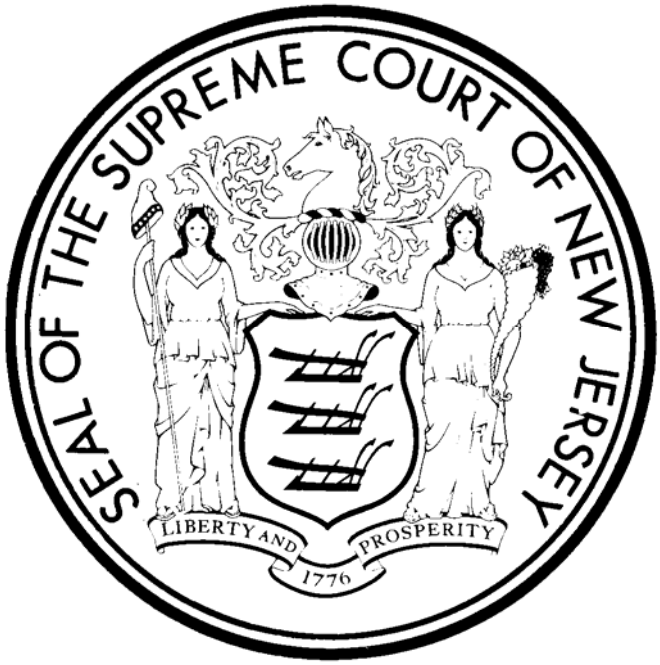
FAMILY PRACTICE COMMITTEE



2004-2007

FINAL REPORT

January 12, 2007

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I. Introduction

The Supreme Court Family Practice Committee ("Practice Committee" or "Committee") recommends that the Supreme Court adopt the proposed rule amendments and proposed new rule adoptions contained in this report. Also in this report, the Practice Committee reviewed other issues, some of which require no recommendations and some of which contain non-rule recommendations.

In the proposed changes to rules contained in this report, deleted text is bracketed [as such], and added text is underlined as such. No change in the text of the rule is indicated by ". . . no change."

II. Proposed Rule Amendments for Adoption

A. Proposed Amendment to R. 1:5-6, R. 1:6-3 and R. 5:5-4 - Re: Motions in Family Actions

Discussion

Motion Timing Issues

Following requests by many attorneys and concerns expressed by some judges, the Committee addressed motion timing issues incorporated within *R.* 5:5-4(c). It is noted that *R.* 5:5-4(c) has not been reconsidered in its entirety for several rules cycles, and, because of issues raised by many, the Committee has concluded that the time is appropriate now to reconsider the current basic format: Currently, pre-judgment motions must be filed not later than 16 days before a return date with a reply and cross-motions are due eight days before the return date and final replies are due four days before the return date (16-8-4). Currently, post-judgment motions, other than motions dealing with enforcement or the status of children must be filed 29 days before the return date, responses and cross-motions are due 15 days before the return date, and the reply certification is due not later than eight days before the return date (29-15-8).

Many lawyers and judges have voiced concern about current motion practice. Among the most frequent complaints by responding parties is that in pre-judgment practice, eight days accords an insufficient amount of time to prepare a comprehensive response. Judges have expressed concern that receiving the reply pleadings only four days prior to the return date affords little time for preparation and even less time for reflection. Many also feel that enforcing the related subject restrictions of *R.* 1:6-3(b) prompts multiple hearings, when in most instances if adequate time were provided, multiple topics could be resolved at the same time.

As the Committee considered these topics, it remained mindful of the public interest in affording litigants prompt access to the courts for needed relief. Motion timing should not be delayed so much as to make the courts unreasonably inaccessible or to force an increase in order to show cause practice.

For the reasons expressed herein, the Committee recommends that these deadlines be extended and that the distinction be removed between pre-judgment and post-judgment motions. After careful consideration of the issues involved, the Committee also recommends that the related subject rule (*R.* 1:6-3(b)) should not apply to Family Part matters.

The Committee further recommends that the time limits for motions filed in the Family Part should be filed and served not less than 24 days prior to the return date with responses and cross-motions due 15 days prior to the return date and final replies due eight days before the return date (24-15-8).

It is noted that this recommendation would lengthen the original notice requirement from 16 days to 24 days, a span of eight days for pre-trial motions, while shortening the existing 29-day notice period by five days for post-judgment motions. The Committee believes that having consistent treatment of pre-judgment and post-judgment motions will reduce unnecessary confusion as well as unnecessary delay.

Assuming a Friday motion day, the Committee notes that the original pleading will be due on a Tuesday, with its reply due nine days later on a Thursday thereby lengthening the current reply period for pre-judgment motions by one day from eight days to nine days. Significantly, the final reply will be due on a Thursday, eight days prior to the return date. The Committee views this as particularly helpful for the Bench because a complete set of pleadings should be available eight days prior to the return date rather than only four days. The Committee

has selected a Thursday final reply date so that the complete package will be available before the weekend preceding the return date, thereby providing judges and their law clerks time for greater study and reflection before the motion hearing.

In addressing the issue of whether the subject matter restriction of *R.* 1:6-3(b) should be discontinued for Family Part purposes, the Committee notes that cross-motions frequently contain many topics that are not so controversial as to require the filing of a separate motion. Even in those complicated matters, however, it is noted that the cross-movant will still be required to serve his or her papers nine days following receipt of the original motion with the original movant having seven days to respond. Accordingly, the amendment would accord the original movant seven rather than four days to present his or her final reply in pre-judgment motions and seven rather than eight days to reply to post-judgment motions. As to the latter, it is the Committee's conclusion that the seven day time frame in lieu of the current eight day reply time cannot justify having two different time frames for pre-judgment and post-judgment filings.

The Committee has concluded that the judicial economies in adopting this formula should prove helpful to litigants (by avoiding multiple motion hearings), to the Bar (by providing modestly greater periods of time for the filing of the requisite pleadings), and to the Bench (by having complete motion files received eight days ahead of the hearing date).

The Committee notes that by adopting this formula, it is extending the practice of differentiating Family Part rules from general civil motion practice. The Committee believes that the distinctions between civil and family practice are substantial. Family Part motions often contain far more requests for individual relief than conventional Civil Part motions. This is something that has historically been recognized in the creation of *R.* 5:5-4(c), as well as other rules contained in Part V of the Rules of Court.

Some might argue that the rule amendments that the Committee now presents might lead to a greater number of requests for adjournments and resultant delays. It is hoped, however, that with the additional time allotted, adjournments will become less prevalent. The Committee believes that if the recommended rules are treated in good faith, the current system will operate better. Adjournments will still be possible and those adjournments should rest within the sound discretion of the individual Family Part judge.

Two examples in which an adjournment request should ordinarily be given favorable consideration follow. First, if an original moving party seeks relief concerning a serious parenting time issue and the responding party cross-moves for broad initial pendent lite alimony and child support relief, it is possible that the responding party might be able to prepare comprehensive reply papers in time under the proposed structure. No adjournment request would be made. Second, if the case is complex and requires detailed preparation, the responding party might elect to reply only to the original motion with the original moving party asking to sever the two issues. Doing so should rest within the sound discretion of the Family Part judge. Similarly, it should be within the discretion of a Family Part judge to grant an adjournment post-judgment to permit the responding litigant time to retain counsel.

Variation in Filing Requirements Among Vicinages

The issue of the variation in motion filing requirements in the various vicinages was specifically referred to the Practice Committee by memorandum dated March 31, 2004, from Richard J. Williams, J.A.D., former Administrative Director of the Courts. Director Williams indicated that the rules currently do not specify the number of copies of a pleading that must be filed. The Committee recommends the standardized requirement that there be an original and

one copy filed. The Committee also recommends amending *R.* 5:5-4(c) to require two sets of all motions, certifications and briefs to be served upon opposing counsel or a litigant.

Specifically, as to the number of copies filed, the Committee recommends amending *R.* 1:5-6(b) to reflect that the submission of an original and one copy of a pleading with the appropriate filing agency constitutes filing. If an attorney or pro se litigant who files a pleading seeks to have a copy returned marked "filed," an additional copy must be provided.

The Committee also recommends an amendment to *R.* 5:5-4(c), which deals with service and motion filing, requiring litigants to serve upon all other parties two copies of all submissions including briefs. The reason for this rule amendment is to facilitate forwarding the papers to the receiving attorney's client without the need for immediate photocopying of a duplicate for forwarding. The Committee notes that oftentimes materials are received late on the deadline day making it virtually impossible for additional copies to be made until the next day. The Committee does not view as burdensome having the original filing party make an extra copy that could then be promptly delivered to the replying litigant. This rule amendment will provide the greatest assistance to the attorney sole practitioner.

R. 1:5-6

1:5-6. Filing

(a) . . . no change.

(b) What Constitutes Filing With the Court. Except as otherwise provided by *R.* 1:6-4 (motion papers), *R.* 1:6-5 (briefs), [and] *R.* 4:42-1(e) (orders and judgments), and *R.* 5:5-4 (motions in Family actions), a paper is filed with the trial court if the original is filed as follows:

(1) . . . no change.

(2) . . . no change.

(3) . . . no change.

(4) . . . no change.

(5) . . . no change.

(6) . . . no change.

(7) . . . no change.

(c) . . . no change.

(d) . . . no change.

(e) . . . no change.

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

paragraph (c)(4) adopted July 27, 2006 to be effective September 1, 2006; paragraph (b) amended _____ to be effective _____.

1:6-3. Filing and service of motions and cross-motions

(a) Motions Generally. . . . no change.

(b) Cross-Motions. A cross-motion may be filed and served by the responding party together with that party's opposition to the motion and noticed for the same return date only if it relates to the subject matter of the original motion. Other than in Family Part motions brought under Part V of these Rules, a [A] cross-motion relating to the subject matter of the original motion shall, if timely filed pursuant to this rule, relate back to the date of the filing of the original motion. The original moving party's response to the cross-motion shall be filed and served as provided by paragraph (a) for reply papers. The court may, however, on request of the original moving party, or on its own motion, enlarge the time for filing an answer to the cross-motion, or fix a new return date for both. No reply papers may be served or filed by the cross-movant without leave of court.

(c) Completion of Service. . . . no change.

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

***R.* 5:5-4**

5:5-4. Motions in family actions

(a) Motions. . . . no change.

(b) Page Limits. . . . no change.

(c) Time for Service and Filing. A notice of motion[, except for motions brought pursuant to *R.* 1:10-3 and motions involving the status of a child, filed more than 45 days after the entry of the written judgment of divorce or annulment, other than an ex parte motion,] shall be served and filed, together with supporting affidavits and briefs, when necessary, not later than 24 [29] days before the time specified for the return date. For example, a motion must be served and filed on the Tuesday [Thursday] for a motion date falling on a Friday 24 [29] days later. Any opposing affidavits, cross-motions or objections shall be served and filed not later than 15 days before the return date. For example, a response must be served and filed on a Thursday for a motion date falling on a Friday 15 days later. Answers or responses to any opposing affidavits and cross-motions shall be served and filed not later than 8 days before the return date. For example, such papers would have to be served and filed on a Thursday for a motion date falling on the Friday of the following week. If service is made by mail, 3 days shall be added to the above time periods. Two copies of all motions, cross-motions, certifications and briefs shall be served.

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

(d) Advance Notice. Every motion shall include the following language: "NOTICE TO LITIGANTS: IF YOU WANT TO RESPOND TO THIS MOTION YOU MUST DO SO IN WRITING. This written response shall be by affidavit or certification. (Affidavits and certifications are documents filed with the court. In either document the person signing it swears

to its truth and acknowledges that they are aware that they can be punished for not filing a true statement with the court. Affidavits are notarized and certifications are not.) If you would also like to submit your own separate requests in a motion to the judge you can do so by filing a cross-motion. Your response and/or cross-motion may ask for oral argument. That means you can ask to appear before the court to explain your position. However, you must submit a written response even if you request oral argument. Any papers you send to the court must be sent to the opposing side, either to the attorney if the opposing party is represented by one, or to the other party if they represent themselves.

"The response and/or cross-motion must be submitted to the court by a certain date. All [pre-divorce] motions [, all enforcement motions (also known as motions for enforcement of litigants' rights, *R.* 1:10-3), or motions that deal with]must be filed on the [status of children must be filed 16] Tuesday 24 days before the return date. [(Since most motion days are on a Friday, motion papers must be filed on the Wednesday 16 days before.)] A response and/or cross motion must be filed [eight] fifteen days (Thursday) before the return date. Answers or responses to any opposing affidavits and cross-motions shall be served and filed not later than [four]seven days ([Monday]Thursday) before the return date. No other response is permitted without permission of the court. [All post-judgment motions, including all motions for modification of alimony, child support, custody, or parenting time/visitation must be filed 29 days (Thursday) before the (Friday) return date. A response and/or cross-motion must be filed 15 days (Thursday) before the return date. Answers or responses to any opposing affidavits and cross-motions shall be served and filed not later than eight days (Thursday) before the return date. No other response is permitted without permission of the court.] If you mail in your papers you must add three days to the above time periods.

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

(e) Tentative Decisions. . . . no change.

(f) Orders on Family Part Motions. . . . no change.

(g) 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 _____ to be effective _____.

B. Proposed Amendment to R. 4:43-2 - Final judgment by default

Discussion

Among the rule amendments adopted to be effective September 1, 2006, was an amendment to *R.* 4:43-2(b) regarding defaults and default judgments. The specific rule amendment provided:

> In all other cases, the party entitled to a judgment by default shall apply to the Court therefor by notice of motion pursuant to *R.* 1:6, served on all parties to the action, including the defaulting defendant or the representative who shall appear for the defaulting defendant . . .

By Order dated September 11, 2006, the Supreme Court directed as follows:

> It is ORDERED that, retroactive to September 1, 2006, and until further Order, the July 27, 2006 amendments to *R.* 4:43-2(b) of the Rules Governing the Courts of the State of New Jersey regarding defaults and default judgments, which amendments became effective September 1, 2006, shall not apply to Family Court matters; and
>
> It is FURTHER ORDERED that the Supreme Court Family Practice Committee shall, on an expedited basis, recommend to the Court appropriate further amendments to *R.* 4:43-2(b) and/or amendments to the Part V rules regarding the applicability to Family Court matters of the procedures now provided for in amended *R.* 4:43-2.

***R.* 4:43-2**

4:43-2. Final judgment by default

. . . no change.

(a) By the Clerk. . . . no change.

(b) By the Court. In all other cases except Family Part matters recognized by Part V of these rules, the party entitled to a judgment by default shall apply to the court therefor by notice of motion pursuant to *R.* 1:6, served on all parties to the action, including the defaulting defendant or the representative who appeared for the defaulting defendant. No judgment by default shall be entered against a minor or mentally incapacitated person unless that person is represented in the action by a guardian or guardian ad litem who has appeared therein. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any allegation by evidence or to make an investigation of any other matter, the court may, on notice to the defaulting defendant or defendant's representative, conduct such proof hearings with or without a jury or take such proceedings as it deems appropriate. The notice of proof hearing shall be by ordinary mail addressed to the same address at which process was served unless the party entitled to judgment has actual knowledge of a different current address for the defaulting defendant. Proof of service of the notice of motion and notice of any proof hearing shall certify that the plaintiff has no actual knowledge that the defaulting defendant's address has changed after service of original process or, if the plaintiff has such knowledge, the proof shall certify the underlying facts. In tort actions involving multiple defendants whose percentage of liability is subject to comparison and actions in which fewer than all defendants have defaulted, default judgment of liability may be entered against the defaulting defendants but such questions as defendants' respective percentages of liability and total damages due plaintiff shall be reserved for trial or other final

disposition of the action. If application is made for the entry of judgment by default in deficiency suits or claims based directly or indirectly upon the sale of a chattel which has been repossessed, the plaintiff shall prove before the court the description of the property, the amount realized at the sale or credited to the defendant and the costs of the sale. In actions for possession of land, however, the court need not require proof of title by the plaintiff. If application is made for the entry of judgment by default in negligence actions involving property damage only, proof shall be made as provided by R. 6:6-3(c).

Note: Source-*R.R.* 4:55-4 (first sentence), 4:56-2(a)(b) (first three sentences) (c), 4:79-4. Paragraph (b) amended July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 15, 1982 to be effective September 13, 1982; text and paragraph (a) amended January 19, 1989 to be effective February 1, 1989; paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b) and (d) amended July 13, 1994 to be effective September 1, 1994; paragraphs (b) and (c) amended June 28, 1996 to be effective September 1, 1996; paragraph (d) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended July 12, 2002 to be effective September 3, 2002; introductory text and paragraph (d) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended and paragraph (d) caption and text amended July 27, 2006 to be effective September 1, 2006; paragraph (a) amended September 11, 2006 to be effective immediately; paragraph (b) amended _____ to be effective _____.

C. Proposed Amendment to R. 5:1-2 - Actions Cognizable

Discussion

The Practice Committee has considered the issue of proper jurisdiction relating to matters arising under the Domestic Partnership Act (DPA), *N.J.S.A.* 26:8A-1 et seq. In response to the enactment of the DPA, Administrative Office of the Courts (AOC) Directive # 9-04 was issued, setting forth procedures for DPA cases. The directive stated that DPA matters should be filed in the Family Part. Only a limited number of reported decisions have been published that relate to same-gender partnership issues. Those cases are: *Hennfeld v. Twp. of Montclair*, 22 *N.J. Tax* 166 (2005), and *Lewis v. Harris*, 188 *N.J.* 415 (2006). *Hennfeld* is confined to the application and intention of state tax law. The Lewis complaint, filed prior to the enactment of the DPA, was heard in the Law Division. After careful consideration, the Committee concluded that the Family Part was the court best suited to handle matters arising under the DPA. Accordingly, the Committee recommends the amendment of *R.* 5:1-2(a) to include matters arising under the Domestic Partnership Act.

