# FAMILY PRACTICE COMMITTEE REPORT

# 2017-2019 RULES CYCLE

January 4, 2019

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# I. Introduction

The Supreme Court Family Practice Committee ("Committee") recommends that the Supreme Court adopt the proposed rule amendments and new rules contained in this report. The Committee also reports on other issues reviewed on which it concluded no rule change or a non-rule recommendation was appropriate.

Where rule changes are proposed, deleted text is bracketed **[as such]**, and added text is underlined **as such**. No change to a paragraph of the rule is indicated by "**. . . no change**."

# II. Proposed Rule Amendments

## A. Proposed Amendments to R. 1:38-3. Court Records Excluded from Public Access

**Special immigrant juvenile status matters**

The Committee considered a recommendation to amend the list of court records excluded from public access under R. 1:38-3 to include special immigrant juvenile status (SIJS) matters. The referred recommendation cited the risk of these court records being misused to identify undocumented residents for the purpose of arrest or detainer and that they involve evidence of child abuse, neglect or abandonment. One of the required findings in a SIJS case is that reunification with one or both of the juvenile's parents is not viable due to abuse, neglect or abandonment, or a similar basis under State law.

The Committee believes excluding these matters from public access will protect children whose personal information will be contained in court filings. Information in the filings may include sensitive information pertaining to the child and family including evidence of sexual or physical abuse, neglect, abandonment, medical issues of parents including mental illness, alcoholism and drug abuse. Filings may also include allegations of abuse by other family members and ongoing criminal investigations. The Committee believes SIJS cases are akin to records relating to Division of Child Protection and Permanency (DCPP) proceedings, which are excluded from public access under R. 1:38-3(d)(12).

Therefore, the Committee recommends the following amendments to R. 1:38-3 and recommends referring the issue to the Supreme Court Advisory Committee on Public Access for additional consideration.

## Rule 1:38-3. Court Records Excluded from Public Access

Rule 1:38-3. Court Records Excluded from Public Access

The following court records are excluded from public access:

(a) General. . . . no change.

(b) Internal Records. . . . no change.

(c) Records of Criminal and Municipal Court Proceedings. . . . no change.

(d) Records of Family Part Proceedings.

(1) . . . no change.

(2) . . . no change

(3) . . . no change.

(4) . . . no change.

(5) . . . no change.

(6) . . . no change.

(7) . . . no change.

(8) . . . no change.

(9) . . . no change.

(10) . . . no change.

(11) . . . no change.

(12) . . . no change.

(13) . . . no change.

(14) . . . no change.

(15) . . . no change.

(16) . . . no change.

(17) . . . no change.

(18) Records Relating to Special Immigrant Juvenile Status matters.

(e) Records of Guardianship Proceedings. . . . no change.

(f) Records of Other Proceedings. . . . no change.

Note: New Rule 1:38-3 adopted July 16, 2009 to be effective September 1, 2009; subparagraph (b)(1) amended December 9, 2009 to be effective immediately; paragraphs (e) and (f) amended January 5, 2010 to be effective immediately; subparagraph (c)(11) amended, subparagraph (c)(12) adopted, and subparagraph (d)(10) amended February 16, 2010 to be effective immediately; subparagraph (d)(1) amended June 23, 2010 to be effective July 1, 2010; paragraph (e) amended October 26, 2010 to be effective immediately; paragraph (e) amended February 28, 2013 to be effective immediately; subparagraph (d)(12) amended July 9, 2013 to be effective September 1, 2013; subparagraphs (f)(2) and (f)(5) amended, and new subparagraph (f)(9) added December 9, 2014 to be effective immediately; subparagraph (d)(2) amended July 27, 2015 to be effective September 1, 2015; subparagraph (b)(1) amended May 30, 2017 to be effective immediately; paragraph (a) and subparagraphs (d)(1) and (d)(13) amended July 28, 2017 to be effective September 1, 2017; subparagraphs (c)(1), (d)(1), (d)(2), (d)(5), (d)(6), (d)(9), and (f)(6) amended May 15, 2018 to be effective immediately; new subparagraph (c)(13) adopted July 27, 2018 to be effective September 1, 2018; new subparagraph (c)(14) adopted and subparagraph (f)(5) amended September 12, 2018 to be effective immediately; new subparagraph (d)(18) adopted _____ to be effective _____.

## B. Proposed Amendments Regarding Arbitration

**Amendments to R. 5:1-4 and R. 5:1-5 to require signatures of parties on arbitration agreements/consent orders and to mandate the arbitrator's disclosure form as an attachment.**

The Committee considered amending R. 5:1-4 and R. 5:1-5 to require signatures of parties on arbitration agreements/consent orders and to mandate the arbitrator's disclosure form as an attachment. The Committee determined arbitration agreements are based in contract law, making signatures appropriate. The Committee believes the proposed amendments will assist litigants in better understanding the arbitration process and may prevent litigation.

Further, the Committee is concerned there is lack of administrative tracking of arbitration cases and lack of consistency statewide on how cases on the arbitration track are handled. The Committee recommends referring the administrative issues to the Conference of Family Presiding Judges for consideration.

Therefore, the Committee recommends the following amendments.

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

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

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

(1) Priority Track. . . . no change.

(2) Complex Track. . . . no change.

(3) Expedited Track. . . . no change.

(4) Standard Track. . . . no change.

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

(b) Procedure for Track Assignment. . . . no change.

(c) Track Reassignment. . . . no change.

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

## Rule 5:1-5. Arbitration

Rule 5:1-5. Arbitration

(a) Scope of Rule. . . . no change.

(b) Prerequisites.

(1) Arbitration Questionnaire. [Prior to the execution of any Agreement or entry of a Consent Order,]

(A) Each [each] party shall review and execute the Arbitration Questionnaire, which is set forth in Appendix XXIX-A, and each party's questionnaire shall be attached to the Agreement or Consent Order and shall be filed with the court.

(B) Arbitrator Disclosure Form. The Arbitrator/Umpire Disclosure form, which is set forth in Appendix XXIX-D, shall be signed by the arbitrator/umpire, attached to the Agreement or Consent Order and filed with the court.

(2) Agreement or Consent Order.

(A) [Insofar as an] The Agreement or Consent Order shall be signed by the parties and [relates to a pending family proceeding, the Agreement or Consent Order] shall state:

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

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

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

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

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

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

(ii) all testimony shall be recorded verbatim; and

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

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

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

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

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

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

(c) Arbitration Track. . . . no change.

Note: Adopted July 27, 2015 to be effective September 1, 2015; subparagraph (b)(1) amended, new subparagraphs (b)(1)(A) and (b)(1)(B) captions and text adopted, subparagraph (b)(2) amended_____ to be effective _____.

## C. Proposed Amendments to R. 5:4-4. Service of Process in Family Part Summary Actions; Initial Complaints and Applications for Post-Dispositional Relief

**Technical amendment to correct an erroneous citation**

The Committee recommends a technical amendment to R. 5:4-4(c)(1) to correct an erroneous citation to the substituted service rule. Substituted service by publication is found in R. 4:4-5(a)(3).

Therefore, the Committee recommends the following amendment.

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

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

(a) Manner of Service. . . .no change.

(b) Service by Mail Program. . . . no change.

(c) Diligent Inquiry in Family Part Summary Actions.

(1) For purposes of initial complaints or upon the filing of any application for post-dispositional relief in a Family Part summary action, where the adverse party cannot be located, the filing party must provide the last known home address and demonstrate, through diligent inquiry, that no current address is known for the adverse party. Where it appears to the court by affidavit or certification of diligent inquiry filed by the filing party that the adverse party cannot be located, the court may proceed to hear the matter. For initial complaints, nothing in this rule shall prohibit the court from ordering substituted service by publication in accordance with R. 4:4-5[(c)] (a)(3).

(2) . . . no change.

(3) . . . no change.

(d) Enforcement of a Support Order. . . . no change.

(e) General Appearance; Acknowledgment of Service. . . . no change.

Note: Adopted July 10, 1998 to be effective September 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004; new paragraph (b)(4) adopted, former paragraph (b)(4) redesignated as paragraph (b)(5), and paragraph (c) amended June 15, 2007 to be effective September 1, 2007; caption amended, paragraph (a) amended, paragraph (b) caption and introductory text amended, subparagraph (b)(1) caption and text amended, subparagraph (b)(2), (b)(3), (b)(4) and (b)(5) text amended, new paragraph (c) caption and text adopted, former paragraph (c) redesignated as paragraph (d), former paragraph (d) redesignated as paragraph (e) and amended July 21, 2011 to be effective September 1, 2011; subparagraph(c)(1) amended _____ to be effective _____.

