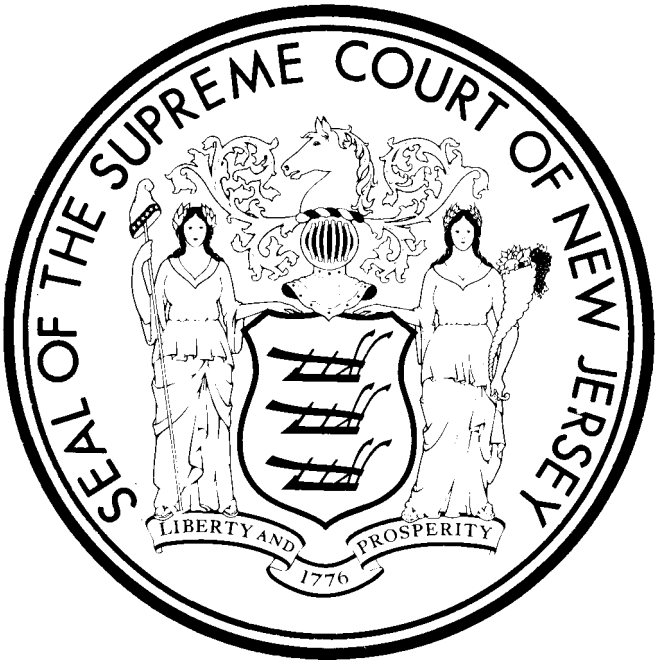
FAMILY PRACTICE COMMITTEE



2007-2009

FINAL REPORT

January 20, 2009

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I. Introduction

The Supreme Court Family Practice Committee ("Practice 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. 1:1-2 - References to Marriage, Spouse and Related Terms

Discussion

Civil Unions and Domestic Partnerships

Effective September 1, 2007, the Supreme Court amended R. 5:1-2 to address the enactment of P.L. 2006, c. 103, which is a law concerning marriage and civil unions.

In addition to the 2007 amendment to R. 5:1-2, the Court referred this issue to all Practice Committees to consider and recommend a global rule to ensure that all litigants in the New Jersey courts, whether spouses, partners to a civil union or partners to a domestic partnership, are treated equally under the Rules of Court.

The recommended rule amendment below is based primarily on language that was codified in N.J.S.A. 37:1-33. This recommendation was endorsed by the Family Practice Committee and Civil Practice Committee.

A number of other issues relating to civil unions will be discussed in more detail in this report, infra. The Practice Committee believes that those issues require more consideration and thus the Practice Committee recommends holding those other issues for the next rules cycle.

R. 1:1-2

1:1-2 Construction and Relaxation; References to Marriage, Spouse and Related Terms

(a) The rules in Part I through Part VIII, inclusive, shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice. In the absence of rule, the court may proceed in any manner compatible with these purposes and, in civil cases, consistent with the case management/trial management guidelines set forth in Appendix XX of these rules.

(b) As used in Part I through Part VIII of these rules and appendices, any reference made to "marriage," "husband," "wife," "spouse," "family," "immediate family," "dependent," "next of kin," "widow," "widower," "widowed," or to any other word or phrase that, in a specific context, denotes a marital or spousal relationship, shall include a civil union, as established by P.L. 2006, c. 103 and a registered domestic partnership, as established by P.L. 2003, c. 246.

Note: Source -- *R.R.* 1:27A, 3:1-2, 3:11-9, 4:1-2, 4:121, 6:1-1 (second sentence), 6:1-2, 8:1-2. Amended June 20, 1979 to be effective July 1, 1979; amended July 5, 2000 to be effective September 5, 2000; caption amended, former text designated as paragraph (a) and new paragraph (b), adopted _____ to be effective _____.

B. Proposed Amendment to R. 1:5-6(c)(1)(C) - Affidavit or certification notifying litigant of complementary dispute resolution alternatives

Discussion

Need to Amend R. 1:5-6(c)(1)(C) to Include Reference to the Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives as a Document that if Not Filed with an Initial Pleading Must be Included as a Non-Conforming Paper as Defined in the Rule

Rule 5:4-2(h) provides as follows:

> (h) Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives. The first pleading of each party shall have annexed thereto an affidavit or certification that the litigant has been informed of the availability of complementary dispute resolution ("CDR") alternatives to conventional litigation, including but not limited to mediation or arbitration, and that the litigant has received descriptive material regarding such CDR alternatives.

This rule intends that such affidavits or certifications must be filed with the initial pleading that each party submits to the clerk's office. It is believed that failure to file such pleadings have resulted in clerks' offices deeming the pleadings as "non-conforming" and notifying the person filing that the pleading must be submitted within a defined period of time. Rule 1:5-6(c)(1)(C) defines what must be submitted to the clerk's office to avoid having a pleading returned. The current rule makes no reference to materials required to be submitted pursuant to R. 5:4-2(h). It is also noted that the approved forms of affidavits or certifications currently do not appear in the Appendix to the Rules of Court. It is recommended that these approved documents (attached hereto as Attachment A) should be so included.

R. 1:5-6

1:5-6. Filing

(a) . . . no change.

(b) . . . no change.

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

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

(A) . . . no change.

(B) . . . no change.

(C) in Family Part actions, the affidavit of insurance coverage required by R. 5:4-2(f), the Parents Education Program registration fee required by N.J.S.A. 2A:34-12.2, [or] the Confidential Litigant Information Sheet as required by R. 5:4-2(g) in the form prescribed in Appendix XXIV, or the Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives as described in R. 5:4-2(h) in the form prescribed in Appendix ___ or ___ of these rules [appendices proposed in this recommendation]; or

(D) . . . no change.

(E) . . . no change.

(2) . . . no change.

(3) . . . no change.

(4) . . . 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 June 15, 2007 to be effective September 1, 2007; paragraph (c)(1)(C) amended and Appendix ___ and ___ adopted _____ to be effective _____.

C. Proposed Amendment to R. 1:6-3(b) - Cross-Motions

Discussion

Amend R. 1:6-3(b) (cross-motions) to clarify its exception to Family Part matters

As part of its comprehensive amendments to the Rules of Court, in 2007, the Supreme Court adopted the Practice Committee's recommended amendment of R. 1:6-3(b) to add at the beginning of the second sentence of that rule the phrase, "Other than in Family Part motions brought under Part V of these Rules."

After the adoption of this rule, concern was expressed about whether the amendment fully addressed its perceived and generally agreed upon purpose.

The amendment was intended to address the comprehensive changes then recommended for the timelines for the adjudication of Family Part motions. There can be no doubt that before R. 1:6-3(b) was amended, there were two sets of timelines for Family Part motions depending upon whether the motion was pre- or post-judgment. As the result of the recommendation made concerning the timing of motions, all of which were adopted by the Supreme Court, one uniform timeline was created for all Family Part motions. It was also intended that the 2007 amendment eliminated, in the Family Part, the R. 1:6-3(b) requirement that cross-motions relate to the subject matter of the original motion.