R. 5:1-2

5:1-2. Actions Cognizable

The following actions shall be cognizable in the Family Part:

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

(b) Juvenile Delinquency Actions. . . . no change.

(c) Criminal and Quasi-Criminal Actions. . . . no change.

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

D. Proposed Amendments to R. 5:2-1 - Venue, Where Laid

Discussion

The Kinship Legal Guardianship Act, P.L. 2001, c. 250, codified at *N.J.S.A.* 3B:12A-1 to -6 became effective January 1, 2002. On January 14, 2002, the Administrative Director of the Courts issued a memorandum giving directions on certain protocols to be followed in deciding matters brought pursuant to this act. The memorandum noted that, on January 3, 2002, the Supreme Court ordered the relaxation of *R.* 5:2-1, addressing venue. Furthermore, the memorandum provided that the Practice Committee recommend conforming rules. Therefore, the Practice Committee proposes the following technical rule amendment relating to venue in KLG matters.

R. 5:2-1

5:2-1. Venue, Where Laid

Venue in family actions shall be laid in accordance with the applicable provisions of *R.* 3:14-1 and *R.* 4:3-2 except as follows:

(a) . . . no change.

(b) . . . no change.

(c) . . . no change.

(d) . . . no change.

(e) . . . no change.

(f) In kinship legal guardianship actions, venue shall be laid in accordance with *R.* 5:9A-3

[Proposed New Rule].

Note: Source--new. Adopted December 20, 1983, to be effective December 31, 1983; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; new paragraph (f) adopted _____ to be effective _____.

E. Proposed Amendment to R. 5:3-4 - Counsel: Appearance; Prosecutor

Discussion

By memorandum dated September 6, 2006, Acting Administrative Director of the Courts Philip S. Carchman referred to the Practice Committee certain issues related to the Supreme Court's decision, *Pasqua v. Council*, 186 *N.J.* 127 (2006). In *Pasqua*, the Court noted that indigent child support obligors charged with violating support orders, and facing coercive incarceration and hearings to enforce litigants' rights, are entitled to counsel.

On August 29, 2006, Directive # 18-06 entitled "Use of Warrants and Incarceration in the Enforcement of Child Support Orders" was issued. This directive supersedes Directive # 2-04 and all related informational memoranda. Directive # 18-06 promulgates statewide standards and procedures relating to the use of warrants and incarceration in child support enforcement. The directive further defines certain terminology, promulgates forms and establishes the nature of these hearings under *R.* 1:10-3. In addition, it addresses the timing of hearings to enforce litigant's rights, the manner of determining warrant release amounts, and the form to be used for payment receipts. The directive also fixes with more precision provisions relating to indigence and the right to counsel in these matters.

There is an apparent conflict between *Pasqua* and *R.* 5:3-4(a), which rule provides: "The court shall also assign counsel to represent indigents in family actions where a party is by constitution, state or federal, or by law entitled to counsel and there is no publicly-funded source of representation available." While *Pasqua* did not expressly abrogate that rule, Director Carchman wrote that "a sound argument can be made that *Pasqua* does carve out an exception to the rule." In *Pasqua*, the Supreme Court specifically provided:

> In the future, at child support enforcement hearings, all parents charged with violating a court order must be advised of their right to counsel. Those parents facing potential incarceration must be advised of their right to appointed

> counsel if they are indigent and, on request and verification of indigency, must be afforded counsel. Otherwise incarceration may not be used as an option to coerce compliance with support orders. Those parents arrested on warrants for violating their support orders must be brought before a court as soon as possible, but, in any event, within seventy-two hours of their arrest.
>
> We realize that unless there is a funding source for the provision of counsel to indigent parents in Rule 1:10-3 proceedings, coercive incarceration will not be an available sanction. We will not use our authority to impress lawyers into service without promise of payment to remedy the constitutional defect in our system. The benefits and burdens of our constitutional system must be borne by society as a whole. In the past, the Legislature has acted responsibly to provide funding to assure the availability of constitutionally mandated counsel to the poor. See, e.g., *N.J.S.A.* 2B:24-7 (providing for representation of indigent municipal defendants charged with crimes specified in *N.J.S.A.* 2B:12-18 or likely to be "subject to imprisonment or other consequences of magnitude"); *N.J.S.A.* 30:4C-15.4(a) (providing in termination of parental rights cases that if indigent parent "requests counsel, the court shall appoint the Office of the Public Defender to represent the parent"). We trust that the Legislature will address the current issue as well.
>
> We refer to the Supreme Court Family Practice Committee consideration of appropriate rules and procedures for the implementation of this decision.
>
> The judgment of the Appellate Division is reversed.

Pasqua at 153-54.

The Court in *Pasqua* specifically referred implementation of its decision to this Practice Committee. In addition to the directive regarding this issue, *R.* 5:3-4 relates directly to the appointment of counsel aspect of the *Pasqua* case. The Practice Committee therefore recommends exempting child support enforcement matters from applying to *R.* 5:3-4.

Furthermore, because of the novel nature of this issue, the Practice Committee believes that, if the Court adopts this rule recommendation, an explanatory note should accompany this rule.

5:3-4. Counsel: Appearance; Prosecutor

(a) Right to Counsel; Public Defender; Assignment of Counsel. In all matters the parties shall have the right to be represented by counsel. In family matters the court shall advise the juvenile and the juvenile's parents, guardian, or custodian of their right to retain counsel and, if counsel is not otherwise provided for the family and if the matter may result in the institutional commitment or other consequence of magnitude to any family member, or if any family member is constitutionally or by law entitled to counsel, the court shall refer the family member to the Office of the Public Defender, if appropriate, or assign other counsel to represent the juvenile or family member. The court may, depending upon the financial circumstances of the parents, guardian or custodian, order them to pay the fee of assigned counsel in such amount as it fixes. The court shall also assign counsel to represent indigents in family actions where a party is by constitution, state or federal, or by law entitled to counsel and there is no publicly-funded source of representation available, except in child support enforcement hearings.

(b) Appearances. . . . no change.

(c) Prosecuting Attorney. . . . no change.

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

2006 Explanatory Note

Pertaining to actions brought under *R.* 1:10-3 for noncompliance with child support orders, the Supreme Court in Pasqua v. Council, 186 N.J. 127, 146, 149 (2006) established a due process right for the obligor to be advised of the right to counsel. Where counsel is requested, and the obligor is found to be indigent, counsel must be assigned before incarceration may be

utilized to coerce compliance. The court determined that pro bono attorneys would not be appointed in these cases, referring the issue to the legislature. Currently, Administrative Office of the Courts Directive # 18-06 promulgates statewide standards and procedures relating to the use of warrants and incarceration in child support enforcement.

F. Proposed Amendment to R. 5:4-2 and Appendix XXIV - Re: Confidential Litigant Information Sheet

Discussion

The Practice Committee addressed whether the Confidential Litigant Information Sheet (CLIS) should bear a certification and a signature line for the litigant. The concern is that if the CLIS does not contain certification language consistent with *R.* 1:4-4(b), there would be no assurance that the information contained on the form is true. Therefore, the Committee recommends the amendment of Appendix XXIV to include certification language and that *R.* 5:4-2(g) be accordingly amended.

***R.* 5:4-2**

5:4-2. Complaint

(a) . . . no change.

(b) . . . no change.

(c) . . . no change.

(d) . . . no change.

(e) . . . no change.

(f) . . . no change.

(g) Confidential Litigant Information Sheet. The first pleading of each party to any proceeding involving alimony, maintenance or child support shall be accompanied by a completed Confidential Litigant Information Sheet in the form prescribed in Appendix XXIV. The form shall be provided at the time of the filing of the first pleading but shall not be affixed to the pleadings. The information contained in the Confidential Litigant Information Sheet shall be maintained as confidential and shall be used for the sole purposes of establishing, modifying, and enforcing support orders. The Administrative Office of the Courts shall develop and implement procedures to maintain the Confidential Litigant Information Sheet as a confidential document rather than a public record. The Confidential Litigant Information Sheet shall contain a certification consistent with *R.* 1:4-4(b).

(h) . . . no change.

Note: Source-*R.* (1969) 4:77-1(a)(b)(c)(d), 4:77-2, 4:77-3, 4:77-4, 4:78-3, 5:4-1(a) (first two sentences). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b)(2) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a)(2) and (d) amended November 2, 1987 to be effective January 1, 1988; paragraphs (b)(2) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a)(2) amended July 10, 1998 to be effective September 1, 1998; new paragraph (f) adopted January 21, 1999 to be effective April 5, 1999; paragraph (f) caption and text amendment July 12, 2002 to be effective September 3, 2002; new paragraph (g) adopted July 28, 2004 to be effective September 1, 2004; new paragraph (h)

adopted July 27, 2006 to be effective September 1, 2006; paragraph (h) amended October 10, 2006 to be effective immediately; paragraph (g) amended _____ to be effective _____.

Appendix XXIV (Confidential Litigant Information Sheet)

Appendix XXIV attached hereto as Attachment A.

G. Proposed Amendments to R. 5:4-4 - Re: Name Change of Motor Vehicle Commission and Affidavit or Certification of Non-Military Service

Discussion

Name Change of Motor Vehicle Commission

The Practice Committee addressed the need for technical changes to *R.* 5:4-4 and *R.* 5:7-5. The Division of Motor Vehicles was recently renamed to the Motor Vehicle Commission. In these rules, reference is made to the Division of Motor Vehicles. The amended rules would refer to the Motor Vehicle Commission rather than to the Division of Motor Vehicles.

Affidavit or Certification of Non-Military Service

Rule 1:5-7, relating to the affidavit of non-military service, applies to all civil actions or proceedings, including family actions (matrimonial and non-dissolution cases). The Practice Committee has reviewed *R.* 1:5-7 specifically in relation to non-dissolution proceedings. The Committee recommends a change to *R.* 5:4-4 to provide notice to those individuals filing non-dissolution complaints of the need to comply with *R.* 1:5-7 when a default judgment is sought. The Committee further recommends proposed new rules relating to the Non-Military Affidavit (*R.* 5:6-8 and *R.* 5:7-9 set forth in this final report) to emphasize to those persons filing complaints the requirement to comply with *R.* 1:5-7.

The Committee recognizes that language in the Part V rules requiring strict compliance with *R.* 1:5-7 may cause delays in the expeditious disposition of non-dissolution cases. Due to the unique nature of non-dissolution matters, i.e. they are summary in nature, compliance with *R.* 1:5-7 will be a challenge. Non-dissolution cases are generally brought pro se or filed by Board of Social Services attorneys. Also included in the summary matters are the interstate petitions filed pursuant to the Uniform Interstate Family Support Act, *N.J.S.A.* 2A:4-30.65, et seq. In

summary proceedings, the defendant is not required to file an answer, but must appear on the date indicated on the summons. *R.* 5:4-3(b). When service is effected, the consideration and entry of a default judgment, e.g. for paternity and support, generally occurs on the first appearance. In cases where a default is under consideration, it often becomes necessary to reschedule cases pending the filing of the non-military affidavit. The Committee believes that when cases are rescheduled, service has already been effected and therefore is not required again when the matter is scheduled for the entry of default once the affidavit is filed. Failure to file the affidavit of non-military service within a reasonable period of time would require the dismissal of the non-dissolution matter without prejudice. Procedures should be developed by the Administrative Office of the Courts (AOC).

Non-dissolution cases are supposed to be disposed of in an expedited manner, generally intended to occur the same day that they are heard. With respect to kinship legal guardianship (KLG) and non-dissolution matters, the amendments provide that the AOC will promulgate such procedures as may be necessary to implement the rule amendments.

The proposed amendments to *R.* 5:4-4 follow.

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

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

(b) Establishment of a Paternity or Support Order and Proceedings for Kinship Legal Guardianship--Service by Mail Program. . . . no change.

(1) . . . no change.

(2) . . . no change.

(3) . . . no change.

(4) No order shall be entered by default until an affidavit or certification of non-military service, as prescribed in *R.* 1: 5-7, is provided to the court. The forms and procedures to implement the provisions of this rule shall be prescribed by the Administrative Director of the Courts.

(5) [(4)] . . . no change.

(c) Enforcement of a Support Order. For purposes of enforcing a support provision in an order or judgment, the court may deem due process requirements for notice and service of process to have been met with respect to the obligor on delivery of written notice to the most recent residential or employer address. If the obligor fails to respond to the notice and no proof is available that the obligor received the notice, the party bringing the enforcement action must show that diligent efforts have been made to locate the obligor by making inquiries to the U.S. Postal Service, the [Division of Motor Vehicles] Motor Vehicle Commission, the Department of Labor, and the Department of Corrections. A certification documenting unsuccessful efforts to locate the obligor shall be provided to the court before any action adverse to the obligor is taken based on failure of the obligor to respond to a notice.

(d) 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 and old paragraph (b)(4) redesignated as (b)(5) and paragraph (c) amended _____ to be effective _____.

H. Proposed Amendment to R. 5:5-2 - Re: Duty to Update Family Case Information Statement and Defaults

Discussion

Duty to Update Case Information Statement

The Practice Committee was asked to consider a possible amendment to *R.* 5:5-2(c) that would require a party to file an updated Family case information statement when circumstances have significantly changed.

This issue arose as the result of an unreported appellate court opinion, *Kravchenko v. Kravchenko*, No. A-1564-05T5, (App. Div. June 28, 2006), decided per curiam by Judges Axelrad and Sabatino. In that matter, the appellate court specifically addressed *R.* 5:5-2(c), which currently reads as follows:

> Amendments. Parties are under a continuing duty to inform the court of any changes in the information supplied on the case information statement. All amendments to the statement shall be filed with the court no later than 20 days before the final hearing. The court may prohibit a party from introducing into evidence any information not disclosed or may enter such other order as deems appropriate.

The appellate court, in reviewing the rule, questioned whether the rule should apply in circumstances where there is no trial or pendente lite hearing at which the court must evaluate the parties' competing economic claims on the merits. The appellate court continued:

> At oral argument before us, both counsel acknowledged that it is not the prevailing custom for matrimonial attorneys and litigants, notwithstanding the first sentence of *R.* 5:5-2(c) to file updated CIS forms unless and until there is an external stimulus to do so -- such as an adversary's demand, court case management directive or an upcoming trial or pendente lite motion. We are also mindful that it could be burdensome for parties to be required to submit a new CIS form automatically every time the savings accounts are enhanced by regular interest payments, or when there are modest fluctuations in income levels, household expenses, account balances and the like. On the other hand, there may be good sense requiring parties to update their CIS filings unilaterally, with or

> without an adversary's demand to do so, or an upcoming court event, when they have experienced a material increase or decrease in their income, expenses, assets or liabilities. As presently drafted, however, the rule does not have an explicit condition of materiality.

In *Kravchenko*, the allegation was made that one of the litigants had potentially received substantial funds subsequent to the filing of his case information statement.

After extensive consideration, the Practice Committee recommends amending *R.* 5:5-2(c) to provide for the submission of an amended CIS when there is a material change in a party's financial information. This amendment provides that litigants, in all cases, must update their CISs unilaterally when there has been a material change in income, expenses, assets or liabilities. The amendment would further serve to relieve litigants of the burden to update their CISs every time there is an insignificant change in their financial situations.

Renumbering Rule Relating to Defaults

The Committee recommends deleting *R.* 5:5-2(e), which relates to defaults and renumbering it as its own rule. The Family Part default rule is now contained in *R.* 5:5-2, which deals with the Family Part case information statement. It is recommended that *R.* 5:5-2(e) should be deleted and renumbered as *R.* 5:5-10 still using its existing title. The recommendation for proposed new *R.* 5:5-10 is set forth in this report, infra. Within the body of that rule, it is recommended that the rule should make reference to *R.* 4:43-2(b) providing that it is unnecessary for a motion to be filed in the Family Part for defaults to be entered. The recommendation for amending *R.* 4:43-2 is set forth in this report, supra.

5:5-2. Family Case Information Statement

(a) Applicability. . . . no change.

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

(c) Amendments. Parties are under a continuing duty in all cases to inform the court of any material changes in the information supplied on the case information statement. All amendments to the statement shall be filed with the court no later than 20 days before the final hearing. The court may prohibit a party from introducing into evidence any information not disclosed or it may enter such other order as it deems appropriate.

(d) Income Tax Returns. . . . no change.

[(e) Default; Notice for Equitable Distribution, Alimony, Child Support and Other Relief. In those cases where equitable distribution, alimony, child support and other relief are sought and a default has been entered, the plaintiff shall file and serve upon the defaulting party, in accordance with *R. 1:5-2,* A Notice of Application for Equitable Distribution, Alimony, Child Support and Other Relief, not less than 20 days prior to the hearing date. The notice shall include the proposed trial date, a statement of the value of each asset and the amount of each debt sought to be distributed, a proposal for distribution and a statement whether plaintiff is seeking alimony and/or child support and, if so, in what amount and a statement as to all other relief sought. Plaintiff shall annex to the notice a completed and filed Case Information Statement in the form set forth in Appendix V of these Rules. Where a written property settlement agreement has been executed, plaintiff shall not be obligated to file such a notice. When the summons and complaint have been served on the defendant by substituted service pursuant to *R. 4:4-4*, a copy of the Notice of Application for Equitable Distribution, Alimony, Child Support and Other Relief

Sought shall be filed and served upon the defendant in the same manner as the summons and complaint or in any other manner permitted by the court, at least twenty (20) days prior to the date set for hearing. The notice shall state that such notice can be examined by the defendant during normal business hours at the Family Division Manager's office in the county in which the notice was filed. The notice shall provide the address of the county courthouse where the notice has been filed.]

(f) Marital Standard of Living Declaration. . . . no change.

