the following:

(A) the required filing fee; or

(B) a completed Case Information Statement as required by R. 4:5-1 in the form set forth in Appendix XII to these rules; or

(C) in Family Part actions, the affidavit of insurance coverage required by R. 5:4-2(f) or the Parents Education Program registration fee required by N.J.S.A. 2A: 34-12.2 ;or the Confidential Litigant Information Sheet as required by R. 5:4-2(g) in the form prescribed in Appendix [xxxx].

Note: Source--R.R. 1:7-11, 1:12-3(b), 2:10, 3:11-4(d), 4:5- 5(a), 4:5-6(a) (first and second sentence), 4:5-7 (first sentence), 5:5- 1(a). Paragraphs (b) and (c) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended November 26, 1990 to be effective April 1, 1991; paragraphs (b) and (c) amended, new text substituted for paragraph (d) and former paragraph (d) redesignated paragraph (e) July 13, 1994 to be effective September 1, 1994; paragraph (b)(1) amended, new paragraph (b)(2), adopted, paragraphs (b)(2), (3), (4), (5) and (6) redesignated paragraphs (b)(3), (4), (5), (6) and (7), and newly designated paragraph (b)(4) amended July 13, 1994 to be effective January 1, 1995; paragraphs (b)(1), (3) and (4) amended June 28, 1996 to be effective September 1, 1996; paragraph (b)(4) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (c)(1)(C) amended , 2004 to be effective ,2004.

Proposed Rule Change

5:5-3. Financial Statement in Summary Support Actions

In any summary action in which support of a child is in issue, each party shall, prior to the commencement of any hearing, serve upon the other party and furnish the court

with an affidavit or certification in the form set forth in Appendix XIV of these Rules. The court shall use the information provided on the affidavit or certification and any other relevant facts to set an adequate level of child support in accordance with R. 5:6A. In summary actions to determine the support of spouse, each party shall, prior to the commencement of any hearing, provide the opposing party and the court with an affidavit or certification of income, assets, needs, expenses, liabilities, and other relevant facts to assist the court in determining the issue of support. Such affidavit or certification shall be preserved for appellate review but shall not be filed. Note that pursuant to R. 5:4-2(g) complaints filed in the Family Part that contain requests for alimony, maintenance or child support must include a completed Confidential Litigant Information Sheet in the form set forth in Appendix (to be assigned) of these Rules.

Note: Source--R. (1969) 5:5-3(a). Adopted December 20, 1983, to be effective December 31, 1983; amended January 10, 1984, to be effective immediately; amended July 14, 1992 to be effective September 1, 1992; amended ,2004 to be effective ,2004.

II. Proposed New Rules for Adoption

A. Proposed *R.* 5:25-4. Domestic Violence Hearing Officers

Discussion

In developing the Domestic Violence Hearing Officer (DVHO) Court Rule, the Domestic Violence Subcommittee had to consider the direction of the Appellate Division in the recent decision of *State v. Johnson,* 352 *N.J. Super*. 15, (App. Div. 2002), stating that there were problems with the current procedure of DVHO's handling the weapons search warrant portion of the temporary restraining order. Specifically the Appellate Division stated that the current procedure did not insure the adequate memorialization on the record of the facts relied upon by the judge when determining whether or not to issue a search warrant in a temporary restraining order. The Appellate Division stated further that the preferable procedure would be for the judge to take direct testimony from the victim on this issue. There were also suggestions to amend the Affidavit in Support of Domestic Violence Search Warrant to provide more detail in support of the victim's belief that the defendant's access and possession of weapons poses a risk of injury to the victim.

Consequently, the Subcommittee is also recommending that the Domestic Violence Hearing Officer (DVHO) Standards be amended to provide for a judge to hear testimony on the issue of the weapons seizure search warrant and the Affidavit in Support of Domestic Violence Search Warrant be amended to include detailed facts supporting the victim's belief that the defendant's possession and access to weapons poses a risk of injury to the victim. **Appendix E** contains the proposed changes to the DVHO Standards Weapons Seizure and Search Warrant section and the proposed changes to the Affidavit.

The Family Practice Committee recommends that the proposed *R.* 5:25-4 and the proposed changes to the DVHO Standards and Affidavit be adopted by the Supreme Court simultaneously.

Proposed New Rule

5:25-4. Domestic Violence Hearing Officers

(a) Appointment, Qualifications and Training.

(1) Domestic Violence Hearing Officers shall be hired at the vicinage level in the same manner as all other Judiciary employees based on the qualifications of the position adopted by the Department of Personnel. All successful candidates for the Domestic Violence Hearing Officer position prior to hearing any cases shall complete a training program approved by the Administrative Office of the Courts. The Training Committee of the Conference of Family Division Managers will develop the training program in coordination with the Judiciary's Chief of Training and Staff Development and in consultation with the Domestic Violence Hearing Officer Advisory Committee of the State Domestic Violence Working Group.

(2) The Domestic Violence Hearing Officers shall report to the Assistant Family Division Manager, and for legal consultation or case issues, shall have access to the Family Division Presiding Judge or a judge designated by the Presiding Judge.

(b) Jurisdiction.

(1) Domestic Violence Hearing Officers shall only hear requests for Temporary Restraining Orders made at the Family Division during regular court hours. Appearance before the Domestic Violence Hearing Officer is voluntary and Plaintiff

may elect to appear before a judge instead. No adverse inferences shall be drawn from a Plaintiff's election to appear before a judge.

(2) The Domestic Violence Hearing Officer shall be governed by the New Jersey Prevention of Domestic Violence Act, New Jersey Court Rule 5:7A, the Domestic Violence Procedures Manual promulgated by the New Jersey Supreme Court and Attorney General, and the Domestic Violence Hearing Officer Standards as approved by the Supreme Court in making recommendations regarding the issuance of an initial Temporary Restraining Order and its specific provisions.

(3) Domestic Violence Hearing Officers may draft and recommend Amended Temporary Restraining Orders in circumstances where only the Plaintiff appears and none of the exclusions listed in Section 4 below apply.

(4) Domestic Violence Hearing Officers shall not hear a particular matter if any of the following circumstances exist:

(A) When a change in or suspension of an existing custody or visitation order is sought by Plaintiff;

(B) When there are cross-complaints, complex issues or circumstances, or pending or recently resolved cases involving the parties that make the matter "complex" (the determination of "complexity" by the Hearing Officer is subject to the oversight of the Presiding Judge or the Lead Domestic Violence Judge);

(C) Where a party has submitted an application for dismissal;

(D) When both parties are present;

(E) When a Temporary Restraining Order has been denied by the Municipal Court, and the Plaintiff appears at the Family Division for a hearing *de novo;*

(F) When a conflict of interest or the appearance of impropriety would result.