The Practice Committee therefore recommends that the underlying rule be amended.

R. 1:6-3

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

(a) . . . no change.

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

(c) . . . no change.

Note: Source -- R.R. 3:11-1, 4:6-3(a); amended July 24, 1978 to be effective September 11, 1978; amended July 16, 1979 to be effective September 10, 1979; amended July 16, 1981 to be effective September 14, 1981; amended November 1, 1985 to be effective January 2, 1986; amended June 29, 1990 to be effective September 4, 1990; amended July 13, 1994 to be effective September 1, 1994; amended and paragraphs (a), (b) and (c) designated July 10, 1998 to be effective September 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; paragraph (b) amended _____ to be effective _____.

D. Proposed Amendment to R. 1:40-5(b) - Mediation of Economic Aspects of Divorce

Discussion

Amend R. 1:40-5(b) to remove reference to Appendix XIX because the Economic Mediation Pilot concluded and the appendix was deleted on February 6, 2007 (Technical Change)

Both R. 1:40-5(b) and 5:5-6 contain references to Appendix XIX, which did not appear in the 2008 Rules of Court but did appear in the 2007 Rules of Court. It is recommended that, as a technical change, reference to Appendix XIX in R. 1:40-5(b) should be deleted, so that the sole reference is to R. 5:5-6, which was adopted on September 1, 2006 and created a "post-MESP Complementary Dispute Resolution (CDR) event." Accordingly, it is suggested that R. 1:40-5(b) should read as follows.

R. 1:40-5

1:40-5. Mediation in Family Part Matters

(a) . . . no change.

(b) Mediation of Economic Aspects of Divorce. The CDR program of each vicinage shall include a post-Matrimonial Early Settlement Panel (MESP) program for the mediation of the economic aspects of divorce or for the conduct of a post-MESP alternate Complementary Dispute Resolution (CDR) event consistent with R. 5:5-6 [and Appendix XIX of these Rules]. However, no matter shall be referred to mediation if a temporary or final restraining order is in effect in the matter pursuant to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.).

Note: Adopted July 14, 1992 to be effective September 1, 1992; new paragraph (c) adopted January 21, 1999 to be effective April 5, 1999; caption and paragraphs (a) and (b) amended July 5, 2000 to be effective September 5, 2000; caption amended, former paragraphs (a), (b), and (c) redesignated as paragraphs (a)(1), (a)(2), and (a)(3), new paragraph (a) caption adopted, and new paragraph (b) adopted July 27, 2006 to be effective September 1, 2006; paragraph (a)(2) amended July 31, 2007 to be effective September 1, 2007; paragraph (b) amended _____ to be effective _____.

E. Proposed Amendment to R. 2:6-11(e) - Advising Court of Custodial Change

Discussion

Include reference to Children in Court matters because Appellate courts are routinely interested in the placement status of children in the care of the Division of Youth and Family Services

This recommendation relates to children who are the subject of Division of Youth and Family Services (DYFS) litigation. This recommendation to amend R. 2:6-11 provides that the appellant or respondent must advise the appellate court when the child's custodial status changes so that the court receives current information regarding the child's placement.

R. 2:6-11

2:6-11. Time for serving and filing briefs; appendices; transcript; notice of custodial status

(a) . . . no change.

(b) . . . no change.

(c) . . . no change.

(d) . . . no change.

(e) Advising Court of Custodial Change. In criminal, quasi-criminal, [and] juvenile and Division of Youth and Family Services matters, the appellant or respondent shall by letter advise the court of any change in the custodial status of a defendant, juvenile, [or] other party subject to confinement[,] or subject child during the pendency of the appeal.

Note: Source -- R.R. 1:7-12(a)(c), 1:10-14(b), 2:7-3. Paragraph (b) amended by order of September 5, 1969 effective September 8, 1969; paragraph (a) amended July 7, 1971 to be effective September 13, 1971; caption and paragraphs (a) and (b) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended May 8, 1975 to be effective immediately; paragraphs (c), (d) and (e) adopted July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended and titles of paragraphs (c)(d) and (e) added November 2, 1987 to be effective January 1, 1988; paragraphs (a) and (b) amended July 14, 1992 to be effective September 1, 1992; paragraph (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004; paragraph (e) amended _____ to be effective _____.

F. Proposed Amendment to R. 2:9-1(c) - Control by Appellate Court of Proceedings Pending Appeal or Certification

Discussion

Proposed procedures for an ineffective assistance of counsel claim in appeals from judgment terminating parental rights

This recommendation is in response to the Supreme Court's decision of Division of Youth and Family Services v. B.R., 192 N.J. 301 (2007). In B.R., the Court directed that procedures should be established for ineffective assistance of counsel appeals in termination of parental rights cases. This recommendation provides for amendments to R. 2:9-1 and the adoption of two new rules, R. 2:10-6 and R. 5:12-7. See "Proposed New Rules for Adoption" section, infra.

Although the Court in B.R. indicated that the remand hearing should be done in 14 days, the majority of the Practice Committee believed that 30 days was necessary to complete the hearing. The Practice Committee believes that the Public Defender's Office requires additional time to assign new counsel who then needs the time to prepare for the remand hearing. As such, this rule recommendation differs only as to the time to complete the ineffective assistance of counsel remand hearing - 30 days instead of 14 days.

R. 2:9-1

2:9-1. Control by Appellate Court of Proceedings Pending Appeal or Certification

(a) . . . no change.

(b) . . . no change.

(c) Ineffective assistance of counsel claim in appeals from judgment terminating parental rights. In appeals from judgments terminating parental rights pursuant to N.J.S.A. 30:4C-15 *et seq.* in which ineffective assistance of counsel has been alleged, the appellate court, if it determines that a genuine issue of material disputed fact on the issue of the representation provided by trial defense counsel may require resolution, may retain jurisdiction and remand the case to the trial judge for an accelerated hearing to be completed within 30 days to be followed promptly by an oral opinion by the trial judge. The parties shall then be permitted simultaneously to exchange supplemental appellate briefs within seven days on the limited issue of the remand.

Note: Source-R.R. 1:4-1 (first sentence), 1:10-6(a) (first and third sentences); paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; new paragraph (c) adopted _____ to be effective _____.

G. Proposed Amendment to R. 5:2-1 - Venue, Where Laid

Discussion

Proposed Amendment to Venue rule to be consistent with the Uniform Interstate Family Support Act (UIFSA) and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

The Practice Committee has been directed to prepare a proposed amendment to R. 5:2-1 so that it is consistent with the Uniform Interstate Family Support Act (UIFSA) and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

The Practice Committee proposes the following rule amendments consistent with both UIFSA and UCCJEA.

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) (1) In actions primarily involving the support or parentage of a child (except actions in which the issue of support of a child is joined with claims for divorce or nullity) venue shall be laid, pursuant to the Uniform Interstate Family Support Act (UIFSA), in the county of New Jersey in which the child is domiciled, if New Jersey is determined to be the child's home state, as defined under N.J.S.A. 2A: 4-30.65.