Note: Source -- *R.* (1969) 4:79-2. Adopted December 20, 1983, to be effective December 31, 1983; amended January 10, 1984, to be effective April 1, 1984; paragraphs (b) and (e) amended November 5, 1986 to be effective January 1, 1987; paragraphs (b) and (e) amended November 2, 1987 to be effective January 1, 1988; paragraphs (a) and (e) amended November 7, 1988 to be effective January 2, 1989; paragraph (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended January 21, 1999 to be effective April 5, 1999; paragraph (e) amended July 12, 2002 to be effective September 3, 2002; caption amended and new paragraph (f) adopted July 27, 2006 to be effective September 1, 2006; paragraph (c) amended and paragraph (e) deleted and redesignated as *R.* 5:5-10 [proposed new rule] _____ to be effective _____.

I. Proposed Amendments to R. 5:7-5, R. 5:6-5 and R. 5:25-3 - Re: Venue Transfer, Enforcement of Litigants' Rights/Contempt and Name Change of Motor Vehicle Commission

Discussion

Venue Transfer

In 1990, Directive # 8-90, "Intercounty Support Case Transfer Policy and Procedures," was issued, requiring that child support cases administered by the Probation Division be made payable through and enforceable in the county where the obligor resided. That directive was issued to implement *R.* 5:7-4(b), which at the time required such case transfers when the obligor moved.

The establishment of the New Jersey Family Support Payment Center in 1998 created a centralized processing unit for child support payments so that the great majority of payments were no longer being processed in the local Probation Divisions. In addition, other child support program enhancements eliminated the need for collection and enforcement to occur in the county of the obligor's residence. In recognition of these changes, the Supreme Court amended *R.* 5:7-4(b) in 2002 to eliminate the requirement that cases be transferred when the obligor moves. Consequently, Directive # 3-05, "Intercounty Child Support Case Management Policy," was issued in 2005 to replace the "Intercounty Case Transfer Policy," in light of the new directive's focus on reducing intercounty transfers. Minimizing the transfer of enforcement cases saves significant time and effort by eliminating the preparation, approval, transmittal, and acceptance of case transfers.

Notwithstanding the changes set forth above, certain cases being enforced by the Probation Division continue to exist where the county of venue differs from the county of enforcement. When this occurs, applications for relief to litigants brought under *R.* 1:10-3 could proceed in the county of venue, even though a different county is enforcing the support case.

This is undesirable since the Probation Division in the county of enforcement is more familiar with the enforcement aspects of the case than its counterpart in the county of venue.

The Practice Committee recommends amending *R.* 5:7-5 to specify that Probation proceedings to enforce litigants' rights should be heard in the county in which the support case is being enforced, regardless of venue, except as provided by court order.

This amendment preserves the court's authority to order such proceedings to be brought in the county of venue, or the county where one of the parties resides, or any other county that the court deems appropriate, if such county is different from the county of enforcement.

Enforcement of Litigants' Rights

The Practice Committee recommends amending *R.* 5:7-5(a), *R.* 5:6-5 and *R.* 5:25-3 to remove references to contempt proceedings in view of concerns raised by *Pasqua v. Council*, 186 *N.J.* 127 (2006), which established the right to counsel for child support obligors facing coercive incarceration at hearings to enforce litigants' rights. It is noted that the initiation of contempt proceedings under *R.* 1:10-2 would trigger the right to counsel under *Pasqua*. Furthermore, the Probation Division does not institute *R.* 1:10-2 contempt proceedings. Probation institutes enforcement of litigants' rights motions. Such enforcements are heard by child support hearing officers. Therefore, the Committee further recommends amending *R.* 5:25-3 to clarify that these child support hearing officer enforcements will be heard as motions to enforce litigants' rights. These recommendations do not change the court's authority to institute *R.*1:10-2 proceedings.

Name Change of Motor Vehicle Commission

The Practice Committee addressed the need for technical changes to *R.* 5:4-4 and *R.* 5:7-5. The Division of Motor Vehicles was recently renamed to the Motor Vehicle Commission. In

these rules, reference is made to the Division of Motor Vehicles. The amended rules would refer to the Motor Vehicle Commission rather than to the Division of Motor Vehicles.

5:7-5. Failure to pay; enforcement by the court or party; income withholding for child support; suspension and revocation of licenses for failure to support dependents; execution of assets for child support; child support judgments and post-judgment interest.

(a) [Contempt and] Application for Relief in Aid of Litigant's Rights. If a person fails to make payments or provide health insurance coverage as directed by an order or judgment, the Probation Division responsible for monitoring and enforcing compliance shall notify such person by mail that such failure may result in the institution of [contempt] Relief to Litigant proceedings in accordance with *R.* 1:10-3. Upon the accumulation of a support arrearage equal to or in excess of the amount of support payable for 14 days or failure to provide health insurance coverage as ordered, the Probation Division shall file a verified statement setting forth the facts establishing disobedience of the order or judgment. [The court in the county in which the person against whom the award is made resides, unless another court is designated by order or Rule 5:7-6(a) otherwise provides, may then, in its discretion, institute contempt proceedings in accordance with Rule 1:10-2, and an aggrieved party, or t] The Probation Division may then, on that person's behalf, [may] apply to the court for relief in accordance with Rule 1:10-3. Actions for relief under this rule shall be brought in the county in which the support case is being enforced, unless another county is designated by court order. [If the aggrieved party states under oath in the application that he or she is indigent and unable to pay the required filing fees, the court, if satisfied of the fact of indigency, may waive the payment of such fees.] If the application for relief is made on behalf of a party by the Probation Division, filing fees shall be waived[,]. If the application for relief is made by or on behalf of the obligee, other than by the Probation Division, and the aggrieved party states under oath in the application that he or she is indigent and unable to pay the required filing fees, the court, if satisfied of the fact of indigency, may waive the

payment of such fees. [and may, in] In the discretion of the court, filing fees subsequently may be assessed against the adverse party if it is determined that he or she has not complied with the order or judgment being enforced. For past-due alimony or child support payments that have not been docketed as a civil money judgment with the Clerk of the Superior Court, the court may, on its own motion or on motion by the party bringing the enforcement action, assess [a late interest charge] costs against the adverse party at the rate prescribed by Rule 4:42-11(a). For past-due child support payments that have been docketed as a civil money judgment, see paragraph g of this Rule.

(b) Immediate Income Withholding. . . . no change.

(c) Initiated Income Withholding. . . . no change.

(d) Rules Applicable to All Withholdings. . . . no change.

(e) Suspension and Revocation of Licenses for Failure to Support Dependents.

(1) General Provisions. If a child support arrearage equals or exceeds the amount of child support payable for six months, or court-ordered health care coverage for a child is not provided within six months of the date that it is ordered, or the obligor fails to respond to a subpoena relating to a paternity or child support action, or a warrant for the obligor's arrest has been issued by the court due to the failure to pay child support as ordered, failure to appear at a hearing to establish paternity or child support, or failure to appear at a child support hearing to enforce a child support order, and said warrant remains outstanding, and the obligor is found to possess a license in the State of New Jersey, including a license to practice law, and attempts to enforce the support provisions through income withholding, withholding of civil lawsuit awards, and the execution of assets, when available, have been exhausted, the Probation Division shall send a written notice to the obligor, by certified and regular mail, return receipt requested, at the

obligor's last-known address or place of business or employment, stating that the obligor's licenses may be revoked or suspended unless, within 30 days of the postmark date of the notice, the obligor pays the full amount of past-due child support, or provides proof that health care coverage for the child has been obtained, or responds to a subpoena, or makes a written request for a court hearing to the Probation Division. If a child support-related warrant exists, the license revocation or suspension will be terminated if the obligor pays the full amount of the child support arrearage, provides proof that health care coverage for the child has been obtained, or surrenders to the county sheriff or the Probation Division. No license revocation action shall be initiated if the Probation Division has received notice that the obligor has pending a motion to modify the child support order if that motion was filed prior to the date that the notice of the license suspension or revocation was sent by the Probation Division. If the court issues a warrant for the obligor's arrest for failure to pay child support as ordered, or for failure to appear at a hearing to establish paternity or child support, or for failure to appear at a child support hearing to enforce a child support order, and said warrant remains outstanding, the Probation Division shall immediately notify the [Division of Motor Vehicles] Motor Vehicle Commission of the warrant and the requirement to suspend the obligor's driving privileges pursuant to *N.J.S.A.* 2A:17-56.41.

(2) Suspension by Default of the Obligor. . . . no change.

(3) Service of the Notice of Proposed License Suspension or Revocation. For the purpose of license suspensions or revocations initiated in accordance with this paragraph, simultaneous certified and regular mailing of the written notice shall constitute effective service. The court may deem procedural due process requirements for notice and service of process to be met with respect to a party thereto upon delivery of written notice to the most recent residential or

employer address filed with the Probation Division for that party. If a party fails to respond to a notice and no proof is available that the party received the notice, the Probation Division shall document to the court that it has made a diligent effort to locate the party by making inquiries that may include, but are not limited to: the United States Postal Service, the [Division of Motor Vehicles] Motor Vehicle Commission in the Department of Transportation, the Division of Taxation in the Department of the Treasury, the Department of Corrections, and the Department of Labor. The Probation Division shall provide an affidavit to the court presenting such documentation of its diligent effort, which certifies its inability to locate the party. If the United States Postal Service returns the mail to the Probation Division within the 30-day response period marked "moved, unable to forward," "addressee not known," "no such number/street," "insufficient address," or "forwarding order expired," the court may deem procedural due process requirements for notice and service of process to be met upon a finding that the Probation Division has provided the affidavit documenting the diligent effort to locate the party. If the certified mail is returned for any other reason without the return of the regular mail, the regular mail service shall constitute effective service. If the mail is addressed to the obligor at the obligor's place of business or employment, with postal instructions to deliver to the addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the obligor. Acceptance of certified mail notice signed by the obligor, the obligor's attorney, or a competent member of the obligor's household above the age of 14 shall be deemed effective service.

(4) License Suspension or Revocation Hearings. . . . no change.

(5) Transmittal of Order Suspending or Revoking License. . . . no change.

(6) Relief From Suspension or Revocation Due to Mistaken Identity. . . . no change.

(7) Term of Suspension/Restoration of License. A license suspension or revocation ordered by the court remains in effect until the obligor files with the licensing authority either a court order restoring the license or a Probation Division certification attesting to the full satisfaction of the child support arrearage. Within three working days of the full payment of the child support arrearage, the Probation Division shall provide the court with a certification stating that the obligor has satisfied the past-due child support amount. Upon receipt of the certification, the court shall issue an order restoring the obligor's licenses. The Probation Division shall immediately forward the restoration order or certification to the obligor. The obligor is responsible for filing the court order or Probation certification with the licensing authority. If a license to practice law in New Jersey was suspended by the Supreme Court pursuant to *R.* 1:20-11A, the attorney shall forward the Chancery Division, Family Part order that recommends the restoration of the license to the Clerk of the Supreme Court and a copy of the order to the Director of the Office of Attorney Ethics. The reinstatement of a license to practice law in New Jersey shall be governed by *R.* 1:20-11A. When the court issues an order to vacate a child support-related warrant or local law enforcement authorities execute the warrant, the Probation Division shall send a certification or the court's order to the obligor and to the [Division of Motor Vehicles] Motor Vehicle Commission indicating that the child support-related warrant is no longer effective. The [Division of Motor Vehicles] Motor Vehicle Commission, upon receipt of the order or certification, may reinstate the obligor's driving privileges, provided that the obligor pays the Division's restoration fee.

(f) Execution on Assets to Collect Alimony and Child Support. . . . no change.

(g) Child Support Judgments and Post-judgment Interest. . . . no change.

Note: Source--*R.* (1969) 4:79-9(b)(1), (2), (3). Adopted December 20, 1983 to be effective December 31, 1983; paragraph (b) amended November 7, 1988 to be effective January 2, 1989;

paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a) amended July 13, 1994 to be effective August 1, 1994; paragraphs (b), (c) and (d) amended July 13, 1994 to be effective September 1, 1994; caption amended, paragraph (e) adopted March 15, 1996, to be effective immediately; caption amended, paragraphs (a) and (d) amended, and paragraphs (f) and (g) adopted June 28, 1996, to be effective immediately: paragraphs (b), (c), and (e) amended May 25, 1999 to be effective July 1, 1999; paragraphs (a), (e)(1), (e)(3) and (e)(7) amended _____ to be effective _____.

R. 5:6-5

5:6-5. Enforcement of Orders

Support orders may be enforced and [contempts] proceeded upon in accordance with *R.* 1:10-3 and the applicable provisions of *R.* 5:7-5, [and] *R.* 5:7-6 and *R.* 5:3-7.

Note: Source--*R.* (1969) 5:6-4. Adopted December 20, 1983, to be effective December 31, 1983; amended _____ to be effective _____.

5:25-3. Child Support Hearing Officers

(a) . . . no change.

(b) . . . no change.

(c) Duties, Powers, and Responsibilities. The Child Support Hearing Officer shall be responsible to the Presiding Judge in the establishment, modification, and enforcement of all Title IV-D child-support actions. Such Child Support Hearing Officers shall serve at the pleasure of the Chief Justice and his/her powers and duties shall be prescribed in the order appointing him/her or in the Rules of Procedure of the Family Part. Such Child Support Hearing Officers shall:

(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) in appropriate cases and with the immediate review by the court, make written findings, and based thereon may:

[(A) request that the court adjudicate a person in contempt, and recommend incarceration for failure to appear in response to a summons or refusal to answer questions or produce evidence or for behavior disrupting a proceeding;]

(A) [(B)] recommend that the court adjudicate that a person has failed to comply with an order in violation of litigant's rights and recommend incarceration for failure to comply with an order for the payment of support or the performance of any other act;

(B) [(C)] request that a witness or party be brought directly before the court for a judicial hearing;

(11) recommend that the court issue a warrant upon the failure of a party or witness to appear after having been properly served, and recommend [an] a release amount [to be fixed for bail, bond or cash payment] to satisfy full arrears[and the warrant];

(12) . . . no change.

(d) . . . no change.

(e) . . . no change.

(f) . . . no change.

(g) . . . no change.

Note: Source--new. Adopted September 24, 1985 to be effective October 1, 1985; paragraph (c)(12) adopted June 28, 1996 to be effective September 1, 1996; paragraph (b)(6) amended May 25, 1999 to be effective July 1, 1999; parapgraph (c).amended _____ to be effective _____.

J. Proposed Amendments to R. 5:7-4, Appendix XVI and Appendix XVII - Re: Interest on Child Support Arrears

Discussion

In response to the appellate court decision rendered in *Pryce v. Scharff*, 384 *N.J. Super.* 197 (App. Div. 2006), Director Carchman issued Directive # 16-06 entitled "Child Support Enforcement - Calculation of Interest on Child Support Judgments" in August 2006. Directive # 16-06 established an interim procedure for the calculation and assessment of post-judgment interest on child support judgments and made a referral to the Family Practice Committee to review both the Temporary Support Order (*R.* 5:7-4; Rules Appendix XVII) and the Uniform Summary Support Order (*R.* 5:7-4, Rules Appendix XVI) to recommend any changes in language that may be necessary to provide parties with notice of the right of the obligee to receive post-judgment interest and the charging of interest on judgments due by the obligor.

The Uniform Summary Support Order incorporates the New Jersey Uniform Support Notices (Notices). The Committee reviewed the Notices and believes that the Notice regarding interest can be incorporated into Notice #10, which at the present reads as follows:

> (10) Any payment or installment for child support shall be fully enforceable and entitled to full faith and credit and shall be a judgment by operation of law on or after the date it is due (*N.J.S.A.* 2A:17-56.23(a). Any non-payment of child support you owe has the effect of a lien against your property. The child support lien may affect your ability to obtain credit or sell your property. Judgments also accrue at the rate prescribed by Rule 4:42-11(a). (*R.* 5:7-4(e)).

The Practice Committee recommends amending the Notices and that all Notices be distributed with the Temporary Support Order (TSO), as is done with the Uniform Summary Support Order to ensure that all parties are noticed regarding the consequences of the obligor's failure to remit timely child support payments: that the arrears may be entered as a judgment against the obligor and that post-judgment interest may be charged on those arrears. The TSO

could be copied double-sided and thus inform the parties of all the notices. If the court uses carbonless copy paper (NCR) for the TSO, the Notices may be printed on the back of the NCR order.

5:7-4. Alimony and Child Support Payments

(a) Allocation of Support. . . . no change.

(b) Payments Administered by the Probation Division. . . . no change.

(c) Establishment of Support Arrears at the Hearing. . . . no change.

(d) Payments to the New Jersey Family Support Payment Center. . . . no change.

(e) Income Withholding. . . . no change.