(5) The following provisions are applicable to cases involving the use or threatened use of weapons:

(A) When a domestic violence complaint is taken in a matter that involves the use or threatened use of a weapon, or where the defendant possesses or has access to a firearm or other weapon defined in *N.J.S.A.* 2C:39-1r, this information should be noted on the complaint and transmittal form that will be attached to the paperwork forwarded to the Domestic Violence Hearing Officer;

(B) During the hearing, when the Domestic Violence Hearing Officer reaches the section of the TRO prohibiting weapons possession, the Domestic Violence Hearing Officer must ask the Plaintiff if the defendant possess or has access to any firearms and/or weapons and if so ask the Plaintiff for as detailed a description as possible concerning the type and number of firearms and/or weapons and their specific location(s);

(C) The Domestic Violence Hearing Officer shall ask the Plaintiff if she/he has any fear of the defendant having the firearm(s) and/or weapon(s) and if so why the Plaintiff is afraid of defendant possessing the firearm(s) and/or weapon(s);

(D) The Domestic Violence Hearing Officer shall then assist the Plaintiff in completing the weapons seizure affidavit form as prescribed in Appendix____, listing the firearm(s) and/or weapon(s) to be seized the likely location(s) of the firearm(s) and/or weapon(s), the reasons or facts that support the Plaintiff's fear of defendant possessing the firearm(s) and/or weapon(s) and the facts

that support the Plaintiff's belief that the defendant's possession of the firearm(s) and/or weapon(s) exposes the Plaintiff to a risk of serious bodily injury;

(E) The Domestic Violence Hearing Officer shall then have the Plaintiff sign the affidavit;

(F) The case shall then be brought to the Judge with the signed affidavit;

(G) The Judge shall then review the affidavit and may also question the Plaintiff on the record regarding whether the defendant possess or has access to any firearms and/or weapons, the type and possible location(s) of the firearm(s) and/or weapon(s), the prior history of domestic violence, the facts and context in which the current alleged act of domestic violence has occurred and any fear the Plaintiff may have that the defendant's possession of the firearm(s) and /or weapon(s) pose a risk of serious bodily injury to the Plaintiff;

(H) If the Judge finds probable cause to issue the search warrant portion of the temporary restraining order, the Judge shall place on the record the reasons and facts supporting the conclusion that the defendant's possession of firearms and/or weapons expose the Plaintiff to a risk of serious bodily injury;

(I) The Judge shall then complete the search warrant portion of the temporary restraining order specifying the firearm(s) and/or weapon(s) to be searched for and seized, the location(s) to be searched and any other instructions to law enforcement.

(c) Duties, Powers, and Responsibilities. The Domestic Violence Hearing Officer shall be responsible to the Presiding Judge for the conduct of hearings on

requests for Temporary Restraining Orders made pursuant to the New Jersey Prevention of Domestic Violence Act. Such Domestic Violence Hearing Officers shall:

(1) Review all related case files involving the parties;

(2) Inform Plaintiff about her/his legal rights and options, and about available protective services, including shelter care;

(3) Explain to Plaintiff the domestic violence legal process and procedures;

(4) Explain to Plaintiff that appearance before the Domestic Violence Hearing Officer is voluntary, and that no adverse inference shall be drawn if Plaintiff seeks to appear instead before a judge;

(5) Take testimony and establish a record, including findings of fact concerning the basis for her/his recommendations;

(6) Rule on the admissibility of evidence;

(7) Record all hearings and maintain a log;

(8) Draft a comprehensive, case-specific Temporary Restraining Order, where appropriate;

(9) Forward the recommended Temporary Restraining Order for review and signature by a judge;

(10) Refer the Plaintiff to other agencies for assistance as appropriate;

(11) Inform Plaintiff of the right to a hearing *de novo* before a Superior Court Judge if the Domestic Violence Hearing Officer has recommended that a TRO not be granted.

(d) Review by Presiding Judge or Designee. All recommendations made by the Domestic Violence Hearing Officer shall be reviewed immediately by the Family Presiding Judge or other Superior Court Judge designated by the Presiding Judge, as follows:

(1) If the judge finds the recommended TRO to be appropriate, she or he should sign the TRO.

(2) If the Domestic Violence Hearing Officer determines that weapon(s) should be seized, the judge shall review the Weapons Seizure Affidavit and if the judge agrees, the probable cause determination regarding the weapon(s) seizure shall be placed on the record;

(3) When the Domestic Violence Hearing Officer finds no basis for the issuance of the TRO or finds a lack of probable cause for a weapons seizure; the Plaintiff shall be entitled to an immediate hearing *de novo* conducted by the Family Presiding Judge or a designated Family Division Judge;

(4) A Plaintiff who does not agree with the findings and/or recommendations of the Domestic Violence Hearing Officer shall be entitled to an immediate hearing *de novo* conducted by the Family Presiding Judge or a designated Family Division Judge.

(e) Service. All rules concerning service of notice ad due process rights applicable to the Family Part shall be applicable to the Domestic Violence Hearing Officer hearings. Copies of the signed TRO shall be provided to Plaintiff by the court or court staff, in accordance with local practice, before Plaintiff leaves the courthouse. Defendant shall be served a copy pursuant to N.J.S.A. 2C:25-17 *et seq.*

Note: Adopted , 2004 to be effective ,2004.

B. Proposed *R.* 5:8-7 - Parenting Coordinator

Discussion

The Parenting Coordinator Rule is intended to provide a vehicle other than mediation where pedestrian disputes between parents concerning details of day-to-day issues, may be discussed with court appointed mental health professionals or consensually designated individuals, both of whom will have the power to make recommendations to the parties that may be brought to the attention of the court if a dispute remains unresolved. A complete history of the process utilized in development of this proposed rule is contained in the full report of the Custody and Parenting Time Subcommittee annexed hereto as **Exhibit A.**

Proposed *R.* 5:8-7 provides the court with the authority to exercise its discretion and appoint such a coordinator. If appointed by the court, the coordinator must be a social worker, a psychologist, a psychiatrist, or family therapist, licensed to practice in New Jersey, by the appropriate State Board and agencies, and qualified by experience or training. If the parties consent, the court may designate a non-mental health layman, including an attorney licensed in New Jersey to be the parenting coordinator. When designating a parenting coordinator, the court must set forth its reasons. The Rule allows the appointment of a coordinator if the court believes it is in the best interests of the children to have such a designation.

Unlike mediation, communications with parenting coordinators are not confidential and the coordinator may make recommendations to the parties, if they are unable to resolve their dispute, which either can bring to the attention of the court in

connection with an application regarding the issue. No attempt has been made in the Rule to catalogue the nature of disputes that may be brought to the parenting coordinator, as it is believed that is best tailored to the facts of an individual case, both by the court and the parties.

This Rule memorializes a practice that has been implemented *de facto* around the State by many judges. It is intended to create uniformity with respect to the use of parenting coordinators. The Rule specifically contemplates that, unless there is consent, the court may only appoint a social worker, a psychologist, a psychiatrist, or a family therapist, licensed to practice in the State of New Jersey by appropriate State Boards and agencies, qualified by experience and/or training. However, in recognition that the parties may bestow confidence in third party laymen who are not licensed mental health professionals, the Rule allows the court to designate such a person, only if the parties consent. The Rule makes clear that, if there is a dispute that cannot be resolved with the assistance of the parenting coordinator, the court makes the final decision on application by either party, although the Rule allows either party to bring the parenting coordinator's recommendation to the attention of the court. The coordinator's recommendation is to be provided to the parties, either of whom may bring it to the court's attention. The provisions of *R*. 5:3-3(d) (redesignated as paragraph (e)) pertaining to communications with the court are fully applicable to parenting coordinators.