(2) In a proceeding to establish, enforce, or modify a support order or to determine parentage, personal jurisdiction over nonresident individuals shall be governed by N.J.S.A. 2A:4-30.68. and 2A:4-30.69.

(3) The jurisdictional basis for the establishment of a support order shall be governed by N.J.S.A. 2A:4-30.71.

(4) The continuing exclusive jurisdiction of New Jersey or another issuing state, exceptions thereto and modification of a support order issued by a court of this or another state, shall be governed by N.J.S.A. 2A:4-30.72.

(5) Recognition of an order entered by this State, or by a tribunal of another state, and the method to determine which order is controlling, when multiple orders exist, including responses to multiple registrations or petitions for enforcement, shall be governed by N.J.S.A. 2A:4-30.74. and 2A:4-30.75.

(b) (1) [In actions involving custody of children where one party or the child does not presently reside in New Jersey, venue shall be laid in the county designated by the courts of the child's home state, which is defined as the state where the child, immediately preceding the time involved, lived with his or her parents, a parent, or a person acting as parent, for at least six consecutive months, unless it is found to be in the best interest of the child for another state to accept jurisdiction.] In actions involving the welfare, custody, protection and status of a child (except actions in which the issues of welfare, custody, protection and status of a child are joined with claims for divorce or nullity), venue shall be laid, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), in the county of New Jersey in which the child was last domiciled if New Jersey is determined to be the child's home state, as defined under N.J.S.A. 2A: 34-54, and pursuant to N.J.S.A. 2A:34-65.

(2) Pursuant to N.J.S.A. 2A:34-68, New Jersey may exercise temporary emergency jurisdiction under the Rule.

[(b)] (c) In divorce and nullity actions, venue shall be laid in accordance with R. 5:7-1.

[(c)] (d) In actions for adoption, venue shall be laid in accordance with R. 5:10-1.

[(d)] (e) In actions for termination of parental rights, venue shall be laid in accordance with R. 5:9-1.

[(e)] (f) In juvenile delinquency actions, venue shall be laid in accordance with R. 5:19-1.

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

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) added June 15, 2007 to be effective September 1, 2007; paragraph (a) amended, paragraphs (b), (c), (d), (e) and (f)

renumbered to (c), (d), (e), (f) and (g), and new paragraph (b) adopted _____ to be effective _____.

H. Proposed Amendment to R. 5:3-5 - Attorney fees and retainer agreements in civil family actions; withdrawal

Discussion

Factors for awarding attorney fees

The Practice Committee discussed the issue of whether there has been full implementation of the recommendations of the Special Committee on Matrimonial Litigation dealing with counsel fee awards as contained in the Special Committee's 1998 Final Report.

Among the most significant reforms relating to the award of counsel fees proposed by the Special Committee was the inclusion in what is now R. 5:3-5(c) of specific factors to be considered in connection with all applications for the award of attorney fees in matrimonial matters. An issue has arisen in the unreported opinion of Dounis v. Dounis, No. A-4717-05T2 (N.J. App. Div. Jan. 28, 2008). In the Appellate Division's slip opinion at page 18, the court wrote:

> A remand is also required to correct legal error. It was not proper to consider settlement proposals in fixing counsel fees. A judge of the Family Part may consider "the reasonableness and good faith of the positions advanced by the parties" in assessing fees. R. 5:3-5(c)(3). The reference to "positions advanced" should be read to extend to positions asserted in court, not settlement proposals. We have held that "failure to settle disputed claims is not in itself a permissible consideration in assessing a fee." Diehl v. Diehl, 389 N.J. Super. 443, 455 (App. Div. 2006). We further recognize that this court has noted that "'where one party acts in bad faith, the relative economic position of the parties has little relevance' because the purpose of the award is to protect the innocent party from unnecessary costs and to punish the guilty part." Yueh v. Yueh, 329 N.J. Super. 447, 461 (App. Div. 2000) (quoting Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992)). That settlement, however, cannot be read too broadly and without regard to judicial decisions discussing "bad faith."
>
> In order to avoid discouraging litigation of meritorious claims that may not ultimately prevail, the bad faith sufficient to allow the Family Part to give less weight to the parties' relative need and ability to pay requires more than the assertion of a position later

> rejected by the court. Kelly, supra, 262 N.J. super. at 309. There must be litigation conduct that is egregious, unjustified and motivated by bad faith. The rationale is "to prevent a maliciously motivated party from inflicted economic damage on an opposing party by forcing expenditures fro counsel fees." Kelly, supra, 262 N.J. Super. at 307. Bad faith and unreasonable conduct has been found where a party has unnecessarily complicated discovery or the trial or unjustifiably increased the cost of the litigation through defiance of court orders resulting in enforcement motions. See Yueh, supra, 329 N.J. Super. at 462 (discussing relevant of failure to comply with discovery and defiance of court orders); Chestone, supra, 322 N.J. Super. at 259 (approving consideration of lack of candor). Where specific conduct such as failure to comply with court orders or unreasonably complication of litigation warrants an award of fees, the fee assessed for that reason should be related and proportionate to the expense incurred as a consequence of that specific conduct. For example, where non-compliance is at issue, an award in the amount of fees incurred to enforce the rights of the non-offending litigant may be appropriate if those fees are reasonable. There is, however, no authority to award or enhance a fee because one party's settlement offer is "fairly reasonable" and the other's offer is "decidedly less so."
>
> The judgment, with the exception of the equitable distribution of credit card debt and the award of counsel fees which are reversed, is affirmed; the matter is remanded.

The Practice Committee has concluded that the Dounis opinion is inconsistent with the intent of R. 5:3-5(c)(3), in that said rule specifically contemplated that, in making counsel fee determinations, the court should consider "the reasonableness and good faith of the positions advanced by the parties." This becomes clear in the discussion contained on pages 147-152 of the Special Committee's Report, as follows:

> The Committee recommends adoption of a new Part V rule setting forth factors which the Family Part should consider in ruling upon all applications for counsel fees. In this regard, and as previously mentioned, the Committee is mindful that N.J.S.A. 2A:34-23 specifically provides:
>
> > [t]he court may order one party to pay a retainer on behalf of the other for expert and legal services when the respective financial circumstances of the parties make the award reasonable and just. In

> considering an application, the court shall review the financial capacity of each party to conduct the litigation and the criteria for award of counsel fees that are then pertinent as set forth by court rule. Whenever any other application is made to a court which includes an application for pendente lite or final award of counsel fees, the court shall determine the appropriate award for counsel fees, if any, at the same time that a decision is rendered on the other issue then before the court and shall consider the factors set forth in the court rule on counsel fees, the financial circumstances of the parties, and the good or bad faith of either party.