## D. Proposed Amendments to R. 5:3-5. Attorney Fees and Retainer Agreements in Civil Family Actions; Withdrawal

**Technical amendment to correct an erroneous citation**

The Committee recommends a technical amendment to correct an erroneous citation contained within R. 5:3-5(a)(9) pertaining to attorney withdrawal from representation. The correct citation is to paragraph (e).

Therefore, the Committee recommends the following amendment.

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

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

(a) Retainer Agreements. Except where no fee is to be charged, every agreement for legal services to be rendered in a civil family action shall be in writing signed by the attorney and the client, and an executed copy of the agreement shall be delivered to the client. The agreement shall have annexed thereto the Statement of Client Rights and Responsibilities in Civil Family Actions in the form appearing in Appendix XVIII of these rules and shall include the following:

(1) a description of legal services anticipated to be rendered;

(2) a description of the legal services not encompassed by the agreement, such as real estate transactions, municipal court appearances, tort claims, appeals, and domestic violence proceedings;

(3) the method by which the fee will be computed;

(4) the amount of the initial retainer and how it will be applied;

(5) when bills are to be rendered, which shall be no less frequently than once every ninety days, provided that services have been rendered during that period; when payment is to be made; whether interest is to be charged, provided, however, that the running of interest shall not commence prior to thirty days following the rendering of the bill; and whether and in what manner the initial retainer is required to be replenished;

(6) the name of the attorney having primary responsibility for the client's representation and that attorney's hourly rate; the hourly rates of all other attorneys who may provide legal services; whether rate increases are agreed to, and, if so, the frequency and notice thereof required to be given to the client;

(7) a statement of the expenses and disbursements for which the client is responsible and how they will be billed;

(8) the effect of counsel fees awarded on application to the court pursuant to paragraph (c) of this rule;

(9) the right of the attorney to withdraw from the representation, pursuant to paragraph [(d)] (e) of this rule, if the client does not comply with the agreement; and

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

(b) Limitations on Retainer Agreements. …no change.

(c) Award of Attorney Fees. …no change.

(d) Affidavit of Services Provided. . . . no change.

(e) Withdrawal from Representation. . . . no change.

Note: Adopted January 21, 1999 to be effective April 5, 1999; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; new paragraph (a)(10) adopted, and paragraphs (d)(1) and (d)(2) amended July 28, 2004 to be effective September 1, 2004; paragraph (c) amended July 16, 2009 to be effective September 1, 2009; paragraph (c) amended and subparagraphs (d)(1) and (d)(2) amended July 21, 2011 to be effective September 1, 2011; subparagraphs (d)(1) and (d)(2) amended July 9, 2013 to be effective September 1, 2013; paragraph (c) amended, new paragraph (d) adopted, former paragraph (d) redesignated as paragraph (e), and new subparagraph (e)(3) adopted July 28, 2017 to be effective September 1, 2017; technical amendment to subparagraph (a)(9) adopted _____ to be effective _____.

## E. Proposed Amendment to R. 5:5-4. Motions in Family Actions

### 1. Proposed Amendment to require the filing of a case information statement (CIS) by both parties upon application by an obligor to modify or terminate alimony based upon retirement.

The Committee considered amending R. 5:5-4 to require the filing of a case information statement (CIS) by both parties upon application by an obligor to modify or terminate alimony based upon retirement pursuant to N.J.S.A. 2A:34-23(j)(2) and (3). These statutes require both the obligor's application to the court and the obligee's response to be accompanied by a current CIS or other relevant documents as well as the previous CIS or other documents from the date of entry of the original alimony award and from the date of any subsequent modification. Rule5:5-4(a) as presently written is inconsistent with the statute in that the rule requires the court to conclude the party seeking relief has demonstrated a prima facie showing of a substantial change of circumstances or other good cause before ordering the opposing party to file a CIS. The statute does not require a "good cause" showing. The Committee recommends proposed amendments to synchronize the rule with the statute. The Committee further recommends reorganizing the rule for clarity.

### 2. Proposed amendment to increase moving party's page limit from 15 to 25 pages, allocated between the motion and reply certification.

The Committee considered amending R. 5:5-4(b) to increase the current 15 page limit on motion filing to a combined 25 page limit that would be allocated between the initial certification and the reply certification as the movant deems appropriate. The rule currently limits a certification in support of motion to 15 pages and the reply certification of opposing pleadings to 10 pages. The Committee recommends the movant be permitted to allocate 25 pages between the motion and reply certification.

Therefore, the Committee recommends the following amendments.

## Rule 5:5-4. Motions in Family Actions

Rule 5:5-4. Motions in Family Actions

(a) Motions. Motions in family actions shall be governed by R. 1:6-2(b) except that, in exercising its discretion as to the mode and scheduling of disposition of motions, the court shall ordinarily grant requests for oral argument on substantive and non-routine discovery motions and ordinarily deny requests for oral argument on calendar and routine discovery motions. [When a motion is filed for enforcement or modification of a prior order or judgment, a copy of the order or judgment sought to be enforced or modified shall be appended to the pleading filed in support of the motion. When a motion or cross-motion is filed to establish alimony or child support the pleadings filed in support of, or in opposition to the motion, shall include a copy of a current case information statement. In the event a motion or cross-motion is filed to modify an obligation for alimony or child support based on changed circumstances, the movant shall append copies of the movant's current case information statement and the movant's case information statement previously executed or filed in connection with the order, judgment or agreement sought to be modified. If the court concludes either that the party seeking relief has demonstrated a prima facie showing of a substantial change of circumstances or that there is other good cause, then the court will order the opposing party to file a copy of a current case information statement.]

(b) Motion attachments for establishing alimony or child support. When a motion or cross-motion is filed to establish alimony or child support, the pleadings filed in support of, or in opposition to the motion, shall include a copy of a current case information statement.

(c) Motion attachments for enforcement or modification. When a motion is filed for enforcement or modification of a prior order or judgment, a copy of the order or judgment sought

to be enforced, modified or terminated shall be appended to the pleading filed in support of the motion.

(d) Motion attachments for modification or termination of alimony or child support not based on retirement. When a motion or cross motion is filed for modification or termination of alimony or child support, other than an application based on retirement filed pursuant to N.J.S.A. 2A:34-23(j)(2) and (j)(3), the movant shall append copies of the movant's current case information statement and the movant's case information statement previously executed or filed in connection with the order, judgment or agreement sought to be modified. If the court concludes that the party seeking relief has demonstrated a prima facie showing of a substantial change of circumstances or that there is other good cause, then the court shall order the opposing party to file a copy of a current case information statement.

(e) Motion attachments for modification or termination of alimony based on retirement. Upon application by the obligor to modify or terminate alimony based upon retirement pursuant to N.J.S.A. 2A:34-23(j)(2) and (j)(3), both the obligor's application to the court for modification or termination of alimony and the obligee's response to the application shall be accompanied by current case information statements as well as the case information statements previously executed or filed, or other relevant financial documents if there was no case information statement executed or filed, in connection with the order, judgment or agreement sought to be modified. In the event the previous case information statement cannot be obtained after diligent efforts or was never prepared, a certification shall be submitted detailing said diligent efforts or the non-existence of said documents.

[(b)] (f) Page Limits. Unless the court otherwise permits for good cause shown and except for the certification required by R. 4:42-9(b) (affidavit of service), all certifications in

support of a motion shall not exceed a total of twenty-five [fifteen] pages. This twenty-five page limit shall be allocated between the initial certification(s) and reply certifications(s) as the movant deems appropriate. All certifications in opposition to a motion or in support of a cross-motion or both shall not exceed a total of twenty-five pages. [All reply certifications to opposing pleadings shall not exceed a total of ten pages.]

[(c)] (g) Time for Service and Filing. . . . no change.

[(d)] (h) Advance Notice. . . . no change.

[(e)] (i) Tentative Decisions. . . . no change

[(f)] (j) Orders on Family Part Motions. . . . no change.

[(g)] (k) Exhibits. . . . no change.

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; paragraphs (c) and (d) amended, and new paragraph (g) adopted July 28, 2004 to be effective September 1, 2004; paragraphs (c) and (d) amended June 15, 2007 to be effective September 1, 2007; paragraphs (a), (b), (d) and (g) amended July 16, 2009 to be effective September 1, 2009; paragraph (a) amended July 27, 2015 to be effective September 1, 2015; paragraph (a) amended, former paragraph (b) amended and redesignated paragraph (f), former paragraph (c) redesignated paragraph (g), former paragraph (d) redesignated paragraph (h), former paragraph (e) redesignated paragraph (i), former paragraph (f) redesignated paragraph (j), former paragraph (g) redesignated paragraph (k) and new paragraphs (b), (c), (d) and (e) adopted _____ to be effective _____.