The costs of the parenting coordinator may be allocated by the court, which is to consider the need and ability of the parties to pay and the good or bad faith of either.

Proposed New Rule

5:8-7. Parenting Coordinator

In all cases where there are issues regarding parenting time or responsibility the Court may, on the application of either party or its own motion, appoint a parenting coordinator. The parenting coordinator shall be a social worker, a psychologist, a psychiatrist, or family therapist, licensed to practice in the State of New Jersey, by the appropriate State Board and agencies, qualified by experience or training. If the parties consent, the Court may designate a non-mental health layman, including an attorney licensed in New Jersey, to be the parenting coordinator. The appointment of a parenting coordinator shall occur when the Court concludes that such a designation is in the best interests of the children. When the Court elects to designate a parenting coordinator, it shall set forth its reasons. Either party, or the Court, may submit an issue to the designated parenting coordinator who is to make an effort to assist the parties in resolving the dispute in the best interests of the children. However, if the parties do not agree, then the parenting coordinator is authorized to propose a resolution with the understanding that neither party is required to accept the coordinator's recommendation. In the event the parties do not resolve their dispute, then either may bring the parenting coordinator's recommendation to the attention of the Court on application pursuant to the Rules for the Court's determination. There is no confidentiality attached to communications to, from, and with the parenting coordinator. The parties shall share the cost of the parenting coordinator pursuant to the parties' respective financial circumstances or as the Court may direct. On applications regarding payment responsibilities for such coordinators, the Court is

instructed to consider the need and ability of the parties to pay and the good or bad faith of either.

Note: Adopted , 2004 to be effective ,2004.

C. Adoption of Proposed *R.* 5:6-7 - Separate Maintenance

Discussion

A recommendation of the Conference of Family Presiding Judges concerning the handling of separate maintenance actions where a couple is not seeking a divorce was referred to the Family Practice Committee. The Conference reported that the matter had been discussed at two separate meetings and recommended, based in part upon a survey within the Family Division, that the vast majority of cases of this type be handled as "FD" matters.

Based upon its discussion and consideration of the issue, the Conference concluded that separate maintenance matters should be considered as summary matters unless designated as non-summary in nature by the vicinage Family Part Presiding Judge.

Although the General Procedures & Rules Subcommittee perceives that there are not significant numbers of separate maintenance actions filed, the Subcommittee concurs with the Conference that the better course is for separate maintenance matters to be treated as summary actions filed under the non-dissolution case type. The Subcommittee also concurs that separate maintenance actions may be transferred to the dissolution case type upon application to the vicinage Family Part Presiding Judge or by the Presiding Judge on the court's own motion. Once transferred to the "FM"

calendar, the action would no longer be considered as summary and all Court Rules pertaining to "FM" matters would then apply.

In considering this issue, the Subcommittee has specifically considered the view that separate maintenance actions should be treated in the exact same manner and with the same concern as if there was pending a full divorce proceeding. The Subcommittee is aware that sometimes, rather than pursuing a divorce, litigants pursue an alternate course for reasons that might be related to insurance, pension, or social security concerns. In other instances, sometimes in the middle of divorce actions, it might be determined to be in litigant's best interests that rather than obtaining a Final Judgment of Divorce the Judgment should stop short of dissolving the marriage. Having given careful consideration to these concerns, the Subcommittee remains convinced that the better course is that adopted by the Conference.

The Conference has recommended both the rule change that appears below together with a comment that makes it clear that upon application a separate maintenance action, which under the Rule would bear an "FD" docket number, might be transferred to the "FM" calendar upon application to the Family Part Presiding Judge, or on the Judge's own motion. This permits what the Subcommittee considers to be an appropriate middle ground. When separate maintenance actions are intended as simple support proceedings, the "FD" docket designation and procedures should suffice. On the other hand, where there are complications or where there is a special reason why the discovery permitted under the "FM" rules are justified, relief could then be granted. Although this procedure may give rise to the filing of an additional motion,

it is suggested that allowing that the vicinage Family Part Presiding Judge to re-designate the matter should simplify the process.

The original draft Rule and Comment adopted by the Conference would have provided as follows:

> 5:6-7. Separate Maintenance
>
> An action for separate maintenance pursuant to N.J.S.A. 2A:34-24 shall be brought as a summary action unless designated as non-summary in nature by the Family Part Presiding Judge.
>
> Comment:
>
> With the adoption of R. 5:6-7, an action for separate maintenance shall be filed under the non-dissolution case type. The action for separate maintenance may be transferred to the dissolution case type upon application to the Family Part Presiding Judge or by the Presiding Judge *sua sponte*. Once transferred, the action will no longer be considered summary in nature and all other pertinent court rules regarding civil family actions are to apply.

The Subcommittee recommends a slightly amended rule amendment that would provide that when the response to the original complaint for separate maintenance contains a counterclaim for divorce, the action should immediately be converted/transferred to the "FM" docket without the need for a formal motion to be made.

Proposed New Rule

5:6-7. Separate Maintenance

An action for separate maintenance pursuant to N.J.S.A. 2A:34-24 shall be brought as a summary action unless designated as non-summary in nature by the Family Part Presiding Judge. When the response to the original Complaint for Separate

Maintenance contains a counterclaim for divorce, the action shall immediately be transferred to the "FM" docket without the need for a formal motion.

Note: Adopted , 2004 to be effective ,2004.

Comment:

With the adoption of R. 5:6-7, an action for separate maintenance shall be filed under the non-dissolution case type. When the response to the original complaint for separate maintenance contains a counterclaim for divorce, the action shall immediately be transferred to the "FM" docket without the need for a formal motion to be made. Additionally, the action for separate maintenance may be transferred to the dissolution case type upon application to the Family Part Presiding Judge or by the Presiding Judge sua sponte. Once transferred, the action will no longer be considered summary in nature and all other pertinent court rules regarding civil family actions are to apply.

III. Proposed Amendments Considered and Rejected

A. Relief from Judgment or Order of Termination of Parental Rights

Discussion

This issue was placed on the agenda of the Family Practice Committee by the Supreme Court following the Court's decision not to adopt a rule proposed by the Committee in the last term address the problem of the impact the reversal of an order termination parental rights after a long period of time. In the remand of the issue to the Family Practice Committee, the Court directed reconsideration of the matter in light of the then recent opinion in *In re Guardianship of J.N.H.*, 172 *N.J.* 440 (2002). The matter was referred back to the Children-In-Court Subcommittee for further discussion.