The Committee is also mindful that for almost three decades, awards of counsel fees in Family Part actions have been guided by the holding in Williams v. Williams, 59 N.J. 229, 233 (1971), where our Supreme Court held in relevant part:

> Under our practice, the award of counsel fees and costs in a matrimonial action rests in the discretion of the court. In deciding whether a wife is entitled to counsel fees and costs, our court's focus on several factors, including the wife's needs, the husband's financial ability to pay and the wife's good faith in instituting or defending the action. Those factors being met, it is the policy of our law that counsel fees and costs in matrimonial actions are properly the obligation of the husband and he should be compelled to furnish them to the wife. In this respect, counsel fees and costs are not unlike other categories of "necessaries," which the law compels the husband, the usual repository of family finances, to furnish to the wife. (Citations omitted)

In the years since Williams, a plethora of Appellate Division and Family Part matters have focused upon the extent to which one spouse should be compelled to contribute to the attorney's and expert fees of the other. Among the issues raised has been the question of whether good or bad faith should dictate the result of a counsel fee award. In Darmanin v. Darmanin, 224 N.J. Super 427, 431 (App. Div. 1988), the Appellate Division observed:

> Bad faith of a party in a family action may not be the basis for assessing counsel fees against that party. Our interpretation of the good-faith factor find support in the express language of the Williams

> opinion and by that court's reference to the doctrine of "necessaries". *Ibid.*
>
> In considering whether a husband should pay a wife's counsel fees, the court said that factor is "the wife's good faith in instituting or defending the action given." *Ibid.* The Court made no reference to the *bona fides* of the husband.

More recently, in Kelly v. Kelly, 262 N.J. Super 303, 311 (Ch. Div. 1992), the Family Part considered the issue of attorney's fees within the context of a matter in which one litigant refused to accept the recommendation of both his lawyer and a Matrimonial Early Settlement Panel. The Family Part wrote:

> In sum, Defendant's *pendente lite* behavior does not clearly suggest malice and his failure to accept the recommendation of either his lawyer or the MESP is not legally sufficient to justify the award of fees. While this result imposes a substantial burden on Plaintiff, it is, in the light of her economic parity, required by the judicial philosophy of imposing fees upon the party incurring them. While the wisdom of a policy encouraging settlements by threatening to award fees if an "unreasonable" position prevents a settlement may be fairly debatable, the adoption of such a philosophy (which constitutes a reversal of the status quo) must first occur. Such directions must come from an Appellate Court and under existing law I am compelled to deny the application. (Emphasis added.)

General Recommendation 7 of the Final Report of the Commission To Study The Law of Divorce considered the same issue and recommended as follows:

> The Family Court should consider economic sanctions on parties whose actions are unreasonable but which to do not rise to the level of "bad faith" set forth in the frivolous lawsuit statute. The court should have expanded power to assess counsel fees against litigants who take positions that are unreasonable without first being required to make findings of bad faith or that the position was "frivolous". Rather, the court should insist upon parties attempting to resolve cases on their own and that their settlement positions be memorialized for

> later review by a court. The courts' ability to assess counsel fees for unreasonable positions, or dilatory tactics, would have the effect of inducing people to take more reasonable positions. Any requirement or practice that there be a finding of "bad faith" is too strict a standard and the Supreme Court is urged to develop more flexible ways to insist upon negotiating and attempts to resolve matters outside of court with counsel fees assessed where the court believes litigants to have acted unreasonably. (Emphasis added.)

A theme that recurred throughout much of the testimony received during its public hearings, as well as Committee debate, focused upon the importance of litigants and their counsel reasonably and realistically addressing the litigation process. So many members of the public focused upon the length of litigation and the costs, both personal and financial, that litigation spawns.

From the testimony and Committee debate, the Committee has concluded that, in considering counsel fee applications at each stage of litigation, the Family Part should take a multifactorial approach considering, among others: the financial circumstances of the parties; the ability of the parties to pay fees or contribute to fees of the other party; the reasonableness of the positions advanced by the parties; the extent of fees incurred by both parties; the fees that may have been awarded previously; the amount of fees previously paid by each party to their counsel; the results obtained; the good or bad faith of the parties; the degree to which fees were incurred to enforce existing orders or to compel discovery; as well as any other factor that appropriately might bear upon the fairness of the award.

All awards of counsel fees have and will continue to rest within the sound discretion of the Family Part judge. That was the principle originally enunciated in Williams, a principle which has withstood the test of time. On the other hand, the Family Part of the 1990's is very different than the Chancery Division of late 1960's which originally considered Williams. Indeed, Williams itself was decided within the context of different law at an earlier time and long before the more recent amendments to N.J.S.A. 2A:34-23.

It is the Committee's view that, in making counsel fee determinations, the Family Part should, following its tradition rooted in equity, to do what it does best -- to weigh all relevant considerations and reach the result that is fair under all of the circumstances. In reaching the appropriate result, the Committee

> agrees with the Commission To Study The Law Of Divorce that litigants have a responsibility to take positions that are reasonable. Certainly, a litigant's good or bad faith must be considered along all other factors in determining an appropriate result.
>
> In this regard, the Committee approves of the practice, generally followed throughout New Jersey that, following final hearing, a court may consider the positions each litigant took prior to the matter being finally determined including their respective positions in the light of recommendations that might have been made by a Matrimonial Early Settlement Panel. Additionally, following final hearing, the Family Part must take into account the totality of the economic circumstances of each party including awards of alimony, child support and equitable distribution of property.
>
> In making its recommendations, the Committee specifically does not disapprove of the holding in any prior case. Instead, the Committee recommends the adoption of the multifactorial approach contained in the proposed rule relying upon its confidence that those who sit on the Family Part will, as they have done for so long, do justice.

Accordingly, the Practice Committee recommends that R. 5:3-5(c) should be amended as proposed herein. It is further recommended that the issue of counsel fees and related questions also should be the focus of both judicial and continuing legal education for the benefit of both the Bench and the Bar. As to the Bench, this recommendation is addressed for appropriate action as a part of new judge training and continuing judicial education to the Conference of Presiding Family Judges for appropriate action.

The Practice Committee concludes that it was the intent of the Special Committee's creation of the factors now contained in the Rules of Court to assure that there is an equal playing field for both a financially advantaged as well as a financially disadvantaged spouse, that counsel fee awards are needed to level that playing field, and that there should be accountability if one side is unreasonable with his or her settlement positions. Given the importance of this issue, and the high turnover in the Family Part Bench over the last 10 years, professional and judicial education is critical if there is to be full understanding of the impact of this issue.

A sub-issue focuses on whether, after deciding the merits of a case, the court should be permitted to learn each litigant's settlement positions and the result of the Matrimonial Early Settlement Panel hearing if one took place.

The Practice Committee concluded that, in deciding attorney fees, consideration should be given to litigants, as suggested by the existing rule, to positions that had been taken. The Practice Committee concluded that the existing rule should be amended to incorporate the additional words "both during and prior to trial" so that Factor 3 would read, "the reasonableness and good faith of the positions advanced by the parties both during and prior to trial." These positions should not be made available to the Family Part before decision of the case has been rendered.