## F. Proposed Amendment to R. 5:7A. Domestic Violence: Restraining Orders

The Committee recommends amending R. 5:7A to reorganize the paragraphs of the Rule to reflect the flow of a case through the court process, beginning with the application for a temporary restraining order. The paragraphs will be reordered as follows: (c) to (a), (f) to (b), (a) to (c), (b) to (d), (d) to (e), and (e) to (f).

The Committee recommends amending newly designated paragraph (c) to clarify that an applicant for a temporary restraining order must qualify as a victim of domestic violence within the meaning of N.J.S.A. 2C:25-19. The Committee recommends including a timeframe in newly designated paragraph (e) so that a hearing for final restraining order is held within 10 days after the filing of an application for a restraining order. Lastly, the Committee recommends newly designated paragraph (f) restate the language of R. 3:4-1 pertaining to procedures before pretrial release, to remove the reference to bail being set and to shorten the caption to "Procedure After Arrest."

Therefore, the Committee recommends the following amendments.

## Rule 5:7A. Domestic Violence: Restraining Orders

Rule 5:7A. Domestic Violence: Restraining Orders

[(a) Application for Temporary Restraining Order. Except as provided in paragraph (d) of this rule, an applicant for a temporary restraining order shall appear before a judge or a domestic violence hearing officer to personally testify on the record or by sworn complaint submitted pursuant to N.J.S.A. 2C:25-28. If it appears that the applicant is in danger of domestic violence, the judge shall, upon consideration of the applicant's domestic violence affidavit, complaint or testimony, order emergency relief, including ex parte relief, in the nature of a temporary restraining order as authorized by N.J.S.A. 2C:25-17 et seq.]

(a) Temporary Restraining Order. In court proceedings instituted under the Prevention of Domestic Violence Act of 1990, the judge shall issue a temporary restraining order when the applicant appears to be in danger of domestic violence. The order may be issued ex parte when necessary to protect the life, health, or well-being of a victim on whose behalf the relief is sought.

[(b) Issuance of Temporary Restraining Order by Electronic Communication. A judge may issue a temporary restraining order upon sworn oral testimony of an applicant who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio or other means of electronic communication. The judge or law enforcement officer assisting the applicant shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine if such are available; otherwise, adequate long hand notes summarizing what is said shall be made by the judge. Subsequent to taking the oath, the applicant must identify himself or herself, specify the purpose of the request and disclose the basis of the application. This sworn testimony shall be deemed to be an affidavit for the

purposes of issuance of a temporary restraining order. A temporary restraining order may issue if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown. Upon issuance of the temporary restraining order, the judge shall memorialize the specific terms of the order and shall direct the law enforcement officer assisting the applicant to enter the judge's authorization verbatim on a form, or other appropriate paper, designated the duplicate original temporary restraining order. This order shall be deemed a temporary restraining order for the purpose of N.J.S.A. 2C:25-28. The judge shall direct the law enforcement officer assisting the applicant to print the judge's name on the temporary restraining order. The judge shall also contemporaneously record factual determinations. Contemporaneously the judge shall issue a written confirmatory order and shall enter thereon the exact time of issuance of the duplicate order. In vicinages where an approved form of electronic temporary restraining order is utilized and prepared electronically by the municipal court judge on a notebook computer or other device, the temporary restraining order may be transmitted electronically without need for a duplicate written order. In all other respects, the method of issuance and contents of the order shall be that required by paragraph (a) of this rule.]

(b) Venue in Domestic Violence Proceedings. Venue in domestic violence actions shall be laid in the county where either of the parties resides, in the county where the domestic violence offense took place, or in the county where the victim of domestic violence is sheltered. The final hearing is to be held in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere.

[(c) Temporary Restraining Order. In court proceedings instituted under the Prevention of Domestic Violence Act of 1990, the judge shall issue a temporary restraining order when the

applicant appears to be in danger of domestic violence. The order may be issued ex parte when necessary to protect the life, health, or well-being of a victim on whose behalf the relief is sought.]

(c) Application for Temporary Restraining Order. Except as provided in paragraph (d) of this rule, an applicant for a temporary restraining order shall appear before a judge or a domestic violence hearing officer to personally testify on the record or by sworn complaint submitted pursuant to N.J.S.A. 2C:25-28. If it appears that the applicant is in danger of domestic violence, the judge shall, upon consideration of the applicant's domestic violence affidavit, complaint or testimony, order emergency relief, including ex parte relief, in the nature of a temporary restraining order as authorized by N.J.S.A. 2C:25-17 et seq. In order to be eligible for a temporary restraining order, the applicant must qualify as a "victim of domestic violence" as defined by N.J.S.A. 2C:25-19d.

[(d) Final Restraining Order. A final order restraining a defendant shall be issued only on a specific finding of domestic violence or on a stipulation by a defendant to the commission of an act or acts of domestic violence as defined by the statute.]

(d) Issuance of Temporary Restraining Order by Electronic Communication. A judge may issue a temporary restraining order upon sworn oral testimony of an applicant who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio or other means of electronic communication. The judge or law enforcement officer assisting the applicant shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine if such are available; otherwise, adequate long hand notes summarizing what is said shall be made by the judge. Subsequent to taking the oath, the applicant must identify himself or herself, specify the purpose of the request and disclose the

basis of the application. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a temporary restraining order. A temporary restraining order may issue if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown. Upon issuance of the temporary restraining order, the judge shall memorialize the specific terms of the order and shall direct the law enforcement officer assisting the applicant to enter the judge's authorization verbatim on a form, or other appropriate paper, designated the duplicate original temporary restraining order. This order shall be deemed a temporary restraining order for the purpose of N.J.S.A. 2C:25-28. The judge shall direct the law enforcement officer assisting the applicant to print the judge's name on the temporary restraining order. The judge shall also contemporaneously record factual determinations. Contemporaneously the judge shall issue a written confirmatory order and shall enter thereon the exact time of issuance of the duplicate order. In vicinages where an approved form of electronic temporary restraining order is utilized and prepared electronically by the municipal court judge on a notebook computer or other device, the temporary restraining order may be transmitted electronically without need for a duplicate written order. In all other respects, the method of issuance and contents of the order shall be that required by paragraph (a) of this rule.

[(e) Procedure Upon Arrest Without a Warrant. Whenever a law enforcement officer has effected an arrest without a warrant on a criminal complaint brought for a violation otherwise defined as an offense under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., bail may be set and a complaint-warrant may be issued pursuant to the procedures prescribed in R. 3:4-1(b).]

(e) Final Restraining Order. A hearing for a final restraining order shall be held in the Superior Court within 10 days of the filing of an application. A final order restraining a defendant shall be issued only on a specific finding of domestic violence or on a stipulation by a defendant to the commission of an act or acts of domestic violence as defined by the statute.

[(f) Venue in Domestic Violence Proceedings. Venue in domestic violence actions shall be laid in the county where either of the parties resides, in the county where the domestic violence offense took place, or in the county where the victim of domestic violence is sheltered. The final hearing is to be held in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere.]

(f) Procedure After Arrest. Whenever a law enforcement officer has effected an arrest for a criminal complaint brought for a violation otherwise defined as an offense under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., a complaint shall be issued pursuant to the procedures described in R. 3:4-1.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended, paragraph (b) caption and text amended and new paragraphs (c) and (d) adopted November 2, 1987 to be effective January 1, 1988; caption amended, former paragraph (c) redesignated paragraph (e), former paragraph (d) redesignated paragraph (f) and new paragraphs (c) and (d) adopted November 18, 1993 to be effective immediately; paragraphs (a), (b), and (e) amended July 12, 2002 to be effective September 3, 2002; paragraph (f) amended July 7, 2005 to be effective immediately; paragraph (b) amended July 21, 2011 to be effective September 1, 2011; paragraph (a) amended July 28, 2017 to be effective September 1, 2017; former paragraph (a) amended and redesignated paragraph (c), former paragraph (b) redesignated paragraph (d), former paragraph (c) redesignated paragraph (a), former paragraph (d) amended and redesignated paragraph (e), former paragraph (e) caption and text amended and redesignated paragraph (f), former paragraph (f) redesignated paragraph (b) adopted _____ to be effective _____.

## G. Proposed Amendment to R. 5:7 B (Sexual Assault Survivor Protection Act: Protective Orders)

The Committee recommends reorganizing R. 5:7B, "Sexual Assault Survivor Protection Act: Protective Orders," to reflect the flow of a case through the court process. The paragraphs will be reordered as follows: (c) to (a), (e) to (b), (a) to (c), (b) to (d), and (d) to (e).