The Subcommittee considered the matter at some length and reconfirmed its strong belief that the in considering an application which would have the effect of undoing an order terminating parental rights, the trial court must give due consideration not only to the impact of the original judgment or order on the applicant but also to the impact of this action on the child in terms of permanency and stability. A new rule was drafted to accomplish the intended purpose, but following further discussion with the entire Family Practice Committee, the Subcommittee has determined that a rule on this subject is not needed at this time. The Supreme Court in *J.N.H.* makes eminently clear that:

> On a Rule 4:50 motion, the need to achieve equity and justice always is balanced against the state's legitimate interest in the finality of judgments. Where the future of a child is at stake, there is an additional weight in the balance: the notion that stability and permanency for the child are paramount. Thus, in determining a Rule 4:50 motion in a parental termination case, the primary issue

> is not whether the movant was vigilant in attempting to vindicate his or her rights or even whether the claim is meritorious, but what effect the grant of the motion would have on the child. [*J.N.H.* at 474-75.] (citation omitted; emphasis added).

In light of the clear delineation of the significance of the interest of children in the viability of court orders and judgments intended to have a lasting impact on their lives in the *J.N.H.* opinion, it is recommended that no rule change be proposed at this time.

B. Domestic Violence Hearsay Exception

Discussion

Members of the Domestic Violence Subcommittee worked with the Supreme Court Committee on the Rules of Evidence regarding a proposal to create an exception to the hearsay rule for domestic violence cases. The Committee on the rules of Evidence made no recommendation to establish a special evidence rule. Instead, that Committee will consider recommending the addition of information on excited utterances for judicial training and within court rule comments.

C. *R.* 5:21A. Juvenile Plea Form

Discussion

The Criminal Practice Committee is recommending during this rule cycle that the following changes be made to *R.* 3:9-2:

> 3:9-2. Pleas
>
> A defendant may plead only guilty or not guilty to an offense. The court, in its discretion, may refuse to accept a plea of guilty and shall not accept such plea without first [addressing] <u>questioning</u> the defendant personally<u>, under oath or by affirmation,</u> and determining by inquiry of the defendant and others, in the court's

discretion, that there is a factual basis for the plea and that the plea is made voluntarily, not as a result of any threats or of any promises or inducements not disclosed on the record, and with an understanding of the nature of the charge and the consequences of the plea. When the defendant is charged with a crime punishable by death, no factual basis shall be required from the defendant before entry of a plea of guilty to a capital offense or to a lesser included offense, provided the court is satisfied from the proofs presented that there is a factual basis for the plea. For good cause shown the court may, in accepting a plea of guilty, order that such plea not be evidential in any civil proceeding. If a plea of guilty is refused, no admission made by the defendant shall be admissible in evidence against the defendant at trial. If a defendant refuses to plead or stands mute, or if the court refuses to accept a plea of guilty, a plea of not guilty shall be entered. Before accepting a plea of guilty, the court shall require the defendant to complete, insofar as applicable, and sign the appropriate form prescribed by the Administrative Director of the Courts, which shall then be filed with the criminal division manager's office.

Note: Source--R.R. 3:5-2(a)(b). Amended July 14, 1972 to be effective September 5, 1972. Amended July 17, 1975 to be effective September 8, 1975. Amended September 28, 1982 to be effective immediately; amended July 13, 1994 to be effective January 1, 1995[.]; amended , to be effective .

The Juvenile Subcommittee considered the need for a Part V rule change in light of the proposed Criminal Practice Committee rule amendment since juvenile guilty pleas are subject to the requirements of *R.* 3:9-2 pursuant to *R.* 5:21A. The proposed rule change to *R.* 3:9-2 would require that a defendant be questioned under oath or by affirmation. The Family Practice Committee concurs with the proposed rule change since it follows the current practice in the juvenile courts. As a result, there is no need for a rule amendment *R.* 5:21A or any other Part V rule.

D. *R.* 5:25-4. Designation of Trial Counsel

Discussion

R. 4:25-4 requires that counsel shall, either in the first pleading or in writing filed no later than ten (10) days after the expiration of discovery, notify the court which specific attorney is to try the case. The General Procedures & Rules Subcommittee has concluded that there is no good reason why an exception should be carved for Family Part matters. For Case Management purposes, it is important that the court is able to identify who will be trial counsel as well as that attorney's availability in the time periods that that attorney's appearance may be required for trial or for other purposes. Although it is perceived that enforcement of this rule in Family Part matters has been sporadic and that courts have been indulgent in trying to accommodate counsel's schedules in the calendaring process, the Subcommittee believes that it is important that courts be able to identify trial counsel early in a proceeding. As the time between filing and trial narrows consistent with the one year goal established by Best Practices, identification of who will be the specific trial counsel becomes increasingly important. Accordingly, the Subcommittee declines to recommend a rule change.

E. *R.* 5:6-1. When and By Whom Filed (Chapter II. Specific Civil Actions, *R.* 5:6. Summary Action for Support)

Discussion

The Conference of Family Presiding Judges referred to the Family Practice Committee, a request to conform the language in *R.* 5:6-1 (as to parties with standing to file a complaint for summary support) with language in the Parentage Act and the Uniform Interstate Family Support Act statute. The Child Support Subcommittee and the full Family Practice Committee considered the request and after in depth discussion determined that a rule change was not required. Instead, the Committee recommends that consideration be given to training staff as to standing to file summary support actions. Therefore, the Committee requests that this issue be returned to the Conference for incorporation in the current training curriculum.

F. *R.* 4:43-2. Final Judgment by Default

Discussion

In response to a referral from the Administrative Director of the Courts for an expedited rule review discussed whether R.4:43-2(a) is applicable to Family Part actions, the General Procedures & Rules Subcommittee considered whether, in some counties, clerks routinely include attorney's fees in default judgments without review by a judge. The Subcommittee determined that there are no instances in Family Part matters where a clerk should enter a default judgment that would include attorney's fees without judicial review and proper notice. The Committee thus expresses no opinion regarding any proposed amendment.

IV. Other Recommendations

A. Family Bench Bar Manual

Discussion

Currently, there is a wealth of resources available to judges to assist in the processing and disposition of case. However, these resources including law books, periodicals, instructional manuals, form orders, case processing flow charts, are often not readily available. The Judicial Education Subcommittee is in the process of developing a New Jersey Family Court Bench Manual to assist Family part judges in the proper and expeditious handling of cases. Once developed, the manual will be available to Judges either in chambers or on the bench for quick and easy access. The Manual will be designed to provide a comprehensive road map for judges in areas of general courtroom procedure, case processing, and substantive law and procedural law. The materials will include practical information including relevant case and statutory factors, case type flow-charts, standard forms orders, backlog goals, glossary of terms, and tips on proper conduct and demeanor.

In order to begin the project, the Subcommittee reviewed several publications. Two publications, the Wisconsin Judicial Bench Book and the California Bench Manual offered the best guidance. The Subcommittee was most impressed with the California Bench Manual format and intends to utilize that publication as a model in developing the New Jersey Family Court Bench Manual. The Subcommittee will be developing an outline to identify, for each docket type, the topics to be included and the

relevant standardized forms. These materials will be attached as an appendix to each section of the manual.