R. 5:3-5

5:3-5. Attorney fees and retainer agreements in civil family actions; withdrawal

(a) Retainer Agreements. . . . no change.

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

(c) Award of Attorney Fees. Subject to the provisions of R. 4:42-9(b), (c), and (d), the court in its discretion may make an allowance, both pendente lite and on final determination, tobe paid by any party to the action, including, if deemed to be just, any party successful in the action, on any claim for divorce, nullity, support, alimony, custody, parenting time, equitable distribution, separate maintenance, enforcement of interspousal agreements relating to family type matters and claims relating to family type matters in actions between unmarried persons. A pendente lite allowance may include a fee based on an evaluation of prospective services likely to be performed and the respective financial circumstances of the parties. The court may also, on good cause shown, direct the parties to sell, mortgage, or otherwise encumber or pledge marital assets to the extent the court deems necessary to permit both parties to fund the litigation. In determining the amount of the fee award, the court should consider, in addition to the information required to be submitted pursuant to R. 4:42-9, the following factors: (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained: (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.

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

Note: Adopted January 21, 1999 to be effective April 5, 1999; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; new paragraph (a)(10) adopted, and paragraphs (d)(1) and (d)(2) amended July 28, 2004 to be effective September 1, 2004; paragraph (c) amended _____ to be effective _____.

I. Proposed Amendment to R. 5:4-2(g) - Complaint

Discussion

Clarify the intent of R. 5:4-2(g) that the Confidential Litigant Information Sheet (CLIS) is not to be served upon the other party

Existing R. 5:4-2(g) does not state that the CLIS was not intended to be served upon opposing parties. The Practice Committee recommends a clarifying amendment to the existing rule adding the phrase, "a copy thereof shall not be served upon any opposing party."

R. 5:4-2

Rule 5:4-2. Complaint

(a) Complaint Generally. . . . no change.

(b) Corespondent. . . . no change.

(c) Affidavit of Verification and Non-collusion. . . . no change.

(d) Counterclaim. . . . no change.

(e) Amended or Supplemental Complaint or Counterclaim. . . . no change.

(f) Affidavit or Certification of Insurance Coverage. . . . 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). A copy thereof shall not be served upon any opposing party.

(h) Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives. . . . 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 June 15, 2007 to be effective September 1, 2007; paragraph (g) amended _____ to be effective _____.

J. Proposed Amendments to R. 5:5-4 - Motions in family actions

Discussion

When a case information statement (CIS) is required to be filed in post-judgment motions

This issue focuses upon when a current case information statement (CIS) must be filed in connection with pre- or post-judgment alimony and child support matters. The applicable sentence in R. 5:5-4(a) as now drafted provides:

> When a motion is brought for the modification of an Order or Judgment for alimony and child support, the pleading filed in support of the motion shall have appended to it a copy of the prior Case Information Statement or Statements filed before the entry of the Order for Judgment sought to be modified and a copy of the current Case Information Statement.

What is missing is whether a responding or cross-moving party similarly must provide a copy of all prior CISs, as well as a copy of a current CIS.

For the very reasons that the rule requires the filing of CISs in motions dealing with either alimony or child support, it is evident that a responding or cross-moving party should be required to do likewise. This rule amendment is specifically intended to make very clear that past CISs, as well as the current CIS, must be filed at the time of the filing of the original motion for modification and at the time of the filing of any cross-motion that seeks similar relief rather than filed as part of the responsive pleading permitted the moving party. The problem with permitting CISs to be filed in a third pleading is that the responding party would then not be permitted to offer commentary thereon without leave of court. It is suggested that when alimony or child support modification relief is sought in a motion but the required past and present CISs have not been furnished, the motion should be returned to the movant with a letter requiring the submission of the required CISs. Handling this situation in this manner is preferable to the likely adjournment after the responding party has been served and discovers the deficiency in the

moving papers presented by the original movant. These observations and recommendation of how such situations should be treated are referred to the Conference of Family Presiding Judges.

The Practice Committee also recommends amending R. 5:5-4(a) to be consistent with the holding in Lepis v. Lepis, 83 N.J. 139 (1980), which provides that a moving party make a prima facie showing of a substantial change in circumstance before the responding party need provide current financial data.

Accordingly, the Practice Committee recommends the amendments to R. 5:5-4(a).

Proposed Amendment to R. 5:5-4(b) dealing with page limits

As part of the omnibus rule amendments adopted by the Supreme Court in 2000 in response to the 1998 Final Report of the Special Committee on Matrimonial Litigation, page limits were adopted that regulated the length of certifications filed in support of Family Part motions. In the eight years that have intervened, issues have arisen as to whether additional testimonial material provided as attachments may be submitted beyond the stated page limits. Issues also have arisen from time to time as to whether the page totals control whether one or several certifications are filed.

The text of the Special Committee's February 4, 1998 Final Report is instructive:

> The Supreme Court Special Committee on Matrimonial Litigation recommends that certifications in support of a notice of motion shall contain a total of no more than fifteen pages; that certifications in answer to a notice of motion and/or in support of a notice of cross-motion shall contain a total of no more than twenty-five pages; and that certifications in response to opposing pleadings shall contain a total of no more than ten pages. The Committee finds that the page limits recommended provide a reasonable number of pages for a litigant to present their information.
>
> To aid the bar in understanding the recommendation contained herein, the page totals control whether one or several certifications are filed. For example, counsel might choose to submit either one certification consisting of fifteen pages or two certifications having a total of fifteen pages. Exhibits attached to certifications are not included within the page totals.
>
> Although few will question that it is frequently more difficult to present factual information succinctly, requiring page limits will aid the system by curtailing what some view as the torrent of rhetoric often presented in Family Part motions.

Accordingly, the Special Committee made clear that the page totals were to control whether one or several certifications were filed.

The Special Committee's Report did not clearly answer the question of whether testimonial exhibits appended to certifications were to count against the permitted page limits. The Practice Committee has concluded that excluding certifications containing additional testimony from the page count would negate the purpose of the page limit rule.

The Practice Committee concluded that it was the Special Committee's intent to include within the page limits any testimonial materials whether in the form of a certification, an affidavit, or anything else in which an individual is providing testimony to the court. For example, if appended to a certification is an exhibit that includes brief statements, whether certified or not, from third parties intended to support the testimony contained within the certification or certifications filed in compliance with the rule, the rule would be circumvented.

The page limits were not, however, intended to apply to documents that counsel or a litigant might deem appropriate to submit to the court. For example, if counsel or a litigant determined it was necessary to provide credit card statements, tax returns, copies of deeds, or other materials directly related to the subject matter of the certification, such documents would not fall within the page limit requirements.

In order to foster consistency of interpretation of these requirements, the Practice Committee recommends amending R. 5:5-4(b).