The Committee recommends amending newly designated paragraph (c) to clarify the requirements for an applicant to qualify for a temporary protective order pursuant to the Sexual Assault Survivor Protection Act. The Committee also recommends including a timeframe in newly designated paragraph (e) so that a hearing for final protective order is held within 10 days after the filing of an application for a protective order.

Therefore, the Committee recommends the following amendments.

## Rule 5:7B. Sexual Assault Survivor Protection Act: Protective Orders

Rule 5:7B. Sexual Assault Survivor Protection Act: Protective Orders

[(a) Application for Temporary Protective Order. Except as provided in paragraph (b) of this rule, an applicant for a temporary protective order shall appear before a judge or a domestic violence hearing officer to personally testify on the record or by sworn complaint submitted pursuant to N.J.S.A. 2C:14-14 and N.J.S.A. 2C:14-15. If it appears that the order is necessary to protect the safety and wellbeing of the victim, the judge shall, upon consideration of the applicant's affidavit, complaint or testimony, order emergency relief, including ex parte relief, in the nature of a temporary protective order as authorized by N.J.S.A. 2C:14-13 et seq.]

(a) Temporary Protective Order. In court proceedings instituted under the Sexual Assault Survivor Protection Act of 2015, the judge shall issue a temporary protective order when the victim has been subject to nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct. The order may be issued ex parte when necessary to protect the safety and wellbeing of the victim on whose behalf the relief is sought.

[(b) Issuance of Temporary Protective Order by Electronic Communication. A judge may issue a temporary protective order upon sworn oral testimony of an applicant who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio or other means of electronic communication. The judge assisting the applicant shall contemporaneously record such sworn oral testimony by means of a sound-recording device or stenographic machine if such are available; otherwise, adequate longhand notes summarizing what is said shall be made by the judge. Subsequent to taking the oath, the applicant must identify himself or herself, specify the purpose of the request, and disclose the basis of the application. This sworn testimony shall be deemed to be an affidavit for the purposes of

issuance of a temporary protective order. A temporary protective order may issue if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown. Upon issuance of the temporary protective order, the judge shall memorialize the specific terms of the order. This order shall be deemed a temporary protective order for the purpose of N.J.S.A. 2C:14-14 and N.J.S.A. 2C:14-15.]

(b) Venue in Sexual Assault Survivor Protection Act Proceedings. Venue in these actions shall be laid in the county where either of the parties resides, where the offense took place, or where the victim is sheltered. The final hearing is to be held in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere.

[(c) Temporary Protective Order. In court proceedings instituted under the Sexual Assault Survivor Protection Act of 2015, the judge shall issue a temporary protective order when the victim has been subject to nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct. The order may be issued ex parte when necessary to protect the safety and wellbeing of the victim on whose behalf the relief is sought.]

(c) Application for Temporary Protective Order. Except as provided in paragraph (b) of this rule, an applicant for a temporary protective order shall appear before a judge or a domestic violence hearing officer to personally testify on the record or by sworn complaint submitted pursuant to N.J.S.A. 2C:14-14 and N.J.S.A. 2C:14-15. If it appears that the order is necessary to protect the safety and wellbeing of the victim, the judge shall, upon consideration of the applicant's affidavit, complaint or testimony, order emergency relief, including ex parte relief, in the nature of a temporary protective order as authorized by N.J.S.A. 2C:14-13 et seq. Any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness,

or any attempt at such conduct, and who is not eligible for a restraining order as a "victim of domestic violence" as defined by N.J.S.A. 2C:25-19d may apply for a temporary protective order.

[(d) Final Protective Order. A final order restraining a defendant shall be issued only on a specific finding of nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct, or on a stipulation by a defendant to the commission of an act or acts of sexual contact as defined by the statute.]

(d) Issuance of Temporary Protective Order by Electronic Communication. A judge may issue a temporary protective order upon sworn oral testimony of an applicant who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio or other means of electronic communication. The judge assisting the applicant shall contemporaneously record such sworn oral testimony by means of a sound-recording device or stenographic machine if such are available; otherwise, adequate longhand notes summarizing what is said shall be made by the judge. Subsequent to taking the oath, the applicant must identify himself or herself, specify the purpose of the request, and disclose the basis of the application. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a temporary protective order. A temporary protective order may issue if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown. Upon issuance of the temporary protective order, the judge shall memorialize the specific terms of the order. This order shall be deemed a temporary protective order for the purpose of N.J.S.A. 2C:14-14 and N.J.S.A. 2C:14-15.

[(e) Venue in Sexual Assault Survivor Protection Act Proceedings. Venue in these actions shall be laid in the county where either of the parties resides, where the offense took place, or where the victim is sheltered. The final hearing is to be held in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere.]

(e) Final Protective Order. A hearing for a final protective order shall be held in the Superior Court within 10 days of the filing of an application. A final order restraining a defendant shall be issued only on a specific finding of nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct, or on a stipulation by a defendant to the commission of an act or acts of sexual contact as defined by the statute.

Note: Adopted July 28, 2017 to be effective September 1, 2017; former paragraph (a) amended and redesignated paragraph (c), former paragraph (b) redesignated paragraph (d), former paragraph (c) redesignated paragraph (a), former paragraph (d) amended and redesignated paragraph (e), former paragraph (e) redesignated paragraph (b) adopted _____ to be effective _____.

## H. Proposed Amendments Regarding Notice to a Consenting Birth Parent in a Step Parent Adoption

**Amendments to R. 5:10-4 and R. 5:10-5 to exempt service of a "Notice of Rights in Adoption Proceeding" form upon consenting birth parents in a stepparent adoption proceeding**

The Committee considered amending R. 5:10-4 and R. 5:10-5 to clarify notice requirements to a consenting birth parent in a stepparent adoption. The court rules require a "Notice of Rights in Adoption Proceeding" form to be served on birth parents informing them of the right to object to an adoption and of their right to court-appointed counsel if they are indigent. However, it is not necessary to send this form to a consenting birth parent in a stepparent adoption because their parental rights are not subject to a termination. The notice is required to be served on the other birth parent whose rights will be terminated in these stepparent adoption cases.

Therefore, the Committee recommends the following amendments.

## Rule 5:10-4. Surrogate Action

Rule 5:10-4. Surrogate Action

(a) Review of Complaint Prior to Docketing. . . . no change.

(b) Jurisdiction.

(1) . . . no change.

(2) . . . no change.

(3) Upon the court fixing a day for preliminary or final hearing in private placement adoptions, the Surrogate shall append to the court's order a form promulgated by the Administrative Director of the Courts informing the child's parents whose parental rights are subject to a termination proceeding of the procedure to object to the adoption, the right to legal counsel, and how to apply for a court-appointed attorney. The signed order and form shall be returned to the plaintiff for service of the form and notice of the hearing on the child's parents whose parental rights are subject to a termination proceeding pursuant to N.J.S.A. 9:3-45. Service of the form on the child's parent whose rights are not being terminated shall not be required.

(4) . . . no change.

Note: Source - R. (1969) 4:94-3. Adopted December 20, 1983, to be effective December 31, 1983; caption amended, former text redesignated as paragraph (b), paragraph (b) caption adopted, paragraph (b) amended, and new paragraph (a) adopted July 21, 2011 to be effective September 1, 2011; former subparagraph (b)(3) redesignated as subparagraph (b)(4) and new subparagraph (b)(3) adopted May 30, 2017 to be effective immediately; subparagraph (b)(3) amended _____ to be effective _____.

## Rule 5:10-5. Post Complaint Submissions

Rule 5:10-5. Post-Complaint Submissions

(a) At least ten business days before a preliminary hearing the following shall be filed with the court.

(1) . . . no change.

(2) . . . no change.

(3) . . . no change.

(4) For private stepparent adoptions and direct private placement adoptions, the Notice of Rights in an Adoption Proceeding (Private/Non-Agency Placement) form as promulgated by the Administrative Director of the Courts which is to be served on a parent whose parental rights are subject to a termination proceeding. If the Private/Non-Agency Placement form is served on, but not filed by, the parent, proof of service on the parent must be filed.

(5) . . . no change.

(b) . . . no change.

(c) . . . no change.

(d) . . . no change.

Note: New Rule 5:10-5 adopted (and former Rule 5:10-5 redesignated as Rule 5:10-8) July 21, 2011 to be effective September 1, 2011; subparagraphs (a)(1) and (b)(4) amended July 9, 2013 to be effective September 1, 2013; subparagraphs (a)(2) and (a)(3)(H) amended, and new subparagraphs (a)(4) and (a)(5) adopted May 30, 2017 to be effective immediately; subparagraph (a)(4) amended _____ to be effective _____.