The undertaking of this project is significant. The Subcommittee, therefore, will recruit Family Part Judges and members of the Bar considered experts in the various case disciplines, to assist in drafting the Manual. A lead judge will be assigned to facilitate the sub-groups working on each assigned topic and will be responsible to report to the Subcommittee on its progress. Upon completion of each section, the Judicial Education Subcommittees of the Conference of Family Presiding Judges and the Supreme Court Family Practice Committee will review each section.

B. Comprehensive Judicial Orientation Program

Discussion

The Judicial Council has approved the Comprehensive Judicial Orientation Program for newly assigned Family Division Judges. That program, jointly developed by the Family Practice Committee and the Conference of Family Presiding Judges, has since been implemented. As such, the Practice Committee's direct involvement with the program has been brought to successful closure. The Committee continues to be available to assist the Presiding Judges Conference on this project should the need arise.

C. Quadrennial Review of *R.* 5:6A Child Support Guidelines

Discussion

The Federal Family Support Act of 1988 requires states to review their child support guidelines every four years. New Jersey's most recent Guidelines review produced the Guidelines we have today, with the ability to adjust variable expenses, to

adjust for parenting time and to apply a self-support reserve, all of which necessitated the development of child support calculation software. The review requires New Jersey to consider current economic data on the cost of raising children and to analyze case data on the application of and deviations from the Guidelines. *See* 45 *CFR* 302.56. It is unlikely that the current review will produce changes on the 1996-1997 scale, but we are overdue on this review.

The Child Support Subcommittee believes that the Family Practice Committee remains an effective vehicle for conducting the review since this committee developed the guidelines and reviews related issues as they are brought to the attention of the Family Practice Committee, and the report, once published, will be available for public comment. Very current economic data on the cost of raising children is available and it is clear that due to the highly technical nature of the data and its application, the guidelines review cannot be done in-house. The experts in this specialized field are the same economists that provided expertise to New Jersey in the past review; they are experienced in assisting states conduct guidelines reviews sufficient to comply with federal requirements to analyze economic data and apply various models on the costs of raising children.

The Committee will make recommendations to the Administrative Director in that regard to secure the best assistance possible for New Jersey's Guidelines review.

Letters from the public regarding the Quadrennial Review received by the AOC, were provided to the Subcommittee and are summarized here in **Appendix F**.

D. Equities of Self Support Reserve Application

Discussion

Currently the Child Support Guidelines treat the self-support reserve for obligors differently than for obligees. The Child Support Subcommittee believes that this issue should be discussed with the experts helping New Jersey conduct the Quadrennial Review of the Guidelines. Since the review will focus on guidelines applications and deviations, it will provide an opportunity to test whether in fact the self-support reserve results in inequities.

The self-support reserve subtracts the child support obligation from the obligor's net income to determine whether the obligor has sufficient remaining income, at least 105% of the federal poverty guideline. If the obligor does not have a sufficient self-support reserve, the support award will be reduced unless the obligee's net income is below the self-support reserve. However, in looking at the obligee's income, the court is not required to, although it may, consider the effect of the obligee's share of the child support obligation. In situations involving two very low-income parents, determining how to provide sufficient income for the custodial parent and child and the non-custodial parent is extremely difficult. The experts may evaluate how this provision is operating and whether there are inequities when courts do not deduct the obligee's share of the support obligation. *See R.* 5:6A, Appendix IX-B, line instructions for Lines 24, 25, 26.

The Subcommittee recommends including this issue as a component of the Quadrennial Review of the Guidelines.

E. Issues Concerning Access to Court Documents

Discussion

The General Procedures & Rules Subcommittee addressed issues concerning public access to court documents. The Subcommittee recognized that portions of this issue have been under consideration by an ad-hoc committee of the Judicial Council. The limited question that the Subcommittee considered in the current rules cycle focused upon the problem that judges' notes are frequently kept in the file maintained by the vicinage or county Family Part Clerk. Judges' notes often contain the thought process that precedes a judicial decision and may have been made at any one of several points in the litigation. The Subcommittee recommends that judges' notes should be purged from the court's files to prevent intrusion into the pre-determination judicial thought process. Although in most instances the public has an absolute right to have access to filings as well as court orders, judgments and court opinions, the Subcommittee perceives that the public does not have a right to examine or have access to what are intended to be a judge's private notes.

The Subcommittee has also discussed who should be charged with purging the file of notes written by a judge. The Subcommittee has concluded that should this task not have been completed in the individual judge's chambers, the task should be undertaken by the clerk's office with all notes returned to the individual judge.

The Subcommittee recommends that this topic should be referred to the Conference of Family Presiding Judges for its consideration. The Subcommittee stands ready in its 2004-2006 term to assist the Conference as the Conference deems appropriate.

F. Issue of Whether it is Permissible to Enter an Appearance Concerning a Motion Prior to Filing a Responsive Proceeding

Discussion

The General Procedures & Rules Subcommittee was asked to discuss whether it is permissible for an attorney to appear on behalf of the client in connection with a motion hearing prior to the filing of a responsive pleading. The Subcommittee has concluded that it is permissible for an attorney on behalf a client to appear at a motion hearing before filing a responsive pleading. Provided that the response to the motion is in proper form and within the time constraints defined by the Rules, counsel or litigants may respond to a motion without filing a responsive pleading to the Complaint. This conclusion is consistent with existing practice.

Particularly when an FM proceeding is commenced by the simultaneous filing of a Complaint and a Notice of Motion, the eight day response time for the reply to the motion will long proceed the 35 day response applicable to the complaint. Although the Rules do not require the filing of a responsive pleading prior to a response being made to a motion, under certain circumstances, the responding party might elect to accelerate the response to the Complaint should that be deemed to be in that parties best interest.

G. Administrative Adjournments

Discussion

The General Procedures & Rules Subcommittee has considered at length the issue of administrative adjournments of motion hearings. For purposes of definition, an administrative adjournment is defined to be an adjournment directed by court staff for such reasons as the length of a particular motion list or for other administrative reasons. The Subcommittee has specifically addressed the importance of motion hearings being conducted promptly so as to effectuate the prompt decision of motions within the context of when the motions were originally filed.

Litigant access to the Family Part for such matters as support, parenting time and asset dissipation requires prompt and sometimes almost immediate judicial attention. Such motions should not be administratively adjourned. While recognizing that motion lists are often long and may test the limits of just how many matters a Family Part Judge should be expected to hear on any given Friday, the decision to adjourn a matter without judicial attention should be eliminated.

The Subcommittee specifically recommends that such steps as may be needed should be taken to discourage administrative adjournments and recommends that the issue matter should be referred to the Conference of Family Presiding Judges for such action as may be needed to assure that administrative adjournments are generally eliminated.

H. Order To Show Cause Practice

Discussion

The General Procedures & Rules Subcommittee recognizes that there is presently under consideration by the Conference of the Family Presiding Judges the general topic of how Orders to Show Cause are treated in the Family Part. Because the Subcommittee has been advised of this study, the Subcommittee declines to broadly study this topic during the current rule cycle.