It is further noted that the Supreme Court adopted R. 5:5-4(g) in 2000 to address exhibits.

Notice to Litigants - Requirement to serve two copies of motions, cross-motions, certifications and briefs (Technical Change)

In 2007, the Supreme Court amended R. 5:5-4(c) to require parties to serve two copies of all motions, cross-motions, certifications, and briefs. This provision was adopted to assist attorneys in providing the papers to their clients as expeditiously as possible. The Practice Committee proposes a technical amendment to R. 5:5-4(d) to indicate in the Notice to Litigants that two copies of all motions, cross-motions, certifications, and briefs must be served on the opposing party. This rule recommendation ensures that R. 5:5-4(d) is consistent with R. 5:5-4(c).

Using tabbed dividers to separate attachments to motions

Over the years, the Practice Committee has discussed practical problems that recur in motion practice. In the last rules cycle, the Practice Committee recommended the amendment of R. 5:5-4 to require the service of two copies of all motion pleadings because oftentimes motion pleadings are served late on the deadline day making it difficult for a responding attorney to have the papers copied in time to be mailed that day to the attorney's client. During the current cycle, the Practice Committee considered a similar practical issue raised by a Family Presiding Judge. In many cases, multiple lengthy exhibits may be attached to a certification. Often, there are no dividers between exhibits making review of the material extremely difficult. In some instances, the dividers were used but did not extend beyond a normal 8-1/2 by 11 inch sheet of paper. Although the Practice Committee believes that as a courtesy to the Bench and Bar, litigants should use dividers for ease of reference, it is not uncommon for dividers not to be employed.

Although the Practice Committee believes that the Civil Practice Committee should consider this rule amendment for application to proceedings governed by Part IV of the Rules of Court, doing so goes beyond the charge of the Family Practice Committee. Recognizing that Family Part motions often prompt lengthy certifications, a differentiation that justified the adoption of page limits in Family Part matters when comparable limits have not been imposed upon civil matters, it is recommended that the following language should be inserted at the end of R. 5:5-4(g): "All exhibits shall be differentiated from the text of a certification or affidavit by the use of labeled dividers before each exhibit. Each divider shall extend beyond the 8-1/2 inch by 11 inch size of the paper."

R. 5:5-4

5:5-4. Motions in Family Actions

(a) Motions. Motions in family actions shall be governed by R. 1:6-2(b) except that, in exercising its discretion as to the mode and scheduling of disposition of motions, the court shall ordinarily grant requests for oral argument on substantive and non-routine discovery motions and ordinarily deny requests for oral argument on calendar and routine discovery motions. When a motion is brought for enforcement or modification of a prior order or judgment, a copy of the order or judgment sought to be enforced or modified shall be appended to the pleading filed in support of the motion. When a motion or cross-motion is brought for the entry or modification of an order or judgment for alimony or child support based on changed circumstances, the pleading filed in support of the motion shall have appended to it a copy of the prior [Case Information Statement or Statements] case information statement or statements filed before entry of the order or judgment sought to be modified and a copy of a current [Case Information Statement] case information statement, and the pleading filed in opposition to entry of such an order also shall have appended to it a copy of all prior case information statements filed before the entry of the order or judgment sought to be modified, and provided that the moving party has demonstrated a prima facie showing of a substantial change of circumstances, a copy of a current case information statement.

(b) Page Limits. Unless the court otherwise permits for good cause shown and except for the certification required by R. 4:42-9(b) (affidavit of service), [a certification] all certifications in support of a motion shall not exceed a total of fifteen pages. [A certification] Certifications in opposition to a motion or in support of a cross-motion or both shall not exceed a total of twenty-

five pages. [A reply certification] Reply certifications to opposing pleadings shall not exceed a total of ten pages.

(c) Time for Service and Filing. . . . no change

(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. Two copies of all motions, cross-motions, certifications, and briefs shall be sent to the opposing side.

"The response and/or cross-motion must be submitted to the court by a certain date. All motions must be filed on the Tuesday 24 days before the return date. A response and/or cross motion must be filed 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 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. Exhibits attached to certifications shall not be counted in determining compliance with the page limits contained in this Rule. Certified statements not previously filed with the court shall be included in page limit calculation. All exhibits shall be differentiated from the text of a certification or affidavit by the use of labeled dividers before each exhibit. Each divider shall extend beyond the 8-1/2 inch by 11 inch size of the paper.

Note: Source-R. (1969) 4:79-11. Adopted December 20, 1983, to be effective December 31, 1983; amended November 2, 1987 to be effective, January 1, 1988; former rule amended and redesignated paragraph (a) and paragraph (b) adopted June 29, 1990 to be effective September 4, 1990; paragraph (b) amended and paragraph (c) adopted June 28, 1996 effective as of September 1, 1996; captions of paragraphs (a) and (b) amended and paragraph (d) adopted July 10, 1998 to be effective September 1, 1998; new paragraph (b) added and former paragraphs (b), (c), and (d) redesignated as paragraphs (c), (d), and (e) January 21, 1999 to be effective April 5, 1999; paragraph (d) amended July 5, 2000 to be effective September 5, 2000; new paragraph (f) added July 12, 2002 to be effective September 3, 2002; paragraphs (c) and (d) amended, and new paragraph (g) adopted July 28, 2004 to be effective September 1, 2004; paragraphs (c) and (d) amended June 15, 2007 to be effective September 1, 2007; paragraphs (a), (b), (d) and (g) amended _____ to be effective _____.

K. Proposed Amendment to R. 5:5-6 - Participation in Mandatory Post-MESP Mediation or in a Mandatory Post-MESP Complementary Dispute Resolution Event

Discussion

Amend R. 5:5-6 to remove reference to Appendix XIX because the Economic Mediation Pilot concluded and the appendix was deleted on February 6, 2007 (Technical Change)

Both R. 1:40-5(b) and R. 5:5-6 contain references to Appendix XIX, which did not appear in the 2008 Rules of Court but did appear in the 2007 Rules of Court. It is recommended that, as a technical change, reference to Appendix XIX in R. 5:5-6 should be deleted, so that the sole reference is to R. 5:5-6, which was adopted on September 1, 2006 and created a "post-MESP Complementary Dispute Resolution (CDR) event." Accordingly, it is suggested that R. 5:5-6 should read as follows.

R. 5:5-6

5:5-6. Participation in Mandatory Post-MESP Mediation or in a Mandatory Post-MESP Complementary Dispute Resolution Event

Each vicinage shall establish a program for the post-Matrimonial Early Settlement Program ("MESP") mediation of the economic aspects of divorce [consistent with the procedures set forth in Appendix XIX]. In any matter in which a settlement is not achieved at the time of the MESP, an order for mediation or other post-MESP Complementary Dispute Resolution ("CDR") event shall be entered. The order shall provide that the litigants may select a mediator from the statewide-approved list of mediators or select an individual to conduct a post-MESP CDR event. Litigants shall be permitted to select another individual who will conduct a post-MESP mediation event, provided such selection is made within seven days.