(f) All Notices Applicable to All Orders and Judgments That Include Child Support Provisions. The judgment or order shall include notices stating: (1) that, if support is not paid through immediate income withholding, the child support provisions of an order or judgment are subject to income withholding when a child support arrearage has accrued in an amount equal to or in excess of the amount of support payable for 14 days. The withholding is effective against the obligor's current and future income from all sources authorized by law; (2) that any payment or installment of an order for child support or those portions of an order that are allocated for child support shall be fully enforceable and entitled to full faith and credit and shall be a judgment by operation of law against the obligor on or after the date it is due. Before the satisfaction of the child support judgment, any party to whom the child support is owed has the right to request assessment of post-judgment interest on child support judgments; (3) that no payment or installment of an order for child support or those portions of an order that are allocated for child support shall be retroactively modified by the court except for the period during which the party seeking relief has pending an application for modification as provided in *N.J.S.A.* 2A:17-56.23a; (4) that the occupational, recreational, and professional licenses, including a license to practice law, held or applied for by the obligor may be denied, suspended or revoked if: 1) a child support

arrearage accumulates that is equal to or exceeds the amount of child support payable for six months, or 2) the obligor fails to provide health care coverage for the child as ordered by the court within six months, or 3) a warrant for the obligor's arrest has been issued by the court for obligor's failure to pay child support as ordered, or for obligor's failure to appear at a hearing to establish paternity or child support, or for obligor's failure to appear at a child support hearing to enforce a child support order and said warrant remains outstanding; (5) that the driver's license held or applied for by the obligor may be denied, suspended, or revoked if 1) a child support arrearage accumulates that is equal to or exceeds the amount of child support payable for six months, or 2) the obligor fails to provide health care coverage for the child as ordered by the court within six months; (6) that the driver's license held or applied for by the obligor shall be denied, suspended, or revoked if the court issues a warrant for the obligor's arrest for failure to pay child support as ordered, or for failure to appear at a hearing to establish paternity or child support, or for failure to appear at a child support hearing to enforce a child support order and said warrant remains outstanding; (7) that the amount of child support and/or the addition of a health care coverage provision in Title IV-D cases shall be subject to review, at least once every three years, on written request by either party to the Division of Family Development, P.O. Box 716, Trenton, NJ 08625-0716 and adjusted by the court, as appropriate, or upon application to the court; (8) that the parties are required to notify the appropriate Probation Division of any change of employer, address, or health care coverage provider within 10 days of the change and that failure to provide such information shall be considered a violation of the order; (9) that, in accordance with *N.J.S.A.* 2A:34-23b, the custodial parent may require the non-custodial parent's health care coverage provider to make payments directly to the health care provider by submitting a copy of the relevant sections of the order to the insurer; (10) that Social Security

numbers are collected and used in accordance with section 205 of the Social Security Act (42 *U.S.C.A.* § 405), that disclosure of an individual's Social Security number for Title IV-D purposes is mandatory, that Social Security numbers are used to obtain income, employment, and benefit information on individuals through computer matching programs with federal and state agencies, and that such information is used to establish and enforce child support under Title IV-D of the Social Security Act (42 *U.S.C.A.* § 651 et seq.); and (11) that after a judgment or order is entered and a probation support account has been established, the obligee and the obligor shall notify the appropriate Probation Division of any change of employer, health insurance provider, or address and the obligee and obligor shall notify the Probation Division of a change of address or a change in the status of the children as may be required in the order or judgment within ten days of the change, and any judgment or order that includes alimony, maintenance, or child support shall so provide. Failure to provide information as to change of employer, health insurance provider, address, or status of the children shall be considered a violation of the order.

Note: Source--*R.* (1969) 4:79-9(a). Adopted December 20, 1983, to be effective December 31, 1983; amended November 2, 1987 to be effective January 1, 1988; amended January 5, 1988 to be effective February 1, 1988; amended June 29, 1990 to be effective September 4, 1990; caption and text amended October 5, 1993 to be effective October 13, 1993; caption amended, text amended and redesignated as paragraphs (a), (b), and (d), captions of paragraph (a) through (e) and text of paragraphs (c) and (e) adopted July 13, 1994 to be effective September 1, 1994; paragraph (d) amended March 15, 1996 to be effective immediately; paragraph (b) amended June 28, 1996 to be effective immediately; caption of paragraph (d) and text of paragraphs (d) and (e) amended May 25, 1999 to be effective July 1, 1999; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) caption and text amended, new paragraph (c) adopted, former paragraph (c) redesignated as paragraph (d), former paragraph (d) amended (including incorporation of some text of former paragraph (e)) and redesignated as paragraph (e), and former paragraph (e) deleted July 28, 2004 to be effective September 1, 2004; new paragraph (c) adopted, and former paragraphs (c), (d), and (e) redesignated as paragraphs (d), (e), and (f) July 27, 2006 to be effective September 1, 2006; paragraph (f) amended _____ to be effective _____.

Appendix XVI - Uniform Support Notices

Uniform Support Notices from Appendix XVI attached hereto as Attachment B.

Appendix XVII - Temporary Support Order

Uniform Support Notices from Appendix XVI attached hereto as Attachment B. It is recommended that these Notices should be added to Appendix XVII, Temporary Support Order.]

K. Proposed Amendments to R. 5:12-4 - Case Management Conference, Hearings, or Trial

Discussion

In response to requests for technical updates to references for evidence rule citations, how to caption a case for kinship legal guardianship, where venue should be laid in kinship cases and other typographical issues, the Practice Committee proposes the following rule amendments. The technical amendments include deleting: "Evidence Rules 63(13) and 62(5)" and "respectively" from *R.* 5:12-4(d), and all square brackets throughout *R.* 5:12-4.

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

(a) Prompt Disposition; Case Management Conference; Adjournments. . . . no change.

(b) Hearings in Private; Testimony of Child. . . . no change.

(c) Examinations and Investigations. . . . no change.

(d) Reports. The Division of Youth and Family Services shall be permitted to submit into evidence, pursuant to [Evidence Rules 63(13) and 62(5) []N.J.*R.*E. 803(c)(6) and 801(d)[, respectively]], reports by staff personnel or professional consultants. Conclusions drawn from the facts stated therein shall be treated as prima facie evidence, subject to rebuttal.

(e) [[]Written Plan[]]. Upon a finding of abuse or neglect the court may require that the Division of Youth and Family Services file a written plan embodying the disposition terms proposed by the Division of Youth and Family Services. When required to be filed, such plan shall be served upon all counsel or parties appearing pro se not less than 10 days prior to the dispositional hearing.

(f) [[]Progress Reports[]]. The court may, upon entry of an order of disposition, require that the Division of Youth and Family Services file with the court and serve upon all counsel or parties appearing pro se periodic progress reports at such intervals as the court shall require and covering such topics as the court shall designate.

(g) [[]Foreign State Placement[]]. In any case in which the court orders or plans to order that a child be placed with a person or agency or institution in another State, the District of Columbia, or the U.S. Virgin Islands, it shall act in compliance with the Interstate Compact on the Placement of children, as adopted in New Jersey. *N.J.S.A.* 9:23-5 et seq. (the Compact). The Administrative Director of the Courts, in coordination with the Commissioner of the Department

of Human Services, as the duly designated public authority responsible for compliance with the Compact, may establish such guidelines and procedures as are necessary to ensure that all actions subject to the Compact are in compliance therewith.

(h) Permanency Hearing. . . . no change.

(i) Notice of Proceedings to Care Giver. . . . no change.

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

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

Discussion

This matter was referred to the Family Practice Committee by the Supreme Court in its recent decision, *State v. J.M.*, 182 *N.J.* 402 (2005). This case deals with the right of a juvenile to produce evidence regarding probable cause in a waiver hearing. Although previous opinions did not specifically address this issue, the Court in *J.M*. resolved this issue in favor of a juvenile's right to produce evidence and to cross-examine any witness. The Court recommended that the Practice Committee draft "an appropriate amendment to *R.* 5:22-2 that is consistent with this opinion." *J.M.* at 416-17.

The Practice Committee recommends the creation of a new paragraph (b) dealing with the production of evidence regarding probable cause in these hearings.

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

(a) Motion for Referral. A motion seeking waiver of jurisdiction by the Family Part shall be filed by the prosecutor within 30 days after the receipt of the complaint, which time shall not be extended except for good cause shown.

(b) Probable Cause; evidence. At the referral hearing the court shall receive the evidence offered by the State and the evidence offered by the juvenile limited to the issue of probable cause and shall permit cross-examination of any witnesses.

(c) [(b)] Standards for Referral. . . . no change.

(d) [(c)] Order of Reference. . . . no change.

(e) [(d)] Admissibility of Testimony Given at Referral Hearing. . . . no change.

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

M. Proposed Amendments to R. 5:24-2 - Predisposition Evaluation

Discussion

Currently, a conflict exists between *N.J.S.A.* 2A:4A-42 and *R.* 5:24-2, dealing with predisposition evaluations. Paragraph (a) of *N.J.S.A.* 2A:4A-42 states, "Before making a disposition, the court **may** refer the juvenile to an appropriate individual, agency or institution for examination and evaluation." (Emphasis added). Rule 5:24-2(a), however, currently requires the court to make such referral before disposition of any matter. The rule states:

> Before disposition of any matter but only after an adjudication of delinquency or a determination by the court that the evidence is sufficient to support such an adjudication, the court **shall** refer the juvenile to an appropriate individual, agency or institution on such terms as may be appropriate for examination and evaluation.
>
> (Emphasis added).

In its current form, *R.* 5:24-2(a) effectively eliminates simultaneous disposition of a juvenile case at the time a plea is taken. Often, particularly when a juvenile is known to the court or in the case of a relatively minor offense, no predisposition evaluation is necessary to conduct a disposition hearing effectively. This Practice Committee, therefore, respectfully recommends amending the rule to substitute the word “may” for “shall” in order to conform to the statute.

R. 5:24-2

5:24-2. Predisposition Evaluation

(a) Before disposition of any matter but only after an adjudication of delinquency or a determination by the court that the evidence is sufficient to support such an adjudication, the court [shall] may refer the juvenile to an appropriate individual, agency or institution on such terms as may be appropriate for examination and evaluation. Before the juvenile may be referred to any institution as an in-patient for such purpose, the court must first provide for the representation of the juvenile, the juvenile's parents, guardian or custodians by counsel as the circumstances require. The court may also confer and consult with such individuals and agencies as may be appropriate to the juvenile's situation and may convene a predisposition conference to discuss and recommend disposition. Any such reports shall be filed with the court no later than five court days before the dispositional hearing date.

(b) . . . no change.

Note: Source--*R.* (1969) 5:9-1(d); *R.* (1969) 5:9-7; *R.* (1969) 5:9-8. Adopted December 20, 1983, to be effective December 31, 1983; former rule redesignated paragraph (a) and paragraph (b) adopted November 5, 1986 to be effective January 1, 1987; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended _____ to be effective _____.

N. Proposed Amendment to Appendix IX-A - Re: Self-Support Reserve Relating to Multiple Family Obligations; Adjustments for the Age of the Children in the Child Support Guidelines

Discussion

Self-Support Reserve Relating to Multiple Family Obligations

In the 2006 Out of Cycle rule amendments, Appendix IX-A (§ 20), Appendix IX-B and Appendix IX-C were amended with respect to the self-support reserve so that obligors and obligees are treated equitably in the calculation of child support. The amended guidelines provide that, when considering the obligee's income in the self-support reserve test, deducting the obligee's share of the child support obligation is mandatory rather than discretionary. The obligee's share of child support now must be deducted just as the obligor's support payment is deducted. Although the obligee's share of support is retained by him or her, it nonetheless represents the obligee's presumptive support going to the child. This amendment will address the treatment of both parents with respect to the self-support reserve.

Because of these prior amendments to Appendix IX, the Practice Committee believes that other sections of Appendix IX relating to the self-support reserve must be considered as well. *Appendix IX-A, § 10.b. Adjustments to the Support Obligation, Multiple Family Obligations,* provides for the obligor self-support reserve when addressing multiple child support cases involving the same obligor. Appendix IX-A, § 10.b. should be amended to take into account the obligee's share of the support obligation when calculating the support award.

Adjustments for the Age of the Children in the Child Support Guidelines

Clarification was sought regarding the interpretation of § 17 of Appendix IX-A, which relates to the adjustment of the child support award when the child is 12 years of age or older. Specifically, the Committee reviewed whether this adjustment should be applied only when

establishing an initial order or whether the adjustment, in fairness to the child, should be applied to any subsequent modifications of the order. A one-time application of the adjustment would not give the child the full benefit of the averaging of the child rearing expenditures that is obtained in child support orders for younger children. Actually, the child support guidelines indicate that the awards for younger children are slightly overstated due to averaging in the higher level of expenditures of older children. The Committee believes that the intent of the adjustment is to provide a fair award when the order is established at a later age. The Committee recommends that Appendix IX-A be amended to clarify the application of the age of child adjustment and to give the child the full benefit of the averaging when an order is entered for a child 12 years of age or older. It is also important to be able to identify awards where the adjustment has been made initially so that any future modifications to child support may apply the adjustment, and therefore the Committee recommends language to address this need.

Appendix IX-A

Appendix IX-A attached hereto as Attachment C.

O. Proposed Amendment to Appendix IX-F - Schedule of Child Support Awards

Discussion

The upper parental income limit of the current Schedule of Child Support Awards is $4,420 per week combined net income. Although the quadrennial review data support this upper limit, members of the Practice Committee and the bar at large have expressed concern that this upper limit is so high that it adversely affects a judge's ability to fashion child support orders that would be appropriate for families at these unique income levels. The upper limit of the current schedule is not applicable to the same percentage of families in New Jersey as the prior schedule. The schedule in effect before September 1, 2006, had an upper combined net income limit of $2,900 per week and it applied to 95% of New Jersey families. Updating the $2,900 limit for inflation would result in a $3,600 per week combined income limit. If the current schedule had an upper limit of $3,600 per week combined net income, then that would be consistent with the previous schedule's application to 95% of the state's families. The five percent of families not provided for in the schedule would be subject to additional court analysis to formulate a support award in accordance with *N.J.S.A.* 2A:34-23. This permits the court to exercise its discretion in determining child support awards for extreme high income families. This revision would place the schedule in the same position as it was prior to September 1, 2006. For these reasons, the Practice Committee recommends revising the upper limit of the schedule to $3,600 per week combined net income.

The Practice Committee recognizes the concerns of the citizens of New Jersey relating to child support, particularly the impact of changes to the basic awards schedule. It is for this reason that the Practice Committee is reserving the issue of reviewing the economic principles of the child support guidelines for the next rules cycle. (See "Review of Appendix IX - Re:

Economic Principles of Child Support Awards" section in *Matters Held for Consideration*, infra.)

Appendix IX-F

Appendix IX-F attached hereto as Attachment D.

P. Proposed Deletion of Appendix IX-G - Schedule of Child Support Awards as a Percentage of Combined Net Income

Discussion

The Supreme Court, in its July 27, 2006 omnibus rule amendment order, amended Appendix IX-F ("Schedule of Child Support Awards"), to be effective September 1, 2006. That updated Appendix IX-F was the result of the federally required Quadrennial Review of the Child Support Guidelines to reflect current economic data. An updated Appendix IX-G ("Schedule of Child Support Awards as a Percentage of Combined Net Income") was not included in the rules effective September 1, 2006. On August 10, 2006, a Notice to the Bar stated that, as of September 1, 2006, Appendix IX-G was out of date and should not be utilized. The matter was referred to this Practice Committee for review and recommendation to the Supreme Court on an expedited basis.

The Practice Committee has completed its review of Appendix IX-G, and concludes that this Appendix is not sufficiently used in calculating child support to warrant continued updating. In fact, one may calculate the Appendix IX-G percentages by multiplying the child support award from Appendix IX-F by the parents' combined net income. Accordingly, there is no justification for the diversion of resources required to update the table. Therefore, the Committee recommends deleting Appendix IX-G from the Appendices to the Rules of Court.

Appendix IX-G

[Appendix IX-G

Schedule of Child Support Awards as a Percentage of Combined Net Income]

Appendix IX-G deleted _____ to be effective _____.

III. Proposed New Rules for Adoption

A. Proposed New R. 5:5-10 - Default; Notice for Equitable Distribution, Alimony, Child Support and Other Relief.

Discussion

In its recommendation to amend *R.* 5:5-2, supra, the Practice Committee also recommends creating a separate rule dealing with defaults. Defaults are addressed in *R.* 5:5-2, which deals with the Family Part case information statement. It is recommended that *R.* 5:5-2(e) should be deleted and renumbered as *R.* 5:5-10 still using its existing title. Within the body of proposed new *R.* 5:5-10, the Committee recommends referencing *R.* 4:43-2(b) to provide that a default judgment may be entered in the Family Part without filing a separate notice of motion. The recommendation for amending *R.* 4:43-2 exempting Family Part matters is set forth in this report, supra.

***R.* 5:5-10**

[Proposed New Rule] 5:5-10. Default; Notice for Equitable Distribution, Alimony, Child Support and Other Relief.

In those cases where equitable distribution, alimony, child support and other relief are sought and a default has been entered, the plaintiff shall file and serve upon the defaulting party, in accordance with *R. 1:5-2*, A Notice of Application for Equitable Distribution, Alimony, Child Support and Other Relief, not less than 20 days prior to the hearing date. The notice shall include the proposed trial date, a statement of the value of each asset and the amount of each debt sought to be distributed, a proposal for distribution and a statement whether plaintiff is seeking alimony and/or child support and, if so, in what amount and a statement as to all other relief sought. Plaintiff shall annex to the notice a completed and filed Case Information Statement in the form set forth in Appendix V of these Rules. Where a written property settlement agreement has been executed, plaintiff shall not be obligated to file such a notice. When the summons and complaint have been served on the defendant by substituted service pursuant to *R. 4:4-4*, a copy of the Notice of Application for Equitable Distribution, Alimony, Child Support and Other Relief Sought shall be filed and served upon the defendant in the same manner as the summons and complaint or in any other manner permitted by the court, at least twenty (20) days prior to the date set for hearing. The notice shall state that such notice can be examined by the defendant during normal business hours at the Family Division Manager's office in the county in which the notice was filed. The notice shall provide the address of the county courthouse where the notice has been filed. Defaults shall be entered in accordance with *R.* 4:43-1, except that a default judgment in a Family Part matter may be entered without separate notice of motion as set forth in *R.* 4:43-2.

Note: Adopted _____ to be effective _____.

B. Proposed New R. 5:6-8 and Rule 5:7-9 - Re: Affidavit or Certification of Non-Military Service

Discussion

Rule 1:5-7, relating to the affidavit of non-military service, applies to all civil actions or proceedings, including family actions (matrimonial and non-dissolution cases). The Practice Committee has reviewed *R.* 1:5-7 specifically in relation to non-dissolution proceedings. The Committee recommends a change to *R.* 5:4-4 (See "Proposed Amendments to *R.* 5:4-4 - Re: Name Change of Motor Vehicle Commission and Affidavit or Certification of Non-Military Service" section of this report, supra) to provide notice to those individuals filing non-dissolution complaints of the need to comply with *R.* 1:5-7 when a default judgment is sought. The Committee further recommends adopting new rules relating to the Non-Military Affidavit (*R.* 5:6-8 and *R.* 5:7-9 set forth in this final report) to emphasize to those persons filing complaints the requirement to comply with *R.* 1:5-7.