## I. Proposed Amendments to Comply with the Indian Child Welfare Act (ICWA)

### Proposed amendments to R. 5:10-6 and R. 5:10-7 to comply with the Indian Child Welfare Act

The Committee considered whether amendments to R. 5:10-6 are necessary to comply with the Indian Child Welfare Act (ICWA) prior to authorizing the out-of-home placement of a child to a non-parent. The Committee recommends amendments to conform to the definition of an Indian child as set forth in 25 CFR 23.2 as: (1) a child who is a member of a federally recognized Indian Tribe; or (2) a child who is eligible to be a member of a federally recognized Indian Tribe and is the biological child of a member of a federally recognized Indian Tribe. The Committee also recommends amendments to clarify an investigation is necessary only when the court cannot determine if ICWA applies to a child.

The Committee also considered whether amendments to R. 5:10-7 are necessary to address ICWA requirements in voluntary surrenders of parental rights. The Committee recommends adding new paragraph (e) to R. 5:10-7 to alert the court and counsel that they should apply the specific requirements of ICWA for voluntary termination of parental rights involving an Indian child, which are found in 25 CFR 23.124 – 23.128.

Therefore, the Committee recommends the following amendments.

## Rule 5:10-6. Indian Child Welfare Act

Rule 5:10-6. Indian Child Welfare Act

To determine if the Indian Child Welfare Act (ICWA) applies, at [At] the first hearing following the filing of the adoption complaint, if a prior court determination has not been made, the court shall determine [whether] if there is reason to believe [that] the child [or either biological parent may be a member, or eligible to be a member, of a federally recognized Indian tribe, pursuant to the Indian Child Welfare Act (ICWA)] is an Indian Child which is defined as: (1) a child who is a member of a federally recognized Indian Tribe or (2) a child who is eligible for membership in a federally recognized Indian Tribe and is the biological child of a member of a federally recognized Indian Tribe. If [so,] the court cannot determine whether ICWA applies, it shall order an investigation, [including notification] which may include an inquiry to the appropriate tribe to determine if [ICWA applies] the child or one of the biological parents is a member. The ICWA findings shall be made on the record and documented in a court order.

Note: New Rule 5:10-6 adopted (and former Rule 5:10-6 redesignated as Rule 5:10-9) July 21, 2011 to be effective September 1, 2011; amended _____ to be effective _____.

## Rule 5:10-7. Judicial Surrender of Parental Rights

Rule 5:10-7. Judicial Surrender of Parental Rights

(a) Procedure. . . . no change.

(b) Contents. . . . no change.

(c) Hearing. . . . no change.

(d) Surrenders Pursuant to N.J.S.A. 9:3-41. . . . no change.

(e) Surrenders Pursuant to the Indian Child Welfare Act (ICWA). If it is determined that the child is an Indian Child as defined by ICWA, the requirements of ICWA for voluntary terminations shall apply.

Note: New Rule 5:10-7 adopted (and former Rule 5:10-7 redesignated as 5:10-10) July 21, 2011 to be effective September 1, 2011; paragraph (d) amended July 9, 2013 to be effective September 1, 2013; new paragraph (e) adopted _____ to be effective _____.

## J. Proposed Amendment to R. 5:14-4. Gestational Carrier Matters; Orders of Parentage

**Amendments to conform to the New Jersey Gestational Carrier Agreement Act (Act) (P.L. 2018, c.18)**

The Committee considered whether amendments to R. 5:14-4 are necessary to conform to the New Jersey Gestational Carrier Agreement Act (Act) (P.L. 2018, c.18). The Act provides an order of parentage may be obtained from the court prior to the birth of the child (pre-birth order) or immediately thereafter. The order directs the doctor or health care facility to include the names of the intended parents as the legal parents of the child on the birth certificate, and not the name of the gestational carrier or her spouse or partner. If all of the terms, conditions and requirements of the Act are satisfied, the order of parentage shall be issued by the court. The Act does not require a notice of the filing of the complaint establishing parentage on the Bureau of Vital Statistics through the Attorney General's Office. The Act provides for a less restrictive process to execute a relinquishment or surrender of parental rights to be signed by the gestational carrier and her spouse or partner. Although prospective cases for pre-birth orders will be filed pursuant to the new Act, those already in progress or those filings inconsistent with the terms and conditions of the Act, will be processed under the prior rule. The Committee determined amendments are necessary to conform to the new law.

Therefore, the Committee recommends the following amendments.

## Rule 5:14-4. Gestational Carrier Matters; Orders of Parentage.

Rule 5:14-4. Gestational Carrier Matters; Orders of Parentage

(a) Complaint and Order to Show Cause. Prior to the birth of a child or thereafter, and prior to the issuance of a birth certificate pursuant to N.J.S.[A.] 26:8-28, a complaint and a proposed order to show cause may be filed requesting an order of parentage naming the petitioners[, except when prohibited by law,] as the child's legal parents. A complaint filed pursuant to the New Jersey Gestational Carrier Agreement Act, N.J.S. 9:17-60 et seq., shall have attached to it those documents as set forth in N.J.S. 9:17-67(b). A gestational carrier is defined as a woman who is not the genetic mother of the child.

(b) Process. The complaint, proposed order to show cause, and proposed order of parentage shall be filed with the Surrogate in the county where either the petitioners or gestational carrier resides, or where the child is to be born. The executed order to show cause shall be entered by the court no later than three days after filing of the complaint and set forth a return date no later than seven days after the filing date of the complaint. The gestational carrier and her spouse or [civil union] partner in a civil union or domestic partnership, if applicable, and any other party to the gestational carrier agreement, shall be served with a copy of the complaint, executed order to show cause, and proposed order of parentage. [A copy of the complaint, executed order to show cause and proposed order of parentage shall be served on the State registrar of vital statistics pursuant to R. 4:44(a)(7), and any other party in interest.] Proof of service shall be filed with the court on or before the return date.

(c) Return on Order to Show Cause.

(1) If the gestational carrier, or her spouse or partner in a civil union or domestic partnership, [civil union partner] if applicable, [the State registrar of vital statistics] and any other party [in interest] to the gestational carrier agreement, have not filed an objection with the

Surrogate, or appeared in court, an order of parentage shall be signed on the return date. The order of parentage shall state that [: (A) the order of parentage shall be issued and become effective upon the filing of a relinquishment of parental rights executed and acknowledged by the gestational carrier, and spouse or civil union partner, if applicable, after seventy-two (72) hours from the birth of the child, and (B)] the petitioners shall be the sole parents of the child born to the gestational carrier. Personal appearances of the parties on the return date shall not be required unless there is an objection to the relief requested.

(2) The order of parentage shall be effective on the date it is executed by the court, and [the relinquishment of parental rights is filed with the Surrogate. Upon the filing of the relinquishment of parental rights,] the Surrogate shall provide the fully executed order of parentage immediately to the petitioners or their attorney who shall serve a copy of the order of parentage on the gestational carrier and her spouse or partner in a civil union or domestic partnership, [civil union partner] if applicable, and any other party to the gestational carrier agreement.

(d) Listing of Names of Petitioners on the Birth Record. Pursuant to N.J.S. 26:8-28 and N.J.S. 9:17-67(g), [Upon] upon presentation by the petitioners or their attorney of the fully executed order of parentage [and relinquishment of parental rights] to the hospital or health care facility in which the child was born, the names of the petitioners shall be listed as the parents of the child on the birth record pursuant to N.J.A.C. 8:2-1.5(d).

Note: Adopted July 27, 2015 to be effective September 1, 2015; paragraphs (a), (b), (d) and subparagraphs (c)(1) and (c)(2) amended _____ to be effective _____.

## K. Proposed Amendment to R. 5:20-1. Complaint

**Amendments to R. 5:20-1(c) at address the court's authority to divert juvenile delinquency complaints**

The Committee considered amending R. 5:20-1(c) to address whether the court may divert a juvenile complaint charging Title 35 and 36 disorderly persons offenses absent consent of the prosecutor. In State in Interest of N.P., 453 N.J. Super. 480 (App. Div. 2018), the appellate court found that, although the trial court had the authority to divert Title 35 and 36 disorderly persons over the prosecutor's objection, the prosecutor was not provided with notice and the opportunity to be heard. N.J.S.A. 2A:4A-71(b) requires intake services to refer Title 35 and 36 disorderly persons offenses for court action, unless the prosecutor consents to diversion. Rule 5:20-1(c) governing court intake services review of all juvenile delinquency complaints is silent as to whether Title 35 and 36 disorderly persons offenses require the prosecutor's consent to divert. The Committee determined the discrepancy between the statute and court rule should be synchronized to make clear the court may divert complaints pursuant to N.J.S.A. 2A:4A-71(b) and -73, including Title 35 and 36 complaints.