Unless good cause is shown why a particular matter should not be referred to this post-MESP program, litigants shall be required to participate in the program for no more than two hours, consisting of one hour of preparation time by the mediator or other individual conducting the alternate CDR event and one hour of time for the mediation or other CDR event. Participation after the first two hours shall be voluntary.

Note: Adopted July 27, 2006 to be effective September 1, 2006; amended _____ to be effective _____.

L. Proposed Amendment to R. 5:5-10 - Default, Notice for Final Judgment

Discussion

Rename Notice of Equitable Distribution

The Practice Committee's attention was directed to the terms of R. 5:5-10, currently captioned, "Default; Notice for Equitable Distribution, Alimony, Child Support and Other Relief." The inquiry came in the form of a copy of correspondence dated March 22, 2007 from a Family Presiding Judge to Family Practice Committee Chair Judge Serpentelli that referenced a recommendation made by the Morris/Sussex Vicinage Liaison Committee. The Liaison Committee suggested that the existing rule should be amended to rename the Notice required to be filed and served in those cases where equitable distribution, alimony, child support, and other relief are sought and a default has been entered.

The Practice Committee recommends a rule change to re-title the Notice with a new and more generic title. Often, following default, substantive relief is sought that might go beyond the relief mentioned in the current title. The relief sought might be as varied as the needs of each family.

The Practice Committee recommends a rule change that would adopt a new name for the document to be the "Notice of Proposed Final Judgment." The Practice Committee concluded that the form would be more appropriately so entitled because other forms of relief beyond those contained in the current title might be sought at the time of final hearing. Rather than lengthen the title of each form, it is better that the form be generically titled a "Notice of Proposed Final Judgment." Accordingly, the Practice Committee recommends that the rule's title and body should read as follows:

R. 5:5-10

5:5-10. Default, Notice for Final Judgment

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 on the defaulting party, in accordance with R. 1:5-2, a Notice of [Application for Equitable Distribution, Alimony, Child Support and Other Relief] Proposed Final Judgment ("Notice"), 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 and a proposal for distribution, a statement as to whether plaintiff is seeking alimony and/or child support and, if so, in what amount, and a statement as to all other relief sought including a proposed parenting time schedule where applicable. Plaintiff shall annex to the Notice a completed and filed Case Information Statement in the form set forth in Appendix V of these Rules. When 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 shall be filed and served on 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: Former Rule 5:5-2(e), adopted as Rule 5:5-10 June 15, 2007 to be effective September 1, 2007; amended _____ to be effective _____.

M. Proposed Amendment to R. 5:6B - Cost-of-living adjustments for child support orders

Discussion

R. 5:6B Cost-of-Living Adjustments for Child Support Orders and R. 5:7-4(e)(7) Triennial Review and Adjustment of Child Support Orders (N.J.S.A. §2A:17-56.9a) and 42 U.S.C. §666

The Practice Committee reviewed the Cost-of-Living Adjustment (COLA) rule and the state and federal statutes governing review and adjustment of child support orders. The Practice Committee discussed the relationship between the COLA, the state triennial review and adjustment statute (*N.J.S.A.* 2A:17-56.9a) and the federal laws and regulations governing periodic review and adjustment of child support orders. Federal laws requiring the states to implement procedures for three-year review of support orders apply only to orders entered under Title IV-D of the federal Social Security Act. Pursuant to *N.J.S.A.* 2A:17-56.9a, the state IV-D agency or its designee is required to review public assistance cases every three years; non-public assistance cases undergo review at the request of a party.

The 1998 amendment to *N.J.S.A.* 2A:17-56.9a, in conjunction with the adoption of the COLA rule (R. 5:6B) that same year, eliminated the right to an in-court triennial review as of right, but continued the administrative right to a triennial review as part of the Title IV-D services required to be offered by the State.

Although notices are routinely sent to parties advising them of the right to a triennial review in Title IV-D cases, few exercise the option. Once a party submits a request for a triennial review, the Title IV-D agency collects income information from various sources and recalculates child support pursuant to the child support guidelines. Pursuant to N.J.A.C. 10:110-14.2, before a new order can be entered, there must be at least a 20% change in the order.

Rule 5:6B provides for the biennial cost of living adjustment of all child support orders based upon the consumer price index. The adjustment occurs automatically, without the need to show a change of circumstances. The rule, as currently written, applies to all orders entered, modified or enforced on or after September 1, 1998.

Child support cases not subject to a COLA could only be modified as the result of either the triennial review process or by modification under a Lepis application. The Practice Committee found that a significant number of child support cases are currently in the state Title IV-D system and are not currently eligible for the COLA because the support orders were last entered, modified or enforced prior to September 1, 1998. Although these cases are eligible for triennial review, they have not been reviewed in many years (and in some cases, never). Consequently, these orders have not kept pace with changes in the cost of living and are inappropriately low. Expansion of the COLA rule to include these cases would, at the very least, allow unchanged pre-September 1, 1998 cases to receive an automatic adjustment every two years. Although the amount of the adjustment in most cases would not be substantial, nonetheless this adjustment would be more than many cases otherwise would get.

The Practice Committee recommends that the rule be amended to apply to all active child support cases, including those entered, modified or enforced prior to September 1, 1998, as set forth below.

R. 5:6B

5:6B. Cost-of-living adjustments for child support orders

(a) All orders and judgments that include child support entered, modified, or enforced on or after [the effective date of this rule] September 1, 1998 shall provide that the child support amount will be adjusted every two years to reflect the cost of living.

(b) Orders and judgments that include child support entered, modified, or enforced on or before August 31, 1998 shall be prospectively subject to adjustment every two years to reflect the cost of living.

(c) The cost-of-living adjustment shall be based on the average change in the Consumer Price Index for the metropolitan statistical areas that encompass New Jersey and shall be compounded.

(d) Before a cost-of-living adjustment is applied, the parties shall be provided with notice of the proposed adjustment and an opportunity to contest the adjustment within 30 days of the mailing of the notice. An obligor may contest the adjustment if the obligor's income has not increased at a rate at least equal to the rate of inflation as measured by the Consumer Price Index or if the order or judgment provides for an alternative periodic cost-of-living adjustment. [Either party may contest the cost-of-living adjustment and may request that the Appendix IX child support guidelines be applied to adjust the amount of child support to be paid. The application of the child support guidelines shall take precedence over cost-of-living adjustments.] A cost-of-living adjustment shall not impair the right of either parent to apply (1) to the court for a modification of support provisions of the order or judgment based on changed circumstances, or (2) to the State IV-D agency or its designee for a three-year review of a Title IV-D child support order, without the need to show changed circumstances.

(e) The forms and procedures to implement cost-of-living adjustments shall be prescribed by the Administrative Director of the Courts.