On the other hand, the Subcommittee has considered one minor sub issue. That issue focuses upon what is to occur when, in the court's discretion, the entry of an Order to Show Cause is denied because the issues presented were determined not to be emergent although those issues still required judicial attention. The Subcommittee recommends the issuance of a directive that would provide that when an Order to Show Cause is denied because the relief sought was not emergent but still required judicial attention, the Order to Show Cause should be returned to the attorney or *pro se* litigant to be re-submitted as a Motion with the notation on the papers submitted that the Motion would be heard on a designated return date. Generally, the Motion should be heard on the next available regularly scheduled Motion date taking into due consideration the sixteen or twenty-nine day notice required for either pre-judgment or an enforcement motions on the one hand or post-judgment non-enforcement motions on the other.

The specific directive that the Subcommittee recommends would be as follows:

Proposed Directive

In Family Part matters, when in the Court's discretion, an application for an Order to Show Cause is rejected because it is determined that its subject matter is not emergent but that the matter still requires judicial attention, the Court may return the moving papers to the applicant with the notation that the matter will be treated as a regular motion and indicating that it will be heard on a specific return date provided proper service is made. Generally, such motions should be heard on the next regularly scheduled motion day taking into consideration the sixteen or twenty-nine day notice requirements contained in R.1:6-3 and R.5:5-4(c).

I. *R.* 5:3-5(c) Pertaining to Judicial Rulings Concerning Counsel Fees

Discussion

The General Procedures & Rules Subcommittee has considered that portion of *R.* 5:3-5(c) that addresses the award of attorney's fees. The Subcommittee has carefully reviewed the current language contained in *R.* 5:3-5(c) much of which found its genesis in the Final Report of the Special Supreme Court committee on matrimonial litigation. Nowhere in the existing rule, however, is there the specific requirement that the Court shall, in making its ruling upon a *pendente lite* or final award of counsel fees, set forth its reasons why the award was granted or denied.

While noting that both *N.J.S.A.* 2A:34-23 and *R.* 5:3-5 require consideration by the court of specific factors, neither the statute nor existing rule requires that the court set forth the reason(s) why counsel fees applications are granted or denied. The Subcommittee also recognizes the heavy burden placed upon Family Part judges in

preparing for motion days as well as the prodigious amount of time and effort expended on motion days.

Although the Subcommittee seriously considered the addition to *R.* 5:3-5 of amendatory language that would require that, when ruling upon any application for counsel fees, the court shall set forth the reasons why the counsel fee application was granted, denied or other action taken, **the Subcommittee unanimously recommends against the creation of such a rule although the Subcommittee also unanimously recommends the creation of a directive addressing the issue.** The directive would recognize the importance of stating reasons for the making of a ruling on counsel fees but also recognize the time constraints placed on Family Part judges on motions days and the heavy burden they face in preparing for motion days. The directive, rather than containing a blanket mandate that reasons be given on all counsel fee applications, would provide that when more than the mere exercise of discretion is involved, a statement of reasons should be provided with this suggestion that this would be particularly appropriate when, for example, (1) a comprehensive fee application is made to fund the litigation rather than a request for fees on a specific motion; (2) when permission is sought to liquidate an asset; or (3) when the interests of justice require more than a summary explanation.

Given the sensitivity of this issue, rather than recommending that the proposed directive be immediately forwarded to the Supreme Court for its consideration, the Subcommittee recommends that its analysis and proposed Directive be forwarded to the Conference of Family Presiding Judges for its consideration and input.

Proposed Directive

It is important that, when ruling upon applications for counsel fees pursuant to *R.* 5:3-5 that reasons be placed upon the record or contained within a letter or other opinion. Recognizing the heavy time constraints placed on Family Part judges on motions days and the heavy burden faced in preparing for motions, it is suggested that reasons be given on all counsel fee applications provided that more than a mere exercise of discretion is involved. A statement of reasons should generally be provided when: (1) a comprehensive fee application is made to fund the litigation rather than a request for fees on a specific motion; (2) when permission is sought to liquidate an asset; or (3) when the interests of justice require more than a summary explanation.

J. Applicability of "No Day" or "Same Day" Rule Entry of Divorce Judgments

Discussion

As part of the September, 2002 amendments to the rules, the General Procedures & Rules Subcommittee and the full Family Practice Committee recommended the adoption of what is now *R.* 5:5-4(f) that reads:

> Orders on Family Part Motions. Absent good cause to the contrary, a written order shall be entered at the conclusion of each Motion Hearing.

This Rule Amendment was consistent with a recommendation made by the special Supreme Court Special Committee on Matrimonial litigation in its Final Report.

The current issue presented to the Subcommittee is whether a "no day" or "same day" rule should similarly apply to the entry of divorce judgments. During the course of the Subcommittee deliberation on the issue, two diametrically opposing views of this issue were expressed. Those opposed to the mandatory same-day entry of judgment raised issues concerning tax consequences, possible medical insurance problems and

potential attorney malpractice problems which might be occasioned were litigants and their attorney to be forced after having spread a judgment on the Record to then be required to have a written judgment on the same day. Those who opposed such a rule indicated that the preferable course in a matter having any degree of complexity would be for the parties to be given a time defined opportunity to incorporate their negotiated settlement in a written Property Settlement Agreement. The proponents of a same-day rule referred to the benefits of closing the case; the immediate relief that might be accorded to the litigants as the result of the settlement they have reached and, most importantly, that there was a fundamental problem in the system wherein weeks if not months sometimes passed before a judgment is received by the court and finally entered of record.

The Subcommittee is concerned about the problem of delay in submission to final judgments after a case has been settled upon the record. *R.* 4:42-1(b) requires the submission of an Order/Judgment within ten (10) days "after its decision is made known, unless such time for good cause shown."

The Subcommittee has unanimously adopted a middle ground. The Subcommittee unanimously recommends that, absent consent of the parties, a same day judgment should not be entered although in many instances the parties and counsel will consent to the entry of a generic short judgment with a more comprehensive judgment to follow. The Subcommittee also recommends that a directive rather than rule amendment should issue.

This recommendation must be considered within the context of the Subcommittee's commitment to addressing the problem of the delay in the entry of

judgments. It is specifically suggested that if consent is not given for the entry of a generic same day judgment with a more comprehensive judgment to follow and if it is anticipated that it will take more than ten (10) days to draft the necessary agreement/judgment, a time frame should be defined on the record and an order entered to that effect following the adjudicatory act. Permitting this to occur would assure the existence of a "control date." It is specifically recommended that if there is a breach, if the control date is not met, the individual Family Part Judge should exercise such supervisory powers as the court deems appropriate with the clear understanding that it should be the policy of the Family Part that no unseemly delay in the entry of judgment should be permitted.

Proposed Notice and Directive

The attention of the Bench and Bar is specifically directed to the applicability of *R.* 4:42-1(b) to Family Part Judgments. *R.* 4:42-1(b) provides:

> . . . Formal written judgments or orders shall be presented to the court for execution within ten days after the decision is made known, unless such time is enlarged for good cause.