The Committee recognizes that language in the Part V rules requiring strict compliance with *R.* 1:5-7 may cause delays in the expeditious disposition of non-dissolution cases. Due to the unique nature of non-dissolution matters, i.e. they are summary in nature, compliance with *R.* 1:5-7 will be a challenge. Non-dissolution cases are generally brought pro se or filed by Board of Social Services attorneys. Also included in the summary matters are the interstate petitions filed pursuant to the Uniform Interstate Family Support Act, *N.J.S.A.* 2A:4-30.65, et. seq. In summary proceedings, the defendant is not required to file an answer, but must appear on the date indicated on the summons. *R.* 5:4-3(b). When service is effected, the consideration and entry of a default judgment, e.g. for paternity and support, generally occurs on the first appearance. In cases where a default is under consideration, it will become necessary to reschedule cases pending the filing of the non-military affidavit. The Committee believes that

when cases are rescheduled, service has already been effected and therefore is not required again when the matter is scheduled for the entry of default once the affidavit is filed. Failure to file the affidavit of non-military service within a reasonable period of time would require the dismissal of the non-dissolution matter without prejudice. Procedures should be developed by the Administrative Office of the Courts (AOC).

Non-dissolution cases are supposed to be disposed of in an expedited manner, generally intended to occur the same day that they are heard. With respect to kinship legal guardianship (KLG) and non-dissolution matters, the amendments provide that the AOC will promulgate such procedures as may be necessary to implement the rule amendments.

Proposed new *R.* 5:6-8 and *R.* 5:7-9 follow.

***R.* 5:6-8**

[Proposed New Rule] 5:6-8. Affidavit or Certification of Non-Military Service

In every summary action and proceeding for support, no order shall be entered by default unless an affidavit or certification of non-military service is provided to the court, as provided in *R.* 1:5-7. The forms and procedures to implement the provisions of this rule shall be prescribed by the Administrative Director of the Courts.

Note: Adopted_____ to be effective _____.

R. 5:7-9

[Proposed New Rule] 5:7-9. Affidavit or Certification of Non-Military Service

In every action and proceeding for divorce, nullity, separate maintenance or child support, no order shall be entered by default unless an affidavit or certification of non-military service is provided to the court, as provided in *R.* 1:5-7.

Note: Adopted_____ to be effective _____.

C. Proposed New R. 5:9A-1 - Title of Action

Discussion

The kinship legal guardianship (KLG) act, P.L. 2001, c. 250, codified at *N.J.S.A.* 3B:12A-1 to -6 became effective January 1, 2002. On January 14, 2002, the Administrative Director of the Courts issued a memorandum giving directions on certain protocols to be followed in deciding matters brought pursuant to the KLG act. The memorandum directed that captions of the pleadings must be entitled "Kinship Matter of [minor child's name]." Therefore, the Practice Committee proposes the following rule to provide for a uniform manner of captioning a KLG matter.

R. 5:9A-1

[Proposed New Rule] 5:9A-1. Title of Action

In all actions seeking kinship legal guardianship of a child, every paper shall be entitled "Kinship Matter of [minor child's name]."

Note: Adopted _____ to be effective _____.

D. Proposed New R. 5:9A-2 - Re: Filing and Service of Kinship Legal Guardianship Matters

Discussion

On January 14, 2002, the Administrative Director of the Courts issued a memorandum giving directions on certain protocols to be followed in deciding matters brought pursuant to the KLG act. The proposed new rules set forth in this report relating to KLG matters require the renumbering of the rules and a new caption to former *R.* 5:9A. Therefore, the Practice Committee proposes redesignating the rule number and caption to the existing KLG rule.

New Caption - *R.* 5:9A-2

[Proposed New Caption] 5:9A-2. Filing and Service

(a) . . . no change.

(b) . . . no change.

(c) . . . no change.

Note: Adopted as *R.* 5:9A July 12, 2002 to be effective September 3, 2002; former text redesignated as paragraph (a), and new paragraphs (b) and (c) adopted July 28, 2004 to be effective September 1, 2004; redesignated as *R.* 5:9A-2 _____ to be effective _____.

E. Proposed New R. 5:9A-3 - Venue in Actions Concerning Kinship Legal Guardianship

Discussion

On January 14, 2002, the Administrative Director of the Courts issued a memorandum giving directions on certain protocols to be followed in deciding matters brought pursuant to the KLG act. The memorandum noted that, on January 3, 2002, the Supreme Court ordered the relaxation of *R.* 5:2-1, addressing venue. Furthermore, the memorandum provided that the Practice Committee recommend conforming rules. Therefore, the Practice Committee proposes the following rule relating to venue in KLG matters.

R. 5:9A-3

[Proposed New Rule] 5:9A-3. Venue in Actions Concerning Kinship Legal Guardianship

(a) An action for kinship legal guardianship of a child pursuant to N.J.S.A. 3B:12A-1 to -6 shall be brought or the venue laid in the county where the caregiver resides. However, as set forth in *R.* 5:2-1(d), in cases where there is a pending action for child abuse/neglect pursuant to N.J.S.A. 9:6-8.1 et seq. or for termination of parental rights under N.J.S.A. 30:4C-15, venue will be determined in accordance with *R.* 5:9-1, that is, in the county where the child abuse/neglect or termination of parental rights action is pending.

(b) A motion to vacate or modify a judgment for kinship legal guardianship of a child brought pursuant to N.J.S.A. 3B:12A-6(f) shall be brought or the venue laid in the county where the judgment of kinship legal guardianship was originally granted. A motion to change venue may be brought pursuant to *R.* 4:3-3 and shall be liberally granted.

Note: Adopted _____ to be effective _____.

F. Proposed New R. 5:12-6 - Matters Involving Law Enforcement

Discussion

A joint work group convened last term from members of the Supreme Court Family and Criminal Practice Committees. The joint work group was formed to address two areas of conflict that chronically arise when the Division of Youth and Family Services (DYFS) and a county prosecutor are investigating and litigating cases arising from the same set of facts. These issues are set forth in the "Report of Joint Ad Hoc Committee on Civil and Criminal Child Abuse Cases." Attachment E. The members of this Practice Committee and the Criminal Practice Committee have reviewed and endorsed the joint report. The Criminal Practice Committee suggested the adoption of rules to provide a framework for managing the situations noted therein. Therefore, this Practice Committee proposes the following rule amendments.

The Family Practice Committee notes that the Criminal Practice Committee is recommending a companion rule amendment to *R.* 3:26-1 (Right to bail before conviction) in this rules cycle.

***R.* 5:12-6**

[Proposed New Rule] 5:12-6. Matters Involving Law Enforcement

(a) Visitation during pendency of related criminal action. When a criminal complaint has been filed against a parent or guardian arising out of the same incident as a Division of Youth and Family Services action pursuant to R. 5:12, the Family Part shall determine the nature and scope of parental or guardian visitation, if any, with the child as follows:

(i) The court shall provide notice of any hearing at which visitation conditions are to be imposed or modified to the county prosecutor and counsel representing the parent or guardian in the criminal prosecution, as well as to all counsel and parties in the Division of Youth and Family Services matter.

(ii) Prior to any hearing, the court shall issue an appropriate protective order governing disclosure of confidential Division of Youth and Family Services records consistent with N.J.S.A. 9:6-8.10a.

(iii) A copy of any order governing such visitation shall be transmitted by the Family Part to the Law Division.

(iv) Any application for modification of a visitation order shall be made to the Family Part, upon notice to the same parties and counsel as required for notice of a hearing pursuant to (i).

(b) If there is a criminal investigation of an incident that is the basis of a Division of Youth and Family Services action pursuant to R. 5:12, the Division of Youth and Family Services may request that the prosecutor provide any relevant information for use in the action. If the Division of Youth and Family Services and the prosecutor are unable to reach an agreement on what information is to be provided, either may request the assignment judge to assign a judge to assist

in the resolution of the matter. The judge assigned shall conduct a conference without delay. Notice of the conference shall be given to the prosecutor and to all parties to the Division of Youth and Family Services action. The court shall not order the release of pre-indictment information without the agreement of the prosecutor. No rights or privileges that may otherwise exist are affected by this procedure for dispute resolution.

Note: Adopted _____ to be effective _____.

G. Proposed New R. 5:7-10 - Suspension Provisions of Child Support Orders

Discussion

In many child support orders, courts order the suspension of enforcement, which is frequently open to interpretation. At times, it is appropriate to suspend the enforcement of a support order temporarily. Circumstances warranting temporary suspension may include, but should not be limited to, the following: obligor's incarceration, custody disputes, overpayments, arrears disputes, applications for Social Security Disability or Supplemental Security Income, and misrepresentation or material mistake of fact. Either on its own motion or upon the application of a party to a case, and upon good cause being shown, the court, in its discretion, may issue an order directing that all or some enforcement activities to collect child support be temporarily suspended until further order of the court.

There has been some confusion regarding the interpretation of the term "suspension of enforcement." Some obligors have believed, erroneously, that the term means that all enforcement remedies, including automated processes, are to cease. Believing that enforcement had been suspended, obligors have been unpleasantly surprised when certain enforcement tools continued to be used to collect child support. The parties, their attorneys, judges, child support hearing officers and Title IV-D child support enforcement agents can all benefit from knowing with certainty which enforcement actions are suspended (and which are not) when the court orders suspension of enforcement. Due process and fundamental fairness dictate that the parties be put on notice and be given the opportunity to be heard when suspension is ordered.

The core issue is what actions are to be stopped when the order states "suspend enforcement" (or a term to that effect) and nothing more. There appears to be no definitive legal authority that defines the parameters of suspension of enforcement. Not surprisingly, there is no

statewide uniformity in the interpretation of the term. Practices differ from county to county. Compounding the problem is that orders for suspension often do not specify a date for future action to be taken or a date when suspension will cease.

In order to increase clarity and help standardize practices, the Practice Committee recommends that the term "suspension of enforcement" should be defined as the temporary cessation of judicial enforcement activity. This would mean that on a support case, no bench warrants would issue, the case would not be listed for enforcement action and no relief to litigants' rights proceedings under *R.* 1:10-3 would be instituted until further order of the court. The current support obligation and all other enforcement remedies would continue, including income withholding**,** automatic entry of judgments, tax offset, license suspension, credit agency reporting, Financial Institution Data Match (FIDM), lottery intercepts, passport denial and Child Support Lien Network (CSLN). The Committee further recommends that the court should specify a time frame for further action to be taken, and if no activity occurs within 60 days of the date of the order, Probation may list the case for a hearing after 60 days.

If it is the intent of a judge or child support hearing officer to suspend provisions of an order other than as provided above, then it is recommended that the order so specify. Judges and hearing officers should keep in mind, however, that certain automated processes, such as FIDM, lottery intercepts, automatic entry of judgments, passport denial and CSLN cannot be stopped easily on an active child support case, nor is it desirable to do so in most cases.

It should be noted that the terms "suspension of the order," "suspension of the support obligation" and "suspension of enforcement" are not interchangeable terms; nonetheless, they are erroneously interchanged. In New Jersey, the Title IV-D Child Support Program (Program) interprets the term "suspension of the order" to mean that all provisions of the order are stayed

for the time specified in the order. All enforcement remedies, including electronic processes, also cease. The circumstances that warrant "suspension of the order" generally involve uncertainty about a fact necessary for determining the child support award, such as an incarcerated parent's ability to repay arrears upon release, *Halliwell v. Halliwell*, 326 *N.J. Super.* 442 (App. Div. 1999) and *Kuron v. Kuron,* 331 *N.J. Super.* 561 (App. Div. 2000), or the employment capacity of a parent who has a pending Social Security Disability application. Suspension of the order is imposed in recognition that *N.J.S.A.* 2A:17-56.23 prohibits retroactive reduction of child support that has accrued. The term "suspension of the support obligation" is interpreted by the Program to have the same meaning as "suspension of the order." If the order states, "Suspension of the current support obligation," the Program would interpret that to mean that the current support provisions of the order are temporarily discontinued, i.e., the order will not charge, but enforcement of the arrears would continue. "Suspension of enforcement" would mean that no bench warrants would issue, the case would not be listed for enforcement action and no relief to litigants' rights proceedings under *R.* 1:10-3 would be instituted until further order of the court.

***R.* 5:7-10**

[Proposed New Rule] 5:7-10. Suspension Provisions of Child Support Orders

(a) Applicability. This rule is applicable to all orders and judgments that include child support provisions. "Suspension of enforcement" of a provision of an order means that judicial enforcement of such provision temporarily ceases until further order of the court. Except as provided by law, the trial court, in its discretion, may enter an order: (1) temporarily suspending enforcement of provisions of an existing child support order. This references only judicial enforcement, meaning that no bench warrants will issue, the case will not be listed for enforcement action, and no relief to litigant proceedings under *R.* 1:10-3 will be instituted until further order of the court; or (2) temporarily suspending specifically identified enforcement mechanisms, such as judicial enforcement and income withholding, of provisions of an existing child support order; or (3) temporarily suspending all support provisions of an existing order, including the charging and enforcement of current support and enforcement of past-due obligations, until further order of the court; or (4) temporarily suspending the current support obligation only, but allowing enforcement of past-due obligations to continue until further order of the court.

(b) Scope. Orders entered by the court under this rule that contain provisions for suspension of enforcement, shall not be scheduled for enforcement hearings, no bench warrants shall issue and no relief to litigant proceedings under *R.* 1:10-3 shall be instituted until further order of the court. Unless otherwise specified in the Order, all other enforcement remedies, including, but not limited to, income withholding, automatic entry of judgments, tax offset, license suspension, credit agency reporting, Financial Institution Data Match (FIDM), lottery intercepts, passport

denial and Child Support Lien Network (CSLN) intercepts, shall continue unless the court directs otherwise.

(c) Review. The Court shall review suspension provisions of the Order 60 days from the date of this Order, and every 60 days thereafter, unless the court directs otherwise. A child support case under the supervision of the Probation Division, that contains a suspension of enforcement provision, shall be listed by Probation for a hearing every 60 days if there has been no activity on the case, unless the court directs otherwise.

Note: Adopted _____ to be effective _____.

IV. Issues Considered Without Recommendation

A. Domestic Violence Restraining Orders Regarding Jointly Held Businesses or Property

The Court referred to the Practice Committee a letter dated April 20, 2004, from a litigant who suggested amending the domestic violence temporary and final restraining order forms. Specifically, he suggested including in the form an additional affidavit from a plaintiff indicating any joint business ventures or partnerships with the defendant, and any jointly held pets, agriculture or livestock and what efforts the plaintiff will use to safeguard the businesses or property.

The Practice Committee considered the request and believes that the current restraining order forms are sufficient for the court to enter provisions regarding businesses or property. The Practice Committee believes that this not a routine situation and therefore does not require an amendment to the forms. Moreover, with the emergent appeal process and scheduling of final hearings within 10 days, concerns of this nature may be addressed expeditiously.

B. Temporary Restraining Order - Re: "History of Domestic Violence" Section

The Practice Committee was asked to review the history section of the domestic violence Temporary Restraining Order form (TRO). This review was prompted because there is insufficient space on the form to provide all necessary information. The Practice Committee agreed that a rule recommendation is not required because a court rule is not needed to change the forms. The Statewide Domestic Violence Working Group and the Administrative Office of the Courts routinely review the form.

C. Tentative Decisions - R. 5:5-4(e)

The Committee declines to recommend the mandatory use of tentative decisions as set forth in *R.* 5:5-4(e). Tentative decisions may be viewed as having a beneficial effect on Family Law practice. Whether they are released on either the Wednesday preceding a Friday motion hearing or on a Thursday prior to a Friday motion hearing, tentative decisions provide litigants and their counsel insight as to how the judge will rule upon their applications, thereby avoiding the need for a court appearance. By according increased pre-hearing time after receipt of the full motion file, some judges might view issuing tentative decisions as more practical. On the other hand, the Committee respects the view taken by many judges that, even before a tentative decision is issued, there should be oral argument. The Committee also respects the view that the pressures imposed upon the Family Part judges make the issuance of tentative decisions impractical. It is believed that over time, the use of tentative decisions will expand. It is not, however, recommended that they should be required.

D. Motion Days Every Week

In some vicinages, Family Part motions are heard weekly, and in others, they are not. The Practice Committee recommends that the decision to hear motions weekly or every other week should rest within each vicinage and where appropriate, with each Family Part judge. The Family Part is overburdened and needs the assignment of additional judges. Among the great challenges that confront Family Presiding Judges is the tension between the need for more trial days and the need for motions to be resolved promptly. It is recognized that a practical effect of making weekly motion days mandatory would be to make the off-Friday in those vicinages that hear motions every other week unavailable for trial or plenary hearing purposes. Accordingly, the Committee does not recommend mandating weekly motion hearings. The determination of whether motions should be heard weekly or bi-weekly should be left to the individual Presiding Judge in each vicinage.

E. Applicability to Family Part Matters - R. 1:6-2

In 2004, the Supreme Court amended *R.* 1:6-2(a) to require the inclusion of the discovery end date in a Notice of Motion or, the inclusion of the fact that no such date has been fixed. That amendment confines the rule to its proceedings in the Law Division-Civil Part. Given the nature of Family Part matters, the Practice Committee has concluded that Family Part matters should not come within the ambit of the existing rule.