The Committee also recommends adding text to the court rule to clarify that the court is authorized to divert any juvenile delinquency complaint provided that, if there is an objection, the court gives notice and a hearing prior to the court's diversion decision. The Committee considered concerns that expansion of the rule to permit judges to divert any juvenile delinquency complaint over the objection of the prosecutor, particularly those alleging conduct which if committed by an adult would constitute 1st or 2nd degree crimes, could override prosecutorial discretion to pursue a complaint and infringe upon the separation of powers between the executive and judiciary branches. The Committee discussed the N.P. decision in terms of the broad discretion granted to juvenile judges and the juvenile justice system's primary

goal of rehabilitation of juvenile offenders. The Committee also considered the rehabilitative purpose of the juvenile justice system and the Court's constitutional rule-making authority as discussed in Winberry v. Salisbury, 5 N.J. 240 (1950), in making this recommendation to provide the trial court with discretion to divert juvenile complaints.

Therefore, the Committee recommends the following amendments.

## Rule 5:20-1. Complaint

Rule 5:20-1. Complaint

(a) How Made, Contents. . . . no change.

(b) Filing and Service. . . . no change.

(c) Court Intake Services Referral. Every complaint alleging juvenile delinquency shall be reviewed by court intake services in the manner provided by law for recommendation as to whether the complaint should be dismissed, diverted or referred for further court action. Where the complaint alleges conduct which, if committed by an adult, would constitute a crime as defined by N.J.S. 2C:1-4a or a repetitive disorderly persons offense as defined by N.J.S. 2A:4A-22(h), or any disorderly persons offense as defined in c. 35 or c. 36 of Title 2C, the matter shall not be diverted by the court unless the prosecutor consents thereto. Nothing in this rule precludes the court from diverting any complaint after a hearing wherein all parties have an opportunity to be heard.

(d) Amendment. . . . no change.

(e) Consolidation. . . . no change.

Note: Source-R. (1969) 5:8-1(a), (b), (c), and (d); R. (1969) 5:9-3(a) and (b). Adopted December 20, 1983, to be effective December 31, 1983; paragraphs (a)(3) and (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended _____ to be effective_____.

## L. Proposed Amendment to R. 5:21A. Juvenile Plea Form

**Recommendation to make use of a plea form mandatory for all cases in which the court accepts a plea in a juvenile delinquency case in accordanc e with Administrative Directive #10-18.**

The Committee recommends amending R. 5:21A to conform to Administrative Directive #10-18, which mandates use of the Juvenile Plea Form (CN 11144) in all matters where the court accepts a plea. The Committee recommends deleting the last sentence of the current version of the rule as it is duplicative of the instructions set forth in R. 3:9-2 (Pleas). The Committee discussed concerns that the Attorney General's Office and Office of the Public Defender will be proposing revisions to the Plea Form and suggested the proposed rule revision be tabled until that process is complete. However, since Directive #10-18 mandates use of the plea form as of September 1, 2018, the Committee determined to move forward with the proposed rule amendments.

Therefore, the Committee recommends the following amendments.

## Rule 5:21A. Juvenile Plea Form

Rule 5:21A. Juvenile Plea Form

A juvenile's plea of guilty is subject to the requirements of Rule 3:9-2. Before accepting a plea of guilty, the court [may] shall require a juvenile to complete, insofar as applicable, and sign the appropriate plea form prescribed by the Administrative Director of the Courts. The form shall then be filed with the Family Division Manager. [The use of this form does not eliminate the obligation of the court to determine by inquiry of the juvenile defendant and others, in the court's discretion, that a factual basis exists for the plea and that the plea is being made voluntarily, not as the 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.]

Note: Adopted July 10, 1998 to be effective September 1, 1998; amended _____ to be effective _____.

## M. Proposed Amendment to Rules Appendix IX-A - Considerations in Use of Child Support Guidelines, Section 16, Child in the Custody of a Third Party

**Recommendation to amend Appendix IX-A regarding child support for children placed in out-of-home care by the Division of Child Protection and Permanency (DCPP).**

The Committee recommends amending Appendix IX-A (Considerations in the Use of Child Support Guidelines) to reflect federal law, State law and Department of Children and Families (DCF) policy on child support for children in Division of Child Protection and Permanency (DCPP) out-of-home care. The revised text would read:

> Appendix IX-A Section 16. Child in the Custody of a Third Party. If the child is in the custody of a third party (e.g., an aunt, uncle, or grandparent [, foster parent]), the court shall order both parents to pay their income shares of the sole-parenting award to the third party for the benefit of the child. When a child has been placed in out-of-home care by a child protective services (CPS) agency, including the New Jersey Division of Child Protection and Permanency, upon application or motion made at the request of the CPS agency as to one or both parents, the court may order the parent(s) to pay their income shares of the sole-parenting award to that agency.

The Committee recommends amendments to Rules Appendix IX-A. See Attachment A.

# III. Proposed New Rules

## A. Proposed New R. 5:20-5. Juvenile Delinquency Matters; Discovery and Inspection

The Committee recommends a new rule providing for discovery in juvenile delinquency matters. Presently, no such court rule exists. Consideration of this issue arises from State in Interest of N.H., 226 N.J. 242 (2016), holding juveniles facing waiver to criminal court are entitled to full discovery.

A joint working group of the Family and Criminal Practice Committees convened to consider the issue and draft a proposed rule modeling R. 3:13-3, discovery in criminal actions. Consideration was given to the differences in delinquency case processing, which include a shortened timeframe to conclude a juvenile case (90 days from the filing of the complaint) and diversions of cases to Juvenile Conference Committees, Intake Services Conferences or Juvenile Referees. The working group's first draft of the Rule was presented to the Committee during the 2015-2017 rules cycle and approved. However, following that recommendation, comments from the Criminal Practice Committee prompted further revisions, which are incorporated into this recommendation.

The Committee recommends the following.

## [New] Rule 5:20-5. Juvenile Delinquency Matters; Discovery and Inspection

Rule 5:20-5. Juvenile Delinquency Matters; Discovery and Inspection [new]

(a) All discovery that is available and within the possession, custody and control of the prosecutor shall be provided to defense counsel:

(1) If the juvenile is detained, discovery shall be provided no later than 3 court days after the filing of the complaint.

(2) If the juvenile is not detained and is not diverted or sent to a referee, discovery shall be provided within 30 days after the filing of the complaint, or upon written request of counsel, but no later than the initial court appearance.

(3) If the juvenile is diverted to a juvenile conference committee or intake service conference or referred to a juvenile referee, discovery will be provided only upon written request of counsel.

The prosecutor shall provide defense counsel with all available relevant material that would be discoverable pursuant to paragraph (b)(1) of this rule.

(b) Discovery to be Provided

(1) Discovery by the Juvenile. Except for good cause shown, the prosecutor's discovery for each juvenile named in the complaint shall be provided to the attorney of record for the juvenile, or shall be available through the prosecutor's office, pursuant to paragraph (a) of this rule. Good cause shall include, but is not limited to, circumstances in which the nature, format, manner of collation or volume of discoverable materials would involve an extraordinary expenditure of time and effort to copy. In such circumstances, the prosecutor may make discovery available by permitting defense counsel to inspect and copy or photograph discoverable materials at the prosecutor's office, rather than by copying and delivering such materials. The prosecutor shall also provide defense counsel with a listing of the materials that

have been supplied in discovery. If any discoverable materials known to the prosecutor have not been supplied, the prosecutor shall also provide defense counsel with a listing of the materials that are missing and explain why they have not been supplied.

Discovery shall include exculpatory information or material. It shall also include, but is not limited to, the following relevant material:

(A) books, tangible objects, papers or documents obtained from or belonging to the juvenile, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(B) records of statements or confessions, signed or unsigned, by the juvenile or copies thereof, and a summary of any admissions or declarations against penal interest made by the juvenile that are known to the prosecution but not recorded. The prosecutor also shall provide the juvenile with transcripts of all electronically recorded statements or confessions by a date to be determined by the trial judge, except in no event later than 14 days before the trial date or waiver hearing.

(C) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of the prosecutor;

(D) reports or records of prior adjudications of the juvenile;

(E) books, papers, documents, or copies thereof, or tangible objects, buildings or places which are within the possession, custody or control of the prosecutor, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images,

electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(F) names, addresses, and birthdates of any persons whom the prosecutor knows to have relevant evidence or information including a designation by the prosecutor as to which of those persons may be called as witnesses;

(G) record of statements, signed or unsigned, by such persons or by co-defendants which are within the possession, custody or control of the prosecutor and any relevant record of prior adjudication of such persons. The prosecutor also shall provide the juvenile with transcripts of all electronically recorded co-defendant and witness statements by a date to be determined by the trial judge, except in no event later than 14 days before the trial date or waiver hearing, but only if the prosecutor intends to call that co-defendant or witness as a witness at trial.