When a judgment is not submitted at the time of the adjudicatory act, the individual Family Part judge presiding in the matter shall inquire of counsel or the litigants whether consent is given to the entry of a brief standard form judgment subject to the submission of a more comprehensive judgment no later than a specified later date. If consent is given, the brief standard form judgment shall be entered subject to the submission of a comprehensive judgment no later than a specified date. If consent is not given, a control date shall be fixed by written order. In the event that the written order is not submitted by the provided control date unless that date shall have been

extended, the court shall require the presence of counsel and the litigants to appear before the court so that the court might direct such relief as may be appropriate.

It is specifically recognized that there exists a serious systemic problem because of delays in the entry of judgments. Such delays are neither in the public interest nor in the interest of the efficient administration of justice. The Bar is hereby placed on notice by publication of this directive that addressing this problem is a matter of high judicial priority.

A recommended form of order would read as follows:

This matter coming on before the court on XXXX, the court having been advised by XXXX counsel for plaintiff and XXXX counsel for defendant that the matter has been amicably settled and it appearing that a settlement has been placed upon the record that the parties and counsel seek to prepare either a comprehensive Property Settlement Agreement or a comprehensive Final Judgment of Divorce, relief is granted for the relaxation of R. 4:42-1(b). Such comprehensive judgment shall be submitted not later than XXXX. In the event that the judgment is not entered prior to said date, counsel and the parties be required to appear before the court at 9:00 a.m. XXXX at which time the court shall enter such further orders as may be just and equitable.

K. Child Support Orders Against Same Defendants in Multiple Counties

Discussion

The issue of how the Family Part should treat matters in which separate child support orders have been entered against the same defendant in multiple counties was presented to the General Procedures & Rules Subcommittee. Although the Subcommittee takes no action and does not recommend the issuance of a directive, the

committee suggests that the judge to whom these matters are assigned should handle such cases on a case-by-case basis addressing the equities on an individual case-by-case basis.

The Subcommittee also suggests that AOC staff, in conjunction with child support enforcement personnel, should conduct a limited study to ascertain how this issue is addressed in selected vicinages. The Subcommittee does not recommend the formal issuance of a survey but simply suggests that AOC staff should collect information from which the Subcommittee could in the 2004-2006 term consider whether action by rule amendment or otherwise is required on this topic.

L. Judges Certification of Final Orders

Discussion

The General procedures & Rules Subcommittee was asked to consider the issue of whether a rule amendment or directive was necessary to specifically address the Certification by a Family Part judge that a ruling is final even though other aspects of the litigation remain pending.

In this term, the Subcommittee declines to make a specific recommendation although it is perceived that no rule change is required and that Family Part judges are not precluded from making such a finding when presented with an appropriate fact pattern.

M. Posting Family Part Decisions on the Internet

Discussion

The General Procedures and Rules Subcommittee has considered a suggestion made that a judge of the Family Part should, in certain situations, be permitted to post

decisions upon the internet. The Subcommittee has considered this issue and has determined to recommend against this practice. At the present time, reported decisions are, as a matter of course, made available following their approval for publication. Non-reported decisions when formal opinions are filed are also publicly available. There is no need at this point in time for decisions to be posted by the Family Part on the internet. The Subcommittee perceives that posting decisions on the internet should not be exclusively done within the context of one part of the Superior Court.

N. Open Courtroom Policy

Discussion

The General Procedures & Rules Subcommittee has been asked to review what is perceived by some to be a serious diversion from normal policy within the New Jersey judiciary--the closing of Family Part courtrooms only permitting litigants and directly interested parties to observe certain proceedings.

The Subcommittee is mindful of the requirements of *R.* 1:2-1 which specifically mandates as follows:

> While trial, hearings of motions and other applications, pretrial conferences, arraignments, sentencing conferences (except for the members of the probation department) an appeal shall be conducted in open court unless otherwise provided by rule or statute. If a proceeding is required to be conducted in an open court, no record of any portion thereof shall be sealed by order of the court except for good cause shown, which shall be set forth on the record. Settlement conference may be heard at the bench or in chambers. Every judge shall wear judicial robes during proceedings in open court.

The Subcommittee acknowledges that certain Family Part proceedings are appropriate to be held in a "closed" courtroom. The Subcommittee sees no reason why the rules in this regard should be expanded. As a general rule, Family Part proceedings

should be conducted in open court and courtrooms should be open for the public to attend.

Among the concerns expressed by Subcommittee members is practice in some vicinages to call domestic violence proceedings one at a time not permitting the public to listen to proceedings in which they are not directly related. While the Subcommittee chooses not to recommend circumscribing judicial discretion to close the court-room in an appropriate situation, the presumption should always be, absent good cause shown or specific rule that the courtrooms should be open.

Because it is perceived that, in some vicinages a problem exists, the Subcommittee recommends referral of this issue to the Conference of the Family Presiding Judges with the respectful recommendation that the Conference should place upon its agenda discussion how best to assure compliance with the rules.

O. Whether a Rule Amendment is Justified Permitting Counsel to Sign a Retainer Agreement for the Limited Purpose of Representing a Litigant in an Application for Fees

Discussion

The General Procedures & Rules Subcommittee has been asked to consider whether a rule amendment or directive should issue to address situations in which an attorney is prepared to accept representation but will only do so if the attorney receives an award of prospective counsel fees. Specifically put, the issue is whether there should be a rule amendment to permit an extremely narrow retainer agreement whereby the attorney's relationship with the client would terminate were a counsel fee application to be denied.

After careful consideration of the issue, the Subcommittee declines to make a recommendation on this issue. In doing so, the Subcommittee is mindful that certain members of the Bar have requested that the Subcommittee and full Family Practice Committee act. The Subcommittee has determined, however, that it would be preferable for issues of this sort to be litigated on a case-by-case basis; should be resolved based upon the facts of each matter and should be left to the sound discretion of a Family Part Judge.

P. Need to Clarify Language of Protective Order Relating to Custody Evaluations Submitted to the Court

Discussion

The General Procedures & Rules Subcommittee was asked to address the existing form of Protective Order entered by Family Part judges following receipt of custody evaluations or reports. However, during to 2002-2004 rules cycle, the Conference of Family Presiding Judges revised the current form of Protective Order to allow copies of custody evaluations to be provided to all litigants whether they are represented by counsel or appearing *pro se* subject to the entry of an appropriate Protective Order. The Subcommittee endorses the form of Protective Order as revised by the Conference.

V. Matters Held for Future Consideration

A. Staffing Resources

Discussion

In performing its tasks, the Children-in-Court Subcommittee inevitably recognized that well founded court practices and orders will fail to accomplish the statutory goals of child protection and permanency unless sufficient personnel with access to sufficient effective services are available to generate and implement them. It is noteworthy that in May, 2003, the legislatively mandated Staffing and Outcome Review Panel (SORP) (pursuant to *N.J.S.A.* 30:4C-3.1) issued a preliminary report concerning resources. This highly credentialed and credible group had access to comprehensive data and advice about nationally accepted standards of practice in the child protection field. SORP concluded that additional funding of $186 million is necessary for New Jersey to conform with good child protection and permanency practices.