F. Instructions for Case Information Statement

The Supreme Court referred to the Practice Committee the issue of whether approved instructions should be provided to assist counsel and pro se litigants in the preparation of the Family case information statement (CIS) form. This Practice Committee reviewed whether instructions should be prepared that might be included as an additional Appendix to the rules giving guidance as to how each portion of the CIS form should be completed. After careful consideration of the issue, the Committee does not recommend the preparation of such instructions. Continuing legal education providers (including, but not limited to, the New Jersey Institute for Continuing Legal Education and other continuing legal education programs sponsored by County Bar Associations and Inns of Court) have presented courses that have addressed the completion of the CIS form.

Apart from the availability of courses and texts that address the preparation of the CIS form, the Committee is concerned that to prepare explicit instructions would be to inhibit full usage of the form and would create value judgments that might be given substantive meaning in later proceedings. It is the Committee's view that use of the form should evolve in practice rather than imposing specific interpretations as to each of the many component parts of the form. Therefore, the Committee recommends that no action be taken on this issue.

G. Form Deposition Subpoena for Videotape Deposition

The Practice Committee has concluded that a rule is not required to address subpoenas for videotape depositions. It was suggested that if there is a need for such a form, the Civil Practice Committee might consider taking action.

H. Standard Interrogatory Forms

The Practice Committee was asked to consider the issue of whether there should be included as an Appendix to the rules standard interrogatory forms. Request for consideration of this issue was made by a member of the Committee. After careful consideration, the Practice Committee decided that a standard interrogatory form should not be created. Various forms already exist that have been prepared and are included within various texts that have been published. The practicing Bar has access to these forms.

It is our view that standard forms of this type should not be dictated. Although discovery is necessary in many cases, the Committee is concerned that if a standard form were adopted and included in the appendices to the rules, counsel/litigants would feel the need that the aforementioned form should be used in all cases. Use of the discovery tools contained in *R.* 5:5-1 is appropriate within the discretion of each litigant, or, if represented, his or her attorney. The Practice Committee sees no need for a mandated form. Beyond that, the Committee has concluded that counsel and litigants should not be discouraged from creating their own case appropriate form suitable for the individual facts of a particular case. For these reasons, the Committee declines to recommend the preparation of standard form interrogatories.

I. Limited Appearances For Purposes Of Seeking Counsel Fees

The Practice Committee was requested to consider whether an attorney should be permitted to make what might be characterized as a "Limited Appearance" in a matter for the sole purpose of making a prospective pendente lite fee application. The inquiry assumes that if the request for fees is to be denied, the attorney would be permitted to withdraw from the representation.

The Committee regards creating such a procedure, rather than serving the interests of justice, could place both the court and counsel in untenable positions. Counsel would be compromised because litigants, for a period of time, would not know whether the attorney would actually assume their representation. Courts would be confronted with a new species of motions. Under current practice, it is rare that a pendente lite application for counsel fees stands alone. More often than not, fee applications are presented with requests for the full ambit of temporary relief.

While declining to recommend a rule amendment to recognize limited appearances for the purpose of making a fee application, the Committee expanded its inquiry to address a concern that courts decline to grant applications for pendente lite attorney's fees to the detriment of non-working spouses. The Committee asks that this issue be referred to the Conference of Family Presiding Judges for the specific purpose of highlighting to the sitting Family Part bench the concerns expressed herein.

As a result of the recommendations of the Supreme Court Special Committee on Matrimonial Litigation in its February 4, 1998 Final Report, the Supreme Court, in its Administrative Determinations dated January 21, 1999, adopted Rule revisions that were eventually incorporated into *R.* 5:3-5(c). That rule, in part, states, "The court may also, on good cause shown, direct the parties to sell, mortgage or otherwise encumber a pledged marital asset

to the extent that the court deems necessary to permit both parties to fund the litigation." In its discussion of its underlying recommendation, the Special Committee specifically discussed and questioned the policy concerns that gave rise to *Grange v. Grange*, 160 *N.J. Super.* 153 (App. Div. 1978).

On June 28, 2005, the Supreme Court decided the matter of *Randazzo v. Randazzo*, 184 *N.J.* 101 (2005) in which the Supreme Court dealt expansively with *Grange* as follows:

> We take this opportunity to express our disagreement with the Grange decision. There, despite the apparent equities in favor of the sale of marital property prior to the divorce, the Grange panel reversed the trial court's judgment authorizing the sale of the marital condominium. We disapprove of Grange to the extent it stands for the proposition that absent consent, the trial court lacks authority to order the sale of a marital asset prior to the judgment of divorce.

Randazzo at 113.

In *Randazzo*, the Supreme Court held that a trial court had the discretion to order the sale of marital assets prior to a Final Judgment of Divorce when the circumstances of a case so justify.

Although the Committee does not believe that permitting special appearances is the appropriate way to address the funding of matrimonial litigation, the Committee recognizes a problem still exists. After careful consideration, the Practice Committee declines to recommend the adoption of a limited appearance rule. It is noted that a minority report regarding this issue was provided to the Committee for its consideration. The Committee further recommends referral to the Conference of Family Presiding Judges the issue of whether the purpose of *R.* 5:3-5(c) has been fulfilled.

J. Certifications Signed by Litigants with Attorney "Disclaimer"

A member of the Practice Committee requested that the Committee review whether the following text should be required to be included as part of a litigant's certification and whether this language should be adopted by rule amendment.

> The word usage and sentence structure may be that of the attorney assisting in the preparation of this Certification, and thus, it does not necessarily purport to be the precise language of the executing party.

The attorney questioned whether there is any authority in the rules for requiring this disclaimer. The attorney commented that it seemed inappropriate to allow litigants to avoid the consequences of a certified statement by attempting to rationalize that they did not intend what the words reasonably reflected because they were constructed by counsel. The Practice Committee concurs with the referring attorney that there is no authority in the rules for such a disclaimer nor would it be appropriate for the use of such a disclaimer to be approved.

The Certification language approved by *R.* 1:4-4(b) requires a litigant, in lieu of an affidavit, oath or verification to include the following certifying language:

> I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Litigants are responsible for the contents of their certifications. An attorney preparing a certification for a litigant's signature must inform the litigant of the litigant's responsibility for the language contained in the certification whether prepared by the attorney or by the litigant. Certifications are provided within the rules in lieu of an affidavit, oath or verification for the expressed purpose of simplifying the process. The use of certifications was intended to serve the convenience of both parties and attorneys.

To degrade the certification by including language that the word usage and sentence structure was that of the attorney would disserve the public by destabilizing the effects of a certification. The Practice Committee notes that the form of certification as it currently exists serves the interest of justice and therefore recommends no change in the rule.

K. Destruction of Electronic Documents

The Practice Committee was referred correspondence from a practitioner who inquired whether a rule should be adopted dealing with the preservation of computer and other electronic data. The rule would address the concerns relating to the spoliation (destruction or alteration) of evidence and the potential ethics exposure of counsel for failing properly to instruct their clients of their ethical and legal obligations relating to these matters. The inquirer proposed a specific rule that would require litigants to preserve and maintain and refrain from destroying or deleting any documentary, electronic, digital or magnetic records or communications so long as their matter was pending and would mandate that before any such documents be destroyed or deleted, counsel be consulted.

The Practice Committee recognizes that if a rule is to be adopted, the rule would be one of general application presumably appearing in Part I of the rules rather than in Part V, which contains rules solely applicable to the Family Part. The Committee has concluded that it is not advisable for such a rule to be proposed.

The Practice Committee's reasoning is that court rules should not include broad prohibitory language relating to matters that are better handled by practice or are addressed by the Rules of Professional Conduct. The Committee has concluded that this is one such issue. The Committee relies on the development of case law to address this issue.

L. Refund of Retainer After Withdrawal of Representation

The Committee was asked to consider the implications of *Fischer v. Fischer*, 375 *N.J. Super.* 278 (App. Div. 2005), and specifically whether a rule should be adopted addressing the concerns raised in both the majority opinion written by Judge Clarkson Fisher and the concurring opinion written by Judge Robert Fall. After careful consideration, the Committee recommends no rule adoption.

In *Fischer*, the appellate court affirmed the entry of an order by the Family Part that permitted an attorney to withdraw from representation before trial, but ordered the attorney to return the $10,000 retainer that had been paid. The appellate court heard the matter after having granted leave to appeal.

The issue before the Committee is the interpretation of *R.* 5:3-5 (d) and specifically whether the provisions of that rule intended to permit a Family Part judge to condition permitting withdrawal of representation upon the return of the retainer that had been received.

It is noted that *R.* 5:3-5(d), as with other rules discussed in this final report, was adopted following the Supreme Court's consideration of the recommendations of the Special Committee on Matrimonial Litigation and specifically the Court's consideration of Recommendation 5 dealing with withdrawal from representation. As noted in the Administrative Determination by the Supreme Court dated January 21, 1999, the Court adopted the rule amendment that set out procedures to be followed when withdrawal from representation was sought and set forth specific factors that the judge shall consider in making a determination on an application for withdrawal. In ruling upon this in *Fischer*, the majority opinion wrote:

> *R.* 5:3-5(d)(2), as demonstrated by the ten factors which the trial judge was required to weigh, is not designed purely for the benefit of the withdrawing attorney, as the arguments in favor of reversal would appear to suggest. Instead, as the comment to the rule indicates, these procedures provide the court "with the discretion to protect not only the client's representation interests but also the

> financial interests of attorney and client." Pressler, Current N.J. Court Rules, comment on *R.* 5:3-5 (2005). We would add to Judge Pressler's comment another factor to be accounted for in this calculus: that the unconditioned granting of such relief at a late stage also tends to burden the efficient administration of justice. n13 Our already congested Family Part calendars give rise to a considerable demand by litigants for access to the scarce judicial resources available. While each case requires careful consideration, any case that obtains a disproportionate share of the court's time--particularly when that time is expended on side issues that do little or nothing to advance the merits of a case--reduces the opportunities of other litigants to obtain their fair share of the court's attention. As a result, the change of attorneys that frequently occurs during the pendency of matrimonial matters, particularly hotly-contested matters such as the case at hand, inevitably delays not only the resolution of the suit in question but also unreasonably hinders the many other pending cases that are shunted aside while a problem case such as this takes more than an appropriate amount of the court's time. *R.* 5:3-5(d)(2) provides a trial judge with the discretion to alleviate that injustice by either refusing an attorney's request to be relieved at such a late date, or by permitting withdrawal on conditions that insure, as best as can be hoped, the case's expeditious resolution.
>
> We detect no abuse of discretion in the trial judge's ruling that has been questioned in this appeal. Indeed, the trial judge's order, considering the extraordinary history of this action, very sensibly and pragmatically resolved the motion to be relieved in a manner that fairly balanced the concerns of the litigants and the attorneys involved, and the administration of justice as well.

Fischer at 290-91.

The Committee, although recognizing the majority opinion, acknowledges the concurrence written by Judge Fall, which expressed concern that the language contained within the majority decision might be viewed and applied too broadly. Judge Fall, in his concurrence, stated:

> I agree with the result reached in the majority opinion issued by my colleagues. The unusual and extraordinary circumstances presented to the motion judge fully warranted the relief granted as part and parcel of the order relieving the Gourvitz firm as counsel for defendant. However, the sanctioning of a procedure that permits a Family Part judge to direct an attorney to return the entirety of a retainer to his or her client in order to fund the retainer for succeeding counsel or otherwise fund the continued litigation costs is an unusual and extraordinary remedy that should have prescribed limits that are consistent with the rule-based scheme adopted by the Supreme Court, which were developed after years of study.

> I write separately because I am concerned that the majority decision may be viewed and applied too broadly. In my view, a family law attorney who enters into a retainer agreement with a litigant that fully complies with the content requirements of *R.* 5:3-5(a), and does not contain provisions proscribed by *R.* 5:3-5(b), should not be subject to the court's discretionary exercise of its equitable authority in the form of an order compelling the return of that retainer to the litigant upon the grant of a withdrawal application, unless the court also finds that the actions of that attorney have, in some way, contributed to the circumstances that have led to that withdrawal application and the consequent inability of the litigant to retain a substitute attorney. Moreover, where services have been expended on behalf of the litigant the court should not require a withdrawing attorney to refund a retainer unless the court also finds that there are no marital assets that can be sold, mortgaged, otherwise encumbered or pledged to fund the litigation in accordance with the discretionary authority vested in the court by *R.* 5:3-5(c).
>
> *Fischer* at 292.

The Practice Committee does not recommend the adoption of a rule. The exercise of the authority to direct the return of a retainer to a litigant upon withdrawal of counsel should be limited to factual patterns that are consistent with the concurrence by Judge Fall. Individual fact patterns should be judged on a case by case basis rather than addressed by either a rule of general application or a rule contained in Part V.

M. Checks Received By the Judiciary

The Practice Committee was asked to address the issue of checks received by the Judiciary that are not made payable to: "Treasurer, State of New Jersey."

The Committee refers to Administrative Bulletin MS-212 issued by Director Carchman effective September 1, 2005. The Committee notes that the following is included in Administrative Bulletin MS-212:

> 4.0 PROCEDURES
>
> Checks received by the Judiciary, with the exception of Child Support, should be made payable to: **Treasurer, State of New Jersey**. This procedure is applicable to all Divisions and Courts of the Judiciary where checks are accepted for fees, services, restitution, trust, escrow, court filings, etc.
>
> In cases where a check is not made payable to **Treasurer, State of New Jersey**, the Judiciary should accept that check and restrictively endorse it for deposit, and advise the client of correct payee information for future payments. The Judiciary should not return checks to clients if they are not made payable to Treasurer, State of New Jersey.
>
> This procedure does not apply to the New Jersey Municipal Courts.
>
> Questions may be directed to William A. McDonald - Chief Banking and Cash Management at (609) 984-5276 or Debra Williams - Assistant Chief Banking and Cash Management at (609) 633-9636. (Emphasis in the original)

Based on this bulletin, no rule is recommended.

N. Appendix IX-A - Multiple Family Obligations

The Practice Committee has reviewed situations involving obligors with multiple child support obligations. Specifically, the Committee considered cases where the obligor was involved in multiple child support cases and those cases were not venued in the same county or in some instances, one of those cases was not venued in New Jersey. The general policy on serial obligor cases is set forth in the Rules of Court, Appendix IX-A: § 10, "Adjustments to the Support Obligation", subsection (b), "Multiple Family Obligations"; and § 21 "Other Factors that May Require an Adjustment to a Guidelines Based Award."

Appendix IX-A, § 10(b) provides:

> Multiple Family Obligations. In some cases, one individual may be obligated to pay child support to multiple families. When the court adjudicates a case involving an obligor with multiple family obligations, it may be necessary to review all past orders for that individual. If the court has jurisdiction over all matters, it may either average the orders or fashion some other equitable solution to treat all supported children fairly under the guidelines. If multiple orders reduce the obligor's income to an amount below the self-support reserve, the orders should be adjusted to distribute the obligor's available income among all children while preserving the obligor's self-support reserve. If other jurisdiction's tribunals ordered the obligor to pay child support for a different family, the New Jersey court may consider that fact for the purpose of maintaining the obligor's self-support reserve.

The Supreme Court amended this provision in 2000 stating that courts may be required to address all child support cases relating to the same obligor. Venue is a pivotal issue to adjudicating these cases. The Committee considered whether the solution was to consolidate all the cases in one venue. The Committee identified various obstacles: change of venue to consolidate cases is problematic; attempts to list all the cases together often delayed proceedings because lack of service on one matter required rescheduling all cases; FACTS notices for modification could not issue unless the matters were going to be heard in the county of venue, thus requiring manual notices for those other cases; Probation has no authority to schedule these

cases for modification. Balancing the interests of the obligor and the multiple families fairly is difficult when families are in different counties or outside of New Jersey.

Given the structuring of the New Jersey court system, there is no feasible method at this time to amend Appendix IX-A, § 10(b), in such fashion as to achieve equitable resolution in all cases involving an obligor with multiple family obligations. Resolution is achievable where all orders are within a single venue, but is problematic where the various orders are venued in multiple counties, or outside of New Jersey. The Committee recommends that attempts to resolve this issue by rule amendment be abandoned, but notes that courts should be encouraged to address this issue when it arises, where practicable.

O. Including Language of What Child Support Covers in Child Support Orders

During routine management of support cases by the Probation Division, the issue of collectable items arises frequently. It is not uncommon for courts to enter orders directing Probation to enforce provisions in a judgment or order that do not constitute child or spousal support. This issue was referred to the Family Practice Committee to make recommendations regarding the adoption of a governing rule.

In New Jersey, the vast majority of orders providing for child and spousal support are enforceable through Probation, using a variety of automated processes. The Title IV-D Automated Child Support Enforcement System (ACSES) has been designed to accommodate the enforcement of items that fall within the definition of child and/or spousal support. When courts order Probation to enforce provisions that do not constitute child or spousal support, such items cannot be properly entered in ACSES. In addition, due to system limitations, even those items that are clearly defined as support may not be identified in ACSES as arrears owed to the obligee, a foreign court or a welfare agency.

It is clear that Family Part judges have broad authority to issue orders involving persons and matters over which they have jurisdiction. Furthermore, federal and state law, rules and regulations governing the Title IV-D program do not limit a judge's discretion to enter judgments or orders pertaining to support over which the court has competent jurisdiction. The issue is not whether judicial authority is circumscribed by law or policy; rather, the issue relates to the administrative and fiscal impact on judiciary operations.

Although Probation functions as an arm of the court, and is charged with carrying out the provisions of support orders, consideration must be given as to whether an activity performed by Probation is a Title IV-D function. Title IV-D activities performed by Probation are partially

reimbursed by the State IV-D agency, and non-IV-D activities are not. Probation has the ability to enforce lawful orders, but if the activity is not a Title IV-D function, it is not reimbursable. In addition, those activities are not automated through ACSES, and therefore the probation officer must enforce the order manually. This manual enforcement includes, but is not limited to, typing and mailing letters, scheduling hearings and tracking the cases for follow up activity. These duties are extremely time-consuming and not reimbursable, and they divert resources from reimbursable Title IV-D activities. In addition, if non-reimbursable duties become part of a full-time Title IV-D staff person's job, then the staff person must closely monitor his or her time to on the IV-D time sheet. Enforcing matters not reimbursable by Title IV-D places additional burdens on overextended Probation staff.