(H) police reports that are within the possession, custody, or control of the prosecutor;

(I) names and addresses of each person whom the prosecutor expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(J) all records, including notes, reports and electronic recordings relating to an identification procedure, as well as identifications made or attempted to be made.

(2) Discovery by the State. Defense counsel shall provide a copy of the discovery materials to the prosecuting attorney by a date to be determined by the trial judge, except in no

event later than 20 days in advance of trial or the waiver hearing. Defense counsel shall also provide the prosecuting attorney with a listing of the materials that have been supplied in discovery. If any discoverable materials known to defense counsel have not been supplied, defense counsel also shall provide the prosecuting attorney with a listing of the materials that are missing and explain why they have not been supplied. A juvenile shall provide the State with all relevant material, including, but not limited to, the following:

(A) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of defense counsel;

(B) any relevant books, papers, documents or tangible objects, buildings or places or copies thereof, which are within the possession, custody or control of defense counsel, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(C) the names, addresses, and birthdates of those persons known to the juvenile who may be called as witnesses at trial and their written statements, if any, including memoranda reporting or summarizing their oral statements;

(D) written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the State may call as a witness at trial. The juvenile also shall provide the State with transcripts of all electronically recorded witness statements by a date to be determined by the trial judge, except in no event later than 14 days before the trial date or waiver hearing.

(E) names and address of each person whom the defense expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(3) Discovery Provided through Electronic Means. Unless otherwise ordered by the court, the parties may provide discovery pursuant to paragraphs (a) and (b) of this rule through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format. All other discovery shall be provided in an open, publicly available (non-proprietary) format that is compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party shall include a self-extracting computer program that will enable the recipient to access and view the files that have been provided. Upon motion of the recipient, and for good cause shown, the court shall order that discovery be provided in the format in which the transmitting party originally received it. In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be provided for any Alcotest 7110 relevant to a particular juvenile’s case in a readable digital database format generally available to consumers in the open market. In all cases in which discovery is provided through electronic means, the transmitting party shall also include a list of the materials that were provided and, in the case of multiple disks, the specific disk on which they can be located.

(c) Motions for Discovery. No motion for discovery shall be filed unless the moving party certifies that the prosecutor and defense counsel have conferred and been unable to resolve the issue(s).

(d) Documents Not Subject to Discovery. This rule does not require discovery of a party's work product consisting of internal reports, memoranda or documents made by that party or the party's attorney or agents, in connection with the investigation, prosecution or defense of the matter nor does it require discovery by the State of records or statements, signed or unsigned, of the juvenile made to the juvenile's attorney or agents.

(e) Protective Orders

(1) Grounds. Upon motion and for good cause shown the court may at any time order that the discovery sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; confidential information recognized by law, including protection of confidential relationships and privileges; or any other relevant considerations.

(2) Procedure. The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone, and if the court thereafter enters a protective order, the entire text of the statement shall be sealed and preserved in the records of the court, to be made available only to the appellate court in the event of an appeal.

(f) Continuing Duty to Disclose; Failure to Comply. There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, it may order such party to permit the discovery of materials not

previously disclosed, grant a continuance or delay during trial, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate.

(g) The privacy and non-disclosure provisions of Part V of the Rules of Court continue to apply in all circumstances.

Note: Adopted _____ to be effective _____.

# IV. Issues Considered Without Recommendation

## A. Notice to Child Welfare Attorneys of Requests for Confidential Division of Child Protection and Permanency (DCPP) Records in a Criminal Case

The Committee considered whether rule amendments should require that notice be given to attorneys in child welfare cases when there is a request in a criminal case for release of confidential Division of Child Protection and Permanency (DCPP) records pursuant to N.J.S.A. 9:6-8.10a(b)(6). This statute authorizes DCPP to release such information to a court upon finding that access to the records may be necessary for determination of an issue before it. This statute further authorizes the court to disclose the records to the attorneys upon a finding that further disclosure is necessary for determination of an issue before the court. The Committee concluded no rule change is necessary as N.J.S.A. 9:6-8.10a(b)(6) and case law adequately addresses the trial court's obligation to weigh the conflicting rights of criminal defendants to a fair trial and the confrontation of witnesses, against the State's compelling interest in protecting child abuse information and records. A rule change providing attorneys in child welfare cases with notice and opportunity to be heard in the criminal case would not provide any added benefit to the trial judge who is obligated to balance these competing interests. Such process might also delay the criminal case from moving forward. Therefore, the Committee recommends no action.

## B. Potential Conflicts of Interest in Dual Representation of Office of Parental Representation (OPR) Attorneys in DCPP Litigation

The Committee considered whether rule recommendations are necessary to address potential conflicts of interest in DCPP litigation where attorneys from the same local office of the Office of Parental Representation (OPR) represent co-defendants. Rule 3:8-2 addresses joint

representation in criminal matters. The Committee determined cases involving DCPP and OPR are fact sensitive and not amenable to a bright line rule. The Rules of Professional Conduct also provide guidance in dual representation scenarios. The Committee concluded a rule is not necessary to address dual representation. Therefore, the Committee recommends no action.

## C. Proposed Amendments to Appendix V – Family Case Information Statement (CIS)

### 1. Health Care Related Flexible Spending Accounts

The Committee considered whether revisions to Appendix V – Case Information Statement (CIS) are necessary to list deductions for health care related flexible spending accounts. The Committee determined no amendment was necessary because these deductions would properly be listed as medical reimbursement (flex fund) in Part C, Section 3, Number 4i on page 4 of the CIS. This section includes mandatory and non-mandatory deductions. Therefore, the Committee recommends no action.

### 2. Income and Expenditures for Third Party Household Members

The Committee considered whether revisions to Appendix V – Case Information Statement (CIS) are necessary to include income and expenditures relating to third party residents of the household. The Committee determined issues of third party residents of a household are rare occurrences and, therefore, do not warrant a separate line item. Should this situation apply, Part C - lines 12 or 18 of the CIS are the appropriate sections to list such income and Part D – "Other" would be the appropriate place to list such expenditures. Therefore, the Committee recommends no action.

### 3. Social Media Expenses

The Committee considered whether revisions to Appendix V – Case Information Statement (CIS) are necessary to remove "newspapers and periodicals" as a line item on

Schedule C and add "social media expenses". The Committee determined such change is unnecessary. Internet charges are listed as an expense on page 6 of the CIS. There is an "other" category where PayPal and other items such as LinkedIn can be listed. Newspapers and periodicals already listed on the CIS imply digital subscriptions are included as well. Therefore, the Committee recommends no action.

### D. Amendment to R. 5:5-2(a) Addressing the Filing of a Case Information Statement (CIS) in Alimony/Cohabitation Situations

The Committee considered amending R. 5:5-2(a) to not require the filing of the CIS where the payor of alimony is asserting co-habitation by the recipient. The Committee determined there is often a request for counsel fees either by the moving party if the application is successful or by the responding party establishing bad faith by the moving party. In these instances, the CIS is necessary for the judge's ruling on the counsel fee application. Therefore, the Committee recommends no action.

### E. Notice of Minor Name Change to Natural Parent, not the Legal Parent of Child

The Committee considered a referral from a private attorney representing a same sex couple seeking to change the name of their minor child, where the court required service upon the sperm donor who was not the legal parent. The Committee determined R. 4:72-3 (Notice of Application) does not require service on a natural parent who is not a legal parent, but rather requires service upon a legal "non-party parent." In the instance of the referral, the sperm donor was not the legal parent and service was not required. Therefore, the Committee recommends no action.

## F. Consider Amending R. 1:4-1(a) to Include Exceptions to the Requirement that Names and Addresses be Included in a Civil Complaint

The Committee considered a referral requesting amendments to R. 1:4-1(a). This court rule requires the first pleading in a civil action complaint to include the party's name in the caption and state the party's residence address, or if not a natural person, the address of the principal place of business. The referral recommends the court rule be amended to set forth an exhaustive list of permissible exceptions to the name and address disclosure requirements. The referral recommends an attorney filing a pleading without the name and address be required to certify the justification for departing from the requirements. The referral also recommends court procedures to be implemented to ensure cases are properly screened.

The Committee recommended the referral be considered by the Conference of Family Presiding Judges, the Conference of Civil Presiding Judges and the Public Access Committee. The Conference of Civil Presiding Judges considered the issue and declined to act. This issue is before the Public Access Committee to consider a recommendation and is held for consideration by the Conference of Family Presiding Judges until such time as the Public Access Committee has completed its review.