Timely and effective court orders can not be entered without sufficient judicial, DAG, Law Guardian, and defense attorney resources. Worse, any order which can not be implemented due to inadequate DYFS staff and services is useless. Therefore, the Subcommittee urges strong advocacy by the Judiciary and all the participants in the child protective court proceedings to obtain the resources required to perform and meet the goals set by statute and case law. The Subcommittee recommends that staffing resources issues be considered by all Subcommittees in the upcoming rules cycle.

B. Conflicts Between Civil and Criminal Child Protection Proceedings

Discussion

The Children-in-Court Subcommittee discussed the issue of conflicts between civil and criminal child protection proceedings. From time to time, problems of some significance have arisen in cases stemming from the implications of the fact that child abuse is both a criminal and civil matter, resulting in simultaneous investigations and proceedings. This often has an impact in terms of scheduling, especially in light of the high priority given to these proceedings in the family court and the strong consideration given to due process concerns of parties in both courts. On several occasions in the past, most notably the published opinion in *D.Y.F.S. v R.M. & B.M.*, 347 *N.J. Super.* 44 (App. Div., 2002), the courts have addressed the impact on one proceeding of discovery and other evidentiary decisions made in the other. This is a complex state of affairs in which many rights and practical considerations are at stake.

The Subcommittee recommended that the most direct way of pursuing procedural reforms beneficial to both court processes, would be to convene a joint working group of knowledgeable members of the Family Practice and Criminal Practice Committees. A request was made of the Chairs of the two committees to establish such a working group, and members were designated and have begun to undertake this important work. The product of their efforts will be available to both the Family Practice and Criminal Practice Committees in the future for rulemaking recommendations.

C. *R.* 5:19-1 – Venue; Transfer

Discussion

The Juvenile Subcommittee is reserving the issue of Venue in juvenile delinquency cases (*R.* 5:19-1) until the next rule cycle. A great deal of effort was expended in considering possible changes to the current rule. A healthy exchange of ideas resulted in several new approaches being seriously entertained. Clearly, there is a greater understanding among all of the members of the Juvenile Subcommittee about the competing interests in this area, but at this time there is no consensus. Some thought was given to presenting a majority and minority report and to ask the committee-of-the-whole to decide the issue. Upon reflection, however, it is felt that enough progress has been made – and good faith generated – to recommend that the matter be carried to the next cycle.

D. Alimony Chapter for New Jersey Family Bench Book

Discussion

Construction of a New Jersey Family Bench Book as an ongoing omnibus reference source for Family Judges is the on-going project of the Judicial Education Subcommittee. That Subcommittee has accepted the offer of the Financial Aspects of Divorce Subcommittee to author the chapter on alimony. To this end, the Financial Aspects of Divorce Subcommittee has begun its work.

During the course of this cycle, the Subcommittee has completed drafts of many subsections of the chapter. Currently the Subcommittee is attempting to delineate additional subsections that will be included and to derive an organizational template that will make the final product informative and user-friendly.

Design and construction of the alimony chapter, however, has been more involved and ambitious than first envisioned. While the California Bench Book provides some guidance as to organization, the law of alimony in New Jersey is complex, detailed and interwoven with many other areas of the law of dissolution, for example, equitable distribution, child support, lifestyle quantification, college contribution, etc. In addition, the Subcommittee is seeking to generate a novel body of information that is related to the judicial process, rather than to the advocacy process; and this generation process simply consumes large quantities of time.

Over the next cycle, the Subcommittee will: (1) refine the structure of the product; (2) undertake revisions of extant drafts; and (3) draft and incorporate discussion of additional issues. The Subcommittee has set the goal of presenting a working copy of the chapter to the Family Practice Committee and the Judicial Education Subcommittee during the next cycle.

E. Criteria for Differentiating Between the Duties of Attorneys and Guardians for Children

Discussion

The Custody and Parenting Time Subcommittee is concerned about the absence of clear criteria for defining and distinguishing between the functions to be performed by counsel for children and Guardian Ad Litems. Although *R.* 5:8(B) does catalogue the functions of a Guardian Ad Litem, *R.* 5:8(A) is not nearly as defined. A full discussion regarding this issue can be found in the Subcommittee's report, annexed here to as **Appendix A**. The Subcommittee recommends reserving this issue for the next cycle.

F. Audio and Video Taping of Evaluations

Discussion

The Custody and Parenting Time Subcommittee believes the issue of use of audio and video taping during evaluations should be further investigated and recommends that this issue be regarded as a reserved issue for further consideration during the next cycle.

G. Applicability of Child Support Guidelines for College Students who Commute

Discussion

R. 5:6A provides in Appendix IX – A, *Considerations in the Use of Child Support Guidelines* reasons why the Guidelines are not applicable to children 18 or older. The economic principles upon which the Guidelines are based did not include data as to the cost of raising children with expenses such as college tuition. The Appendix IX – F schedules represent average expenditures of intact families with children less than 18 years of age. Additionally, the Guidelines awards represent basic needs of all children provided by their families. College education is a discretionary expense not to be commingled with the costs to meet the basic needs. Inclusion of the college cost in the support schedules would have increased the support awards for all families regardless of whether they have a child attending college. Additionally, even for a college age child who lives at home and commutes, college expense "is a large, variable expenditure" and as such does not lend itself to inclusion in the support awards schedules. The Subcommittee agrees with the Guidelines principle that the needs of the minor children must be established first and any determination as to college age children should be in accordance with established case law. Nevertheless, the

Subcommittee would like to continue to study this issue only in the context of the Quadrennial Review presenting an opportunity to explore this question with our experts. Therefore, the Subcommittee recommends that the matter be carried to the next cycle.

H. *R. 5*:6B. Cost–of-Living Adjustment for Child Support Orders

Discussion

The Child Support Subcommittee believes that the Cost-of-Living Adjustments (COLA) has been successfully implemented for matters to which *R*. 5:6B applies, i.e., matters established, modified or enforced after the *R.* 5:6B effective date of September 1, 1998. Expanding COLA to apply to all cases should be explored as an effective and seamless means of maintaining the value of the order. Review and adjustment, (triennial review), per *N.J.S.A.* 2A:17-56.9a remains available as an option for parties through the Division of Family Development. Further discussions are needed with the Title IV-D Agency to clarify the status of the COLA as a review and adjustment mechanism and related issues before proceeding on the merits of expanding the COLA. The Subcommittee requests to carry this issue as well as the related issue of Triennial Review to the next cycle.

I. Discussion of Practice Under the Applicable Statute that Permits a Name Change Within the Context of Divorce

Discussion

The General Procedures & Rules Subcommittee wishes to reserve the issue of permitting a name change within the context of divorce for discussion during the next rule cycle.

Appendices

Appendix A.	**Custody and Parenting Time Subcommittee Report**
Appendix B.	***(no Appendix B)***
Appendix C	**Temporary Support Order – Appendix XVII**
Appendix D	**Case Information Statement**
Appendix E	**Domestic Violence Hearing Officer Program Standards**
Appendix F	**Summary of Correspondence from the Public Regarding the Quadrennial Review**