Courts may consider the fiscal impact that uncollected charges have on the Child Support program. Even where the charge, e.g. attorney's fees, is appropriately added to the support order, the uncollected amount results in a corresponding increase in the total amount of arrearages owed by obligors. Since states receive federal incentive dollars based on a number of factors, one of which is percentage of arrears collected, an increase in the total amount of arrears may negatively affect the amount of federal incentive the Child Support program receives and passes on to the child support enforcement agencies for child support enforcement.

The Conference of Family Presiding Judges, at its April 6, 2006 meeting, agreed that only those items defined by *N.J.S.A.* 2A:17-56.52 as "child support" or "spousal support" to the payee should be collectable through Probation. Attorneys should be advised that they should not be indicating non-collectable items as collectable in their consent orders. The Conference further agreed that judges, law clerks and attorneys should be educated as to Probation responsibilities regarding collection of items not reimbursed pursuant to Title IV-D.

For the foregoing reasons, no rule is recommended.

P. Criteria for Differentiating Between the Duties of the Attorney and Guardian for Children

The Committee has considered amending *R.* 5:8A, which addresses the appointment of counsel for a child. The Committee concluded that amending this rule to segregate issues relating to a child's financial interest is not in the child's best interest. Therefore, no rule adoption is recommended.

Q. Rule 5:3-3 - Re: Consultation with Experts

The Committee has considered amending *R.* 5:3-3(b) to permit each party's expert in a custody action to confer regarding parenting arrangements. The Committee believes that permitting such a meeting is inappropriate and therefore recommends no rule change.

V. Other Recommendations

A. Two Orders, One Motion

Discussion

Rule 1:6-2(a) requires that all motions shall be accompanied by a proposed form of order in accordance with *R.* 4:42-1(e) and that the form of order shall note whether the motion was opposed or unopposed. Currently, no uniform practice exists as to the preparation of orders at the conclusion of motion hearings. In some vicinages, particularly those in which tentative decisions are issued pursuant to *R.* 5:5-4(e), the court generates the order based upon the amended tentative decision issued as the result of argument during the motion hearing. In other vicinages, counsel prepare a form of order following hearings on blank forms furnished by the court. The Practice Committee notes that this practice is essentially consistent with Recommendation 26 of the report of the Special Committee on Matrimonial Litigation (February 4, 1998) that specifically addressed *R.* 1:6-2(a). The Special Committee wrote:

> The Committee bases its recommendation on the importance of having a prompt memorialization of the court's oral decision. Deleting the Family Part exception to *R.* 1:6-2(a) should avoid the problem too frequently encountered by both the bench and bar concerning the settlement or disputed forms of order. Disputes as to the form of order could be resolved on the spot without the need for costly transcripts and the expenditure of time by both counsel and the court.
>
> The Committee recognizes that, particularly with certain omnibus pendente lite motions, counsel, pro se litigants or the court might be confronted with the daunting task of amending/conforming multiple rulings made by the court from the bench. In this regard, the Committee approvingly cites initiatives now present in certain vicinages in which the form of orders are resolved prior to counsel leaving the courthouse.
>
> First, the Committee approvingly refers to an effort now underway in Cumberland County, and perhaps elsewhere, where the court provided counsel with blank forms of order with built in carbon so that the order might then be immediately completed. Such forms should be made available statewide so that when the pre-prepared orders could not easily be tailored to include all of the court's ruling, the orders could still be completed before counsel/the parties leave the courthouse.

This practice has come to be known as the "no-day" rule. a take-off on the 5-day rule that has become the favored method of submitting Family Part Orders. A copy of the blank form of order in use in Cumberland County is included as Section A-3 of the Appendix to the Report.

Second, the Committee also approvingly cites the effort in Ocean County where computer generated orders prepared by the court are distributed, reviewed and settled, again before counsel leave the courthouse. Implementation of such a program would depend on the availability of the requisite hardware and software.

Third, the Committee does not discourage tailoring the forms of order that would be submitted under the revised rule to reflect the rulings that have been made. The Committee discourages, however, entry of more than one form of order stemming from one motion day hearing. Multiple orders stemming from a single hearing can be misleading and lead to later confusion. Again reference is made to Judge Pressler's opinion in *Filippone v. Lee*, supra, 304 *N.J. Super*. at 307, in which the following commentary appears:

> There is yet another anomaly we must address. The emancipation decisions made here resulted from the father's motion to enforce the mother's adjudicated support obligation and mother's cross motion to declare the children emancipated. In making their respective motions, each party submitted a form of order in accordance with R. 1:6-2(a). Predictably, the two forms contained contradictory and otherwise disparate provisions. As we have noted, each of the parties prevailed to some extent. One child was declared emancipated, the other not, and discrete support and arrearage provisions flowed from each determination. Under these circumstances, the appropriate way for the court to have proceeded would have been to advise the parties of the totality of its rulings with reasons therefor, and then directed one of the parties, most likely the one most prevailing, to draft a single conforming order memorializing all of the dispositions. What happened here is that the judge, with substantial interlineations, added paragraphs, and crossings out, signed both the orders submitted to him with the motions. The result is a pair of orders difficult to read and refer to, to some extent inconsistent in decretal provision, and providing a poor and potentially confusing litigation record for now and the future. That too disserves the interests of the parties and the appellate court and is a practice that should not be repeated. *Filippone* at 307.

The Committee subscribes to Judge Pressler's criticism of the practice of entering more than one order from a single hearing. On the other hand, the Committee prefers experimentation like that now underway in Cumberland and Ocean counties which permit settled forms of orders to be entered immediately following the motion hearing.

> Both the Cumberland and Ocean County initiatives reflect the ingenuity and practicality of the judges who have conceived and implemented the programs involved. Although both programs require the investment of more time for both the bench and bar when a motion is heard, both save an even greater amount of time by eliminating what would be otherwise unnecessary hearings to later resolve the forms of disputed orders. The Committee encourages other vicinages to either adopt the Cumberland or Ocean County programs or to formulate programs of their own to reduce the number of orders not formally reduced to writing on the day a motion is argued and decided. Although the Committee generally disapproves of local practice rules, the type of innovation we recommend should be allowed to continue with the view that, toward the end of the 1998-2000 rules cycle, the Family Division Practice Committee could review the programs in place to seek possible uniformity.
>
> Having recommended that the Family Part exception should be deleted from *R.* 1:6-2(a) and the experimentation with the programs now in use in Cumberland and Ocean Counties, the Committee still recognizes that circumstances will arise where it is still impractical for an order to be prepared, modified and conformed following hearing. In such cases, consistent with present practice, the Committee leaves to the individual Family Part judge assignment of the preparation of the form of order to one of the appearing attorneys.
>
> Special Committee Report at 113-16.

In its administrative determinations based on the Special Committee's report, the Court wrote:

> RECOMMENDATION #26: There should be a new rule creating a procedure for expeditious entry of orders following determination of a motion. The rule should contain a presumption in favor of the entry of the motion order prior to counsel, or the parties if they are pro se, leaving the courthouse.

The Court did not specifically discourage the entry of multiple orders on the same motion.

The Practice Committee agrees that it is preferable for there to be one order stemming from a hearing (whether or not that hearing involved both a motion and a cross-motion).

Recommendation

The Practice Committee recommends referring this issue to the Conference of Family Presiding Judges to review and, if necessary, to develop procedures. The Committee notes that it favors the practice of one order over multiple orders because, frequently, two orders are

confusing. The Practice Committee also recommends for the Conference's consideration, that when two orders are entered, each order should contain reference to the entry of the other order. The Practice Committee reaffirms that only in extraordinary situations involving very complex motions should the entry of the order be delayed beyond the date of the motion hearing. To do otherwise would be to return to the era when second appearances were commonplace to settle the court's oral order.

B. Open Court Rooms

Discussion

Rule 1:2-1 requires that all trials, hearings on motions and other applications, pretrial conferences, arraignments, sentencing conferences (except with members of the probation department) and appeals shall be heard in open court unless otherwise provided by rule or statute. The Practice Committee has been anecdotally advised that in some courtrooms litigants are only permitted to be present in court when their own matter is being heard or that litigants may not be permitted to be accompanied into a courtroom by a member or members of his or her support group. Such practices, although admittedly rare, are inconsistent with the existing rule and against the public interest. Only special proceedings specifically authorized by statute, rule or necessitated by special circumstances should be conducted behind closed doors. Although the Committee does not want to impinge upon the discretion of an individual judge in the control of his or her courtroom, the basic policy of keeping proceedings open should be followed.

Recommendation

The Committee recommends referring this issue to the Conference of Family Presiding Judges for consideration.

C. Maintaining the Confidential Litigant Information Sheet Pursuant to R. 5:4-2(g)

The Practice Committee has reviewed the handling of the Confidential Litigant Information Sheet (CLIS) in various courts. Some Committee members commented that, in some cases, judges are asking that litigants complete the CLIS multiple times, which is burdensome and redundant.

The Committee notes that existing rules require submission of the form upon the filing of the complaint. Some judges, however, also require the form to be completed at the time of the oral entry of a Final Judgment of Divorce. Apparently, some judges do not have access to or were unaware that the CLIS had been filed. The Committee has concluded that this latter concern should be eliminated over time as courts continue to require parties to file the CLIS with their initial pleadings.

Most of the Committee members expressed concern as to how this confidential form was being safeguarded. The specific concern was whether the CLIS remained confidential. The Committee has been advised that the Family Division of the Administrative Office of the Courts, in conjunction with the Conference of Family Presiding Judges, has addressed this issue and that the Committee need not recommend a protocol for safeguarding the CLIS.

Recommendation

The Practice Committee recommends referring this issue to the Family Practice Division with the suggestion that a standard notation should be placed on all file jackets as to whether and when a CLIS was submitted by each litigant. This would provide notice to the judge that a CLIS has previously been completed and filed, and thus avoid asking litigants to complete the CLIS form more than is necessary.

VI. Matters Held for Consideration

A. Review of Appendix IX - Re: Economic Principles of Child Support Awards

Pursuant to the Family Support Act of 1988 (42 *U.S.C.A.* § 467(a)) and 45 *C.F.R.* 302.56(e), each state is required to review its child support guidelines every four years (Quadrennial Review) "to ensure that . . . application [of the guidelines] results in the determination of appropriate child support awards." Specifically, states are required to review current economic data on child-rearing costs as well as review actual case data on deviations of awards from guidelines. The Administrative Office of the Courts sponsored two reports to satisfy the Quadrennial Review requirement: (1) "New Jersey Economic Basis for Updated Child Support Schedule Report" (Economic Basis Report), dated March 30, 2004; and (2) "Findings from Child Support Order Case File Reviews" (File Reviews Report), dated January 12, 2005.

The Economic Basis Report reviews current economic data and applies more recent Consumer Expenditures Survey (CEX) data than reflected in the child support schedule of awards (Appendix IX-F) adopted in 1997 and effective through August 31, 2006. The Economic Basis Report forms the basis for the current Appendix IX-F that became effective September 1, 2006. Since then, concerns have been raised as to the decreased awards resulting from the review and whether any errors accounted for the downward turn in the schedule of awards.

The Committee has been in contact with Jane Venohr, Ph.D., the economist with Policy Studies, Inc. who authored the reports. She worked with economist Dr. David Betson who converted the CEX data to estimates of child-rearing expenditures using 1996-99 data. When the 2004 Economic Basis Report was prepared, the 1996-99 data were the most current data

available. Both economists have experience in updating child support guidelines of many states, including New Jersey. Dr. Betson is recognized as a leading authority in this field and has been instrumental in developing data useful to states in reviewing their guidelines. Dr. Venohr assured the Committee that there was no change in the methodology used to develop the estimates of child-rearing expenditures between the 1997 schedule and the 2006 schedule. The estimates of child-rearing costs underlying the tables used in 1997 and 2006 were developed by Dr. Betson using the Rothbarth methodology. New Jersey maintains the income shares model and assumptions remain the same. Dr. Venohr, in a letter to Richard Russell, Chair of the Child Support Subcommittee to the Supreme Court Family Practice Committee, dated October 31, 2006, set forth some factors to consider regarding the current Appendix IX-F:

- The primary cause of the changes in the table is change in expenditure patterns of families surveyed in 1980-86 versus families surveyed in 1996-99. The new schedule is based only on the updated economic data.

- The decreases are the product of more current economic data.

- The decreases impact all income ranges in the schedule but are more pronounced at the higher incomes and in awards for three to six children.

- Since updated economic data form the basis for the new schedule, it is necessary to examine the source of the data. The major change since 1997 involves the CEX conducted by the Bureau of Labor Statistics (BLS). These surveys are used because they are the most comprehensive and in-depth surveys on household expenditures. The CEX captures 95% of expenditure items. The CEX constantly reviews the items captured because the data is used to track changes in price levels and how they are measured.

- The CEX in 1984 began to combine urban and rural areas in its published measurements. Prior to that, only information from urban areas was included.

- The CEX records expenditures for over 1,000 items including tennis club memberships and other items that may be considered discretionary or lifestyle spending. The estimates capture the average of these expenditures.

- The CEX gathers information through two components: quarterly interviews and weekly diaries. The BLS completes quarterly interviews with approximately 7,800 households using a sampling strategy representative of the U.S. civilian population. These are the data sources of the estimates of child-rearing expenditures. The use of a rotating survey insures a stream

of new households. Each household is interviewed for five consecutive quarters. Dr. Betson uses families that have participated in at least three quarterly interviews over several years to increase the sample size.

- The sampling and response rates to the CEX have improved due to geographical restructuring and rephrasing of the questions.

- The sample size for higher incomes has increased significantly since the last estimates of child-rearing expenditures were developed. With the 1997 table, there were only 350 families with incomes greater than $100,000. Now the sample includes 600 families with incomes above $125, 000 and over 300 cases with incomes of $150,000 or more.

- In 1997, the schedule proposed had an upper limit of $175, 240 annual net income. The realignment of the cost estimates from national to New Jersey income distributions increased the upper limit to this amount. The Family Practice Committee recommended that the revised schedule be capped at $125,000 annual net income to allow judicial discretion to set support awards for families with incomes above that level. Ultimately, the cap was set at $150,800 ($2,900 net weekly). At that time, the Court based its decision on the fact that the CEX was not as reliable due to the limited number of families with high incomes in the survey. The sample size is now greater than it was in 1997.

- It is important to remember that the methodology to calculate child-rearing costs is not an accounting method, i.e. income in one column and expenditures in the other column. Child-rearing expenditures are calculated by comparing two equally well-off households: one with children and another without children. The difference in expenditures between the two households is attributed to child-rearing costs, i.e. marginal cost.

- One assumption in New Jersey's guidelines is that for the purpose of determining child support obligations, marginal cost estimation techniques, which provide the additional cost of children based on intact family spending patterns, are more appropriate than average-cost methods that divide spending between all family members (per capita).

When comparing the existing and updated schedules, it is noted that the economic factors have not changed. Below are the key design assumptions based on New jersey's guidelines model that were factored into the development of the schedule.

- The major categories of expenditures include food, housing, home furnishings, utilities, transportation, clothing, education and recreation.

- The schedule does not include expenditures on child care, extraordinary medical and children's share of health insurance costs. The costs for child care, extraordinary medical and children's share of health insurance costs are deducted from the base amounts used to establish the schedule. In New Jersey, these items are added on to the basic child support obligation as actually incurred in individual cases.

- In the Economic Basis Report, Technical Appendix, Table I-4 sets forth "Expenditures on Children as a % of Total Consumption Expenditures" for one, two and three children. The table also gives the child care cost and medical cost as a percentage of consumption per child. Also available for comparison is the table prepared by Policy Studies in April 1995 as part of their report to update the schedule adopted in 1997. Although the ranges of income have changed, they provide a comparison of the percentages for the cost of child care and medical between the 1997 and 2006 schedules.

- Medical costs reflect a consistent increase for all income ranges.

- Child care costs have decreased at the lower levels from the 1997 figures and increased at the higher incomes. There is less net income for consumption at the lower income, which may reflect that families may be using resources like relatives to provide child care at a lower cost or no cost.

- The schedule does include expenditures on ordinary medical care and is based on the assumption that expenditures on ordinary medical care are $250 per year per child in accordance with our guidelines.

- The schedule is based on average expenditures on children zero through 17 years of age.

- Visitation and shared parenting time are not factored into the schedule, nor is the self-support reserve.

- The three economic factors considered in updating Appendix IX-F are: changes in the price levels, changes in New Jersey income relative to national income and the new measurements of child-rearing expenditures.

- The most significant impact on the new table of awards was due to the application of the new Betson-Rothbarth measurements of child-rearing costs based on the 1996-99 CEX spending patterns. Although there are no statistical differences (i.e., averages fall outside the margin of error of the measurement - Betson-Rothbarth measurements have a margin of error of 4%), there are apparent differences when the child rearing expenditures are broken down by the number of children and income groups. The differences are large enough to impact the schedule of basic child support awards. These differences result from the new measurements of child-rearing costs, specifically a precipitous decline in child-rearing costs as income increases.

In the Quadrennial Review, states must review their guidelines and make appropriate adjustments to them based on more current economic data. Decreases in the current Appendix IX-F as compared to Appendix IX-F in effect before September 1, 2006, does not mean that New Jersey's prior schedule was wrong or the current schedule is wrong. They both were developed from data collected over a span of 10 to 13 years. During that time, interest rates dropped

significantly and income increased for many such that the CEX included higher income consumers in that survey. The state must ultimately decide whether the current income shares model used in New Jersey should be re-examined if the experience with the new awards tables suggests that they do not accurately reflect child-rearing expenditures.