## G. Entry of Default in a Summary Proceedings

The Committee considered whether amendments to R. 5:4-1(b) were necessary to address a process for the entry of default in Family Part summary proceedings where a party has failed to plead, failed to otherwise defend or has had an answer stricken. Non-dissolution and domestic violence matters are examples of Family Part summary proceedings. Rule 4:43-1 provides a process for entry of default in Civil Part summary proceedings, which includes a written request for the entry of default, supported by affidavit of the moving party. The affidavit recites the date and method of service of a complaint and a statement that the time has expired for the defendant

to plead or otherwise defend. In contrast to summary proceedings in the Civil Part, the court rather than a party performs service of process in Family Part summary actions. The summons gives notice to the defendant that non-appearance at the proceeding may result in a default order. The Committee believes this replaces the need for a request and affidavit filed by a moving party as in R. 4:43-1. Therefore, the Committee recommends no action.

### H. Revisions to the Domestic Violence Complaint

The Committee considered whether language should be added to the Domestic Violence Temporary Restraining Order (TRO) warning of the possible issuance of a default order due to non-appearance at a hearing for a domestic violence final restraining order. Rule 5:4-1(b) requires the summons in a summary action to notify the defendant that, unless the defendant appears at the date, time and place set forth in the summons, an order may be entered by default. The Committee recommends amending the TRO to include the default language as stated in R. 5:4-1(b), and therefore recommends the issue to be referred to the Conference of Family Presiding Judges for consideration.

# V. Matters Held for Consideration

## A. Whether to Adjust the Child Support Guidelines Self-Support Reserve (SSR) - Rules Appendix IX-A, Section 7.h

In the 2011-2013 rules cycle, the Committee completed a comprehensive quadrennial review of the New Jersey Child Support Guidelines, R. 5:6A, but carried the issue of adjusting the Self-Support Reserve (SSR) for further consideration. The SSR is a factor in calculating a child support award only when one or both of the parents have a low income based on the federal poverty level. The child support calculation must leave an obligated parent enough income to meet his or her own basic needs. The SSR is an amount calculated to ensure that a non-custodial parent (NCP) has sufficient income to maintain a basic subsistence level and the incentive to work so that child support can be paid. New Jersey's SSR formula employs a 105% above-the-poverty-line standard of need as established by the U.S. Department of Health and Human Services for a single individual living alone. As of January 25, 2016, the self-support reserve is $240 per week.

The New Jersey Division of Family Development, Office of Child Support Services (OCSS), contracted with expert analysts to prepare and calculate simulations of child support guidelines for each of the SSR levels under consideration with a variety of incomes for custodial and non-custodial parents. OCSS has also retained economic experts for the next quadrennial review of the current child support guidelines during the 2019-2021 cycle.

The SSR issue and the upcoming quadrennial review relate to the same subject matter and should be analyzed together. Since the technical analysis of those issues by the experts retained will not be completed during the 2017-2019 term, the Committee recommends that the SSR issue be carried to the next rules cycle.

## B. Consider Rule Recommendations to Implement the "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule"

The "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule" ("Final Rule") was issued by the federal Administration for Children and Families, Office of Child Support Enforcement on December 20, 2016. The goal of the Final Rule is to set realistic child support orders for non-custodial parents to pay regularly, rather than setting an unrealistically high child support obligation that results in higher rates of nonpayment. The Final Rule is expected to have an impact on the child support program and court practices. The Committee is considering the adoption of a new court rule to implement the requirements of the Final Rule.

As this issue cannot be resolved during the current rules cycle, the Committee will carry this issue to the 2019-2021 rules cycle.

## C. Bifurcation of Child Support Issues in Summary Actions

The Committee considered amending R. 5:6-3, hearings in summary actions, to address bifurcation of child support issues. Rule 5:7-8 addresses bifurcation in dissolution matters, and provides bifurcation is permitted only with the approval of the Family Presiding Judge, under extraordinary circumstances and for good cause shown. In summary actions in the non-dissolution docket type, issues of custody and parenting time may be bifurcated from the establishment and calculation of child support without judicial approval. Bifurcation of child support issues and referral to child support hearing officers inconveniences the parties who must appear in court again on a future date and delays the establishment of child support. However, requiring approval of the Family Presiding Judge encumbers the discretion of the judge hearing the case, especially where the parties are initially without the requisite proofs for the

establishment of support. The Committee will carry this issue for additional consideration during the 2019-2021 rules cycle.

# VI. Out of Cycle Activity

## A. Technical Amendments to Appendices IX-A (Considerations in the use of Child Support Guidelines), IX-B (Use of the Child Support Guidelines), IX-C (Sole Parenting Worksheet) and IX-D (Shared Parenting Worksheet) to Conform to 115 P.L. 97, Which Changes the Tax Treatment of Alimony

The Committee considered whether amendments to Appendices IX-A (Considerations in the Use of Child Support Guidelines), IX-B (Line Instructions), IX-C (Sole Parenting Worksheet), and IX-D (Shared Parenting Worksheet) are necessary to conform to 115 P.L. 97, which changes the tax treatment of alimony effective January 1, 2019. The Child Support Guidelines Worksheets in Appendices IX-C and IX-D currently treat alimony as taxable to the alimony recipient and tax-deductible for the alimony payor. The Committee determined amendments to Appendices IX-C and IX-D as well as Appendices IX-A and IX-B (line instructions) are necessary. In addition, clarifying language is necessary so that alimony information captured in lines 1b & 1c of the worksheets pertains only to alimony under the former version of the law. The Committee also recommends amending Appendix IX-B (line instructions) and the adoption of new lines 4a and 4b on the worksheets to allow for the accurate accounting for alimony that is non-taxable for the alimony recipient and non-tax-deductible for the alimony payor.

Since these amendments are technical in nature and the effective date of the legislation January 1, 2019, the Committee will submit the proposed amendments to the Court separately as part of other technical amendments to the child support guidelines.

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Respectfully submitted,

Hon. Bonnie J. Mizdol, A.J.S.C., Chair

Dated: January 4, 2019

# List of Attachments

**A.** Rules Appendix IX-A - Considerations in the Use of Child Support Guidelines

**New Jersey Rules of Court**
**Appendix IX-A**

# CONSIDERATIONS IN THE USE OF CHILD SUPPORT GUIDELINES

(Includes amendments through those effective _____, 2019)

1. Philosophy of the Child Support Guidelines . . . no change.

2. Use of the Child Support Guidelines As a Rebuttable Presumption . . . no change.

3. Deviating from the Child Support Guidelines . . . no change.

4. The Income Shares Approach to Sharing Child-Rearing Expenses . . . no change.

5. Economic Basis for the Child Support Guidelines . . . no change.

6. Economic Principles Included in the Child Support Guidelines . . . no change.

7. Assumptions Included in the Child Support Guidelines . . . no change.

8. Expenses Included in the Child Support Schedules) . . . no change.

9. Expenses That May Be Added to the Basic Child Support Obligation . . . no change.

10. Adjustments to the Support Obligation …no change.

11. Defining Income . . . no change.

12. Imputing Income to Parents . . . no change.

13. Adjustments for PAR Time (formerly Visitation Time) . . . no change.

14. Shared-Parenting Arrangements . . . no change.

15. Split-Parenting Arrangements . . . no change.

16. Child in the Custody of a Third Party

If the child is in the custody of a third party (e.g., an aunt, uncle, or grandparent[, foster parent]), the court shall order both parents to pay their income shares of the sole-parenting award to the third party for the benefit of the child. When a child has been placed in out-of-home care by a child protective services (CPS) agency, including the New Jersey Division of Child Protection and Permanency, upon application or motion made at the request of the CPS agency as to one or both parents, the court may order the parent(s) to pay their income shares of the sole-parenting award to that agency.

17. Adjustments for the Age of the Children . . . no change.

18. College or Other Post-Secondary Education Expenses . . . no change.

19. Determining Child Support and Alimony or Spousal Support Simultaneously . . . no change.

20. Extreme Parental Income Situations . . . no change.

21. Other Factors that May Require an Adjustment to a Guidelines-Based Award…no change.

22. Stipulated Agreements . . . no change.

23. Modification of Support Awards . . . no change.

24. Effect of Emancipation of a Child . . . no change.

25. Support for a Child Who has Reached Majority . . . no change.

26. Health Insurance for Children . . . no change.

27. Unpredictable, Non-Recurring Unreimbursed Health-Care In Excess of $250 Per Child Per Year . . . no change.

28. Distribution of Worksheets and Financial Affidavits . . . no change.

29. Background Reports and Publications . . . no change.