On its own motion, the Practice Committee conducted a follow-up review of the Schedule of Child Support, Appendix IX-F, adopted effective September 1, 2006. There were significant changes of awards at certain income levels in the September 2006 Appendix IX-F. At the November 15, 2006, Family Practice Committee meeting, Mr. Russell provided an historical summary of the process of the development of child support guidelines in New Jersey. In 1997, New Jersey adopted child support guidelines based on methodologies developed by Dr. Betson. Mr. Russell noted that the methodologies were reliable. The guidelines adopted in September 2006 were done in part by Dr. Betson using the same methodologies. The more current data (1996-1999) used for the September 2006 guidelines were more accurate than data used for the 1997 guidelines (1980-86). The current data contained many more consumer expenditure surveys than the 1980-86 surveys. The data supported the expansion to higher income families without any extrapolation; there was no extrapolation in 1997 or 2006. Dr. Venohr's October 31, 2006, letter sets forth the reasons for the changes in the child support awards. Mr. Russell suggested that there was no way to increase the child support awards without significantly altering the underlying data and analysis.

The Committee discussed these additional items. If experience proves that the schedule does not accurately reflect child rearing expenditures (i.e., the courts deviate from the guidelines more frequently), then the Committee will recommend that the Supreme Court consider adopting a different methodology. It should be noted, however, that analyzing and adopting a new

methodology would take several years to accomplish. Despite the assurances of the economists that the samples were scientifically acceptable, some Committee members were concerned that the sample size of the surveys for the high income families was too small to be significant. Members of the Committee also suggested that high income families with more disposable income spend money in unique ways and should be afforded more judicial review for determination of child support.

The Practice Committee recommends a review of the presumption language in Appendix IX in the next rules cycle and that a recommendation should be made to provide for deviations in appropriate cases. The Committee also notes that there are significant expenses not accounted for in the schedule and that these may be listed as possible extraordinary expenses to be added to the basic child support award. There was concern that the 2006 guidelines would produce awards that were not fair and adequate to meet the needs of New Jersey families.

The Practice Committee recognizes that all income levels were impacted by the September 1, 2006 guidelines amendment. The Committee recommends that in the first six months of the 2007-09 rules cycle, a review of alternate or modified models for child support guidelines be conducted. The Committee would also like to identify all expenses covered under the child support guidelines in order to recognize significant expenses that might be considered for deviating from the guidelines. After the analysis of these two items, the Committee recommends the submission of an out-of-cycle recommendation, if necessary. The Committee further recommends exploring methodologies used by other states and recommends seeking the views of other economists in this specialized field of child support guidelines development.

B. Enforcement of Orders to Outside Parties

Referred to the Practice Committee was the issue of the enforcement of orders on parties who are not parties to the litigation. The issue arose as a result of an inquiry forwarded to then Administrative Director Williams. The person asked that when an order is entered to attach an individual's pension funds some identifying information should be provided in order to avoid personal identification problems. The person wrote:

> The problem is the absence of appropriate personal identification, e.g., social security number, full name with middle initial and a home address, led Citicorp to flag the wrong pension account.
>
> . . .
>
> It would appear to me the court system bears a higher level of responsibility to have processes and procedures in place that requires lawyers to provide sufficient and irrefutable information necessary to establish the correct target of a legal action.
>
> As we all know from the news headlines, identity theft is a major issue in today's society. But an issue of equal concern is the incorrect information that may be disseminated from source to source (including credit agencies) where someone is wrongly labeled by the actions of government or by the Court.

The General Procedures and Rules Subcommittee of this Practice Committee recommended the adoption of a rule that would require orders directed to third-party agencies to contain the last four digits of a social security number as well as the individual's date of birth. This Practice Committee, however, believes that this issue is properly before the Supreme Court Committee on Public Access to Court Records and therefore will hold this matter until that Committee has issued its report.

C. Contents of the Confidential Litigant Information Sheet - Appendix XXIV

The American Civil Liberties Union of New Jersey wrote a letter to the Family Practice Division that addressed the inclusion of a litigant's maiden name and address in the Confidential Litigant Information Sheet (CLIS), Appendix XXIV. That letter was referred to this Practice Committee for review. This Practice Committee believes that this issue is properly before the Supreme Court Committee on Public Access to Court Records and therefore will hold this matter until that Committee has issued its report.

D. Name Change of Minors During Divorce

The Practice Committee reserves the issue pertaining to name change of minors during divorce. Although the Committee began its deliberations to consider the adoption of a rule dealing with the name change of children during divorce proceedings, the Committee has not reached a final conclusion and defers the issue to the 2007-09 rules cycle. It is noted that this issue was carried from the 2002-04 rules cycle. The Committee's deliberation will include a review of Justice Stein's opinion in *Gubernat v. Deremer*, 140 *N.J.* 120 (1995), which addresses these name change applications. The Practice Committee believes that further deliberation is required before submitting a recommendation to the Court.

E. United States Postal Service Postal Certifications

The Committee was asked to consider whether electronic postal certification should suffice as proof of service of relevant pleadings.

By memorandum dated January 31, 2006 from Director Carchman to Judge Serpentelli, the Practice Committee was informed that the Conference of Family Presiding Judges had requested that the Supreme Court consider amending the rules to permit the court to accept United States Postal Service (USPS) internet tracking information as sufficient proof of service of process to determine whether certified mail has been delivered or not. This proof of service would be an alternative to the physical receipt of a return receipt. The Committee has not concluded its deliberations on this issue and reserves the matter for the 2007-09 rules cycle.

F. Application of R. 5:6B Cost-of-Living Adjustments to Child Support Orders Entered Prior to September 1, 1998

The Practice Committee is reviewing the issue of applying *R.* 5:6B cost-of-living adjustments to those orders containing child support entered before September 1, 1998. The Committee has not concluded its deliberations on this issue and reserves the matter for the 2007-09 rules cycle.

G. Coexistence of R. 5:6B Cost-of-Living Adjustments on Child Support Orders and N.J.S.A. 2A:17-56.9a Triennial Review/Adjustment of Child Support Orders (42 U.S.C.A. §666)

The Practice Committee is reviewing the issue of whether to adopt a rule to provide for the coexistence of *R.* 5:6B cost-of-living adjustments to child support orders and *N.J.S.A.* 2A:17-56.9a Triennial Reviews. The Committee has not concluded its deliberations on this issue and reserves the matter for the 2007-09 rules cycle.

H. Rule 5:25-3 Child Support Hearing Officer Appeals

The Conference of Family Presiding Judges asked that the Family Practice Committee review *R.* 5:25-3, which relates to the authority and duties of the child support hearing officers (CSHO). A CSHO hears cases and recommends orders on child support matters to establish paternity and support, to modify support and to enforce support, including interstate matters filed pursuant to the Uniform Interstate Family Support Act (UIFSA), *N.J.S.A.* 2A:4-30.65, et.seq. CSHO matters are summary actions, which differ from standard court actions in that a defendant does not file an answer to the complaint but must appear in person. CSHOs make recommendations and draft form orders. The Family Presiding Judge or a designated judge reviews the CSHO recommendation and if the recommendation is appropriate, the judge signs and ratifies the order. Parties appearing before the CSHO are entitled to an immediate appeal if they disagree with the CSHO's recommendation. Rule 5:25-3(d)(2). Generally, appeals are requested at the conclusion of the CSHO hearing and heard by the judge on the same day.

Sometimes parties leave the hearing and later (more than 24 hours after the hearing) seek the immediate appeal pursuant to *R.* 5:25-3. Rule 5:25-3(d)(2) also provides that "[f]ailure to request a de novo hearing does not bar a motion for a new trail pursuant to Rule 4:49 or a motion for Relief from Judgment pursuant to Rule 4:50." Rule 5:25-3(d)(2) provides a procedure for appeals not requested at the hearing, e.g., a party must file a motion in the county of venue. The Conference of Family Presiding Judges concluded that the reference to *R.* 4:49 was not applicable to appeals from hearing officer proceedings and should be deleted and that *R.* 4:50 was appropriate for a party seeking a de novo hearing.

The Practice Committee commenced a discussion on this proposed rule amendment and recommends that the issue be reserved for discussion in the 2007-09 rules cycle to allow the

Committee to explore related issues regarding the de novo hearing and whether the reference to *R.* 4:49 should be deleted from *R.* 5:25-3.

I. Rule 5:2-1 Amendment to be Consistent with the Uniform Interstate Family Support Act and Uniform Child Custody Jurisdiction and Enforcement Act

The Practice Committee is reviewing the issue of amending *R.* 5:2-1 to provide that venue is consistent with the Uniform Interstate Family Support Act (UIFSA) and Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The Practice Committee has not concluded its deliberations on this issue and reserves the matter for the 2007-09 rules cycle.

J. Audiotaping and Videotaping Custody Evaluations

The Practice Committee is reviewing the issue of permitting the recording of custody evaluations. The Committee has not concluded its deliberations on this issue and reserves the matter for the 2007-09 rules cycle.

K. Short Form Family Case Information Statement for Post Judgment Dissolution Motions Modifying Child Support

The Practice Committee is reviewing the issue of creating a short form Family case information statement for post judgment motions to modify child support in dissolution matters. The Committee has not concluded its deliberations on this issue and reserves the matter for the 2007-09 rules cycle.

VII. Out of Cycle Activity

A. Amendment to R. 5:19-1 - Establishment of Venue; Change of Venue

In juvenile delinquency proceedings, *R.* 5:19-1, prior to amendment, presumed venue in the juvenile's county of domicile unless there were multiple defendants. In those cases, venue was laid in the county where the incident allegedly occurred. Over the years, concerns were raised because the information most useful to the Family Part judge assigned to hear the juvenile delinquency case was uniquely available in the juvenile's county of domicile. The Conference of Family Presiding Judges recommended that the rule be amended. The amended rule supports a presumption in favor of venue in the county of the child's domicile; requires Family Part case management in the county where the complaint was originally filed to notify the State, and any attorney of record, of the existence of multiple defendants; permits the raising of an objection within five days of such notice of multiple defendants in the county where the complaint was originally filed and requires good cause to retain venue there; and for any other reason, a motion to change venue may be brought at any time, which also requires a finding of good cause to change venue. The amendment was adopted by the Supreme Court effective September 1, 2006.

B. Amendment to Appendix XVI - Uniform Summary Support Order and Notices to Litigants

As prescribed by *R.* 5:7-4 (b), in non-dissolution proceedings, the court is required to record its decision using the Uniform Summary Support Order (USSO) adopted as Appendix XVI of the Rules of Court.

The USSO and the New Jersey Uniform Support Notices (Notices) were developed to: improve the collection and exchange of information between judges, Family and Probation Divisions; enhance understanding of court orders by litigants; provide statutorily required notices; and expedite preparation and dissemination of support orders statewide. The USSO and Notices continue to serve these functions but were revised to improve capturing and disseminating information necessary for effective case management.

C. Amendment to R. 5:7-4(c) - Re: Calculation of Arrearages at Establishment Hearings

In March 2005, the Judicial Council recommended that in all support cases (dissolution, non-dissolution, and domestic violence case types), arrearages must be calculated at the establishment hearings. In conjunction with the establishment of arrears, a determination of any appropriate direct payments from the obligor to the obligee to cover the period between the effective date of the order and the hearing date must be credited in the calculation of arrearages.

This recommendation to calculate arrearages at the establishment hearing was to provide notice to the litigants as to the exact amount of support owed at the time the order is entered. To establish the importance of this practice and facilitate its implementation, *R.* 5:7-4(c) was amended to ensure that, at the inception of every dissolution, non-dissolution and domestic violence (case types FM, FD, and FV, respectively) case, the parties would know the amount of the arrearages that are owed. Arrearages are a debt and it is reasonable for the parties to know the total amount at the outset.

D. Amendment to R. 5:7A. Domestic Violence: Restraining Orders

The Prevention of Domestic Violence Act, in *N.J.S.A.* 2C:25-29a, states that a 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." To conform the Rules of Court to that statutory provision, the Supreme Court by order of July 7, 2005 amended the second sentence of paragraph (f) of Rule 5:7A to read as follows: "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. Quadrennial Review of Rule 5:6A Child Support Guidelines and Amendment to Appendix IX-F - Schedule of Child Support Awards

Pursuant to the Family Support Act of 1988 (42 *U.S.C.A.* § 467(a)) and 45 C.F.*R.* §302.56(e), states are required to review their child support guidelines every four years by reviewing current economic data on child-rearing costs and analyzing case data on the application of and deviations from the guidelines. Due to the federal requirement and the availability of new economic research, the Child Support Subcommittee undertook a guidelines review, commencing in the 2002-2004 rules cycle.

The AOC contracted with Policy Studies, Inc. in Colorado, which was commissioned to provide two Quadrennial Review reports to assist in the guidelines review. These reports explained the empirical basis for the proposed child support schedule and the method by which the economic data used was realigned to apply to New Jersey.

Considering that the schedule of basic child support awards had not been updated since 1997, the availability of new data provided the courts with an economics based method of setting fair, adequate and consistent child support awards. The child support schedules contained in the Quadrennial Review reports were adopted and implemented as the new Appendix IX-F Schedule of Child Support Awards.

F. Amendments to Appendix IX-A - Re: College or Other Post-Secondary Education

The Supreme Court considered and adopted an amendment to § 18 of Appendix IX-A to apply the child support guidelines to those children who commute to college. There is an interest in applying the guidelines to the support of college students who commute. Many dependent children who commute to college still require the basic necessities that form the economic basis for the guidelines-based awards. As such, the Supreme Court adopted the following in Appendix IX-A, § 18: "The child support guidelines may, in the court's discretion, be applied to support for students over 18 years of age who commute to college."

G. Amendments to Appendix IX-A, IX-B and IX-C - Self-Support Reserve

The Supreme Court adopted amendments to various sections of Appendix IX-A (Considerations in the Use of Child Support Guidelines), IX-B (Sole Parenting Worksheet Line Instructions) and IX-C (Sole Parenting Worksheet) of the child support guidelines so that both parents' income are treated equally when determining self-support reserve. Therefore, when considering the obligee's income, deduction of the obligee's share of the child support obligation is mandatory rather than discretionary. The obligee's share of child support should be deducted just as the obligor's support payment is deducted. Although the obligee retains his or her share of child support, that amount represents the portion of the obligee's income that will go to support the child, just like the obligor's support obligation. Now, this calculation is performed to test both incomes equally against the self-support reserve.

H. Amendments to Appendix XVI - Uniform Summary Support Order

The Uniform Summary Support Order and its Notices (Appendix XVI) were developed to improve the collection and exchange of information between judges and the Family and Probation Divisions, to enhance litigants' understanding of court orders, to provide statutorily required notices, and to expedite preparation and dissemination of support orders statewide. The Supreme Court adopted amendments to the Uniform Order and Notices to comply with current statutes, rules and policies. The revised Uniform Order now includes, for example, reference to paternity established through a Certificate of Parentage, recording of deviations from guidelines, Cost-of-Living Adjustment, and termination of Title IV-D services. The Uniform Order's Notices now include required notices such as the suspension or revocation of driver's and professional licenses.

I. Amendment to R. 5:5-2(f) - Marital Standard of Living Declaration

In *Crews v. Crews*, 164 *N.J.* 11 (2000), the Supreme Court addressed "…whether marital lifestyle findings should be made upon the entry of a Divorce Judgment that includes support so as to facilitate the official handling of subsequent modification applications." *Crews* involved a contested divorce. In *Weishaus v. Weishaus*, 180 *N.J.* 131 (2004), the Supreme Court revisited its procedural pronouncement in Crews within the context of an uncontested case. The Court referred to the Practice Committee the question of how best to capture marital lifestyle information efficiently and economically for use in later post-judgment proceedings. In order to fulfill the mandates of *Crews* and *Weishaus*, if filed case information statements exist for both parties, the parties shall each preserve their respective case information statements. Therefore, the Supreme Court adopted a new provision to *R.* 5:5-2:

> (f) Marital Standard of Living Declaration. In any matter in which an agreement or settlement contains an award of alimony, the parties shall include a declaration that the marital standard of living is satisfied by the agreement or if there is (a) one or more filed Case Information Statements, the parties shall each preserve their respective Case Information Statements until such time as alimony is terminated; or (b) the parties shall, by stipulation, define the marital standard of living; or (c) the party who shall have filed a Case Information Statement shall preserve that Case Information Statement and the other party who has not filed a Case Information Statement shall prepare and preserve the Part D (monthly expenses) portion of the Case Information Statement form serving a copy thereof upon the other party.

J. New Caption to R. 5:5, New R. 5:5-9 and New Appendix XXV - Re: Procedures Concerning the Entry of Certain Final Judgments of Divorce

The Supreme Court amended the caption of *R.* 5:5 to include procedures relating to certain judgments. The Court further adopted *R.* 5:5-9 setting forth the use of a final judgment of divorce form (adopted as Appendix XXV) when a divorce is entered orally on the record. The parties may use this form or one to which they have consented. Rule 5:5-9 also provides a ten day limit to submit the judgment of divorce, which the court, in its discreation, may extend.

K. Parenting Coordinator

After extensive drafting and discussion, the Practice Committee recommended a new rule authorizing and standardizing the use of parenting coordinators. The Supreme Court carefully considered this recommendation and chose not to adopt a rule. The Court, however, suggested implementing a pilot program to test its effectiveness and to address concerns regarding its use.

VIII. List of Attachments

A. Appendix XXIV (Confidential Litigant Information Sheet)

B. Appendix XVI Uniform Support Notices

C. Appendix IX-A

D. Appendix IX-F

E. Report of Joint Ad Hoc Committee on Civil and Criminal Child Abuse Cases