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

N. Proposed Amendment to R. 5:12-4(g), 5:13-1 and 5:21-4

Discussion

Creation of Department of Children and Families (Technical Change)

Pursuant to P.L. 2006, c.47, the child welfare activities within the "Department of Human Services" were moved to the new "Department of Children and Families." This law requires technical changes to R. 5:12-4(g), 5:13-1 and 5:21-4.

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. Hearings and trials shall be conducted in private. . . . no change

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

(d) Reports. . . . no change

(e) Written Plan. . . . no change

(f) Progress Reports. . . . no change

(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] Children and Families, 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; paragraph (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; paragraph (d) amended, and captions added to

paragraphs (e), (f), and (g) June 15, 2007 to be effective September 1, 2007; paragraph (g) amended _____ to be effective _____.

R. 5:13-1

5:13-1. Definitions

The definitions contained in the Child Placement Review Act (N.J.S. 30:4C-50 et al.) apply to this rule. The term "act" as used in this rule means the Child Placement Review Act. The term "board" as used in this rule means a child placement review board established under the act. The term "court" as used in this rule means the Superior Court, Chancery Division, Family Part in the child's county of supervision. The term "division" as used in this rule means the Division of Youth and Family Services of the Department of [Human Services] Children and Families.

Note: Source-R. (1969) 5:7B(a). Adopted December 20, 1983, to be effective December 31, 1983; amended November 5, 1986 to be effective January 1, 1987; amended _____ to be effective _____.

R. 5:21-4

5:21-4. Place of detention or shelter care

No juvenile shall be placed in detention or shelter care in any place other than that specified by the State Juvenile Justice Commission or Department of [Human Services] Children and Families as provided by law. No juvenile shall be detained or placed in any prison, jail, lockup, or police station. If however, no other facility is reasonably available and if a brief holding is necessary to allow the release of the juvenile to the juvenile's parent, or guardian, or other suitable person, or approved facility, a juvenile may be held in a police station in a place other than one designed for the detention of prisoners and apart from any adult charged with or convicted of crime. Nor shall a juvenile be placed in a detention facility which has reached its maximum population capacity as determined by the Juvenile Justice Commission.

Note: Source-R. (1969) 5:8-6(a). Adopted December 20, 1983, to be effective December 31, 1983; amended July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; amended _____ to be effective _____.

O. Proposed Amendment to R. 5:13-4 and Deletion of Appendix XV - Initial Court Order

Discussion

Deleting Reference to Initial Court Order in R. 5:13-4 and Deleting Appendix XV

This recommendation relates to the necessity of Appendix XV, Initial Court Order for child placement cases and related R. 5:13-4. Since its first publication, this model order has been revised and promulgated through the Office of the Administrative Director of the Courts. Most recently, the order was revised in May 2005. The Practice Committee believes that this method of promulgating revisions through the Administrative Director's Office is appropriate. Therefore, the Practice Committee recommends deleting Appendix XV and removing any reference to Appendix XV in R. 5:13-4. Appendix XV has never been amended since its adoption in 1983. The Practice Committee believes that this technical change to the rules is consistent with the current practice of promulgating Children in Court forms of order.

R. 5:13-4

5:13-4. Initial court determination

The court, within 15 days following receipt of the notice of the initial placement pursuant to a voluntary agreement, shall make a determination in the manner prescribed by the act including a determination as to whether or not reasonable efforts have been made to prevent the placement, which determination shall be entered as an order in the form [set forth in Appendix XV of these rules or in such other form as the court may direct] prescribed by the Administrative Director of the Courts. The court shall give a copy of the notice of placement to the division, the child, the parents or legal guardian and such other persons or agencies which the court determines have an interest in or information relating to the welfare of the child, which may include the temporary caretaker. If the court schedules a hearing it shall provide written notice thereof in the manner prescribed by the act.

Note: Source-R. (1969) 5:7B(d). Adopted December 20, 1983, to be effective December 31, 1983; amended July 13, 1994 to be effective September 1, 1994; amended _____ to be effective _____.

Appendix XV - Initial Court Order, R. 5:13-4

[Appendix XV Initial Court Order]

Appendix XV deleted _____ to be effective _____.

P. Proposed Amendment to R. 5:25-3 - Child Support Hearing Officers

Discussion

Time to request Child Support Hearing Officer Appeals

The Conference of Family Presiding Judges, through a memorandum dated May 15, 2006, from Philip S. Carchman, J.A.D., then Acting Administrative Director of the Courts, asked the Family Practice Committee to consider and recommend an amendment to R. 5:25-3 to clarify that parties not requesting a hearing de novo before a judge at the conclusion (or within a 24 hour period) of a hearing officer proceeding must file a motion if further relief is to be considered. The current rule provides that "[f]ailure to request a de novo hearing does not bar a motion for a new trial pursuant to Rule 4:49 or a motion for Relief from Judgment pursuant to Rule 4:50." R. 5:25-3(d)(2). The Conference felt that, since hearing officer proceedings are summary matters, reference to R. 4:49 is not applicable, and that parties seeking relief from a hearing officer determination should be directed to file under Rule 4:50. Accordingly, the Conference suggested that R. 5:25-3(d)(2) be amended as follows:

> A party not accepting a recommendation entered by the Child Support Hearing Officer shall be entitled to an immediate appeal of the recommendation to the Presiding Judge of the Family Part or a Judge designated by the Presiding Judge who shall conduct a hearing forthwith. Failure to request [a de novo] an appeal on the day of the hearing does not bar a motion for [a new trial pursuant to Rule 4:49 or a motion] Relief from Judgment pursuant to Rule 4:50.

The Practice Committee agreed with the Conference's suggestion to amend R. 5:25-3 in order to provide clarification for parties seeking relief after a hearing officer recommendation becomes ratified, but felt that there should be no reference to a specific rule under which a party must file. The Practice Committee recommends the following amendment to the Rule.

R. 5:25-3

5:25-3. Child Support Hearing Officers

(a) Appointment. . . . no change

(b) Jurisdiction. . . . no change

(c) Duties, Powers, and Responsibilities. . . . no change

(d) Review by Presiding Judge or Designee; Appeal; Time; Record.

(1) . . . no change

(2) A party not accepting a recommendation entered by the Child Support Hearing Officer shall be entitled to an immediate appeal of the recommendation to the Presiding Judge of the Family Part or a Judge designated by the Presiding Judge who shall conduct a hearing forthwith. Failure of a party to request a de novo appeal on the day of the hearing [does not bar a motion for a new trial pursuant to Rule 4:49 or a motion Relief from Judgment pursuant to Rule 4:50.] shall require the filing of a motion before further relief can be considered.

(3) . . . no change

(e) Service. . . . no change

(f) Standards and Guidelines. . . . no change

(g) Qualifications and Compensation. . . . 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; paragraphs (c)(10) and (c)(11) amended June 15, 2007 to be effective September 1, 2007; paragraph (d)(2) amended _____ to be effective _____.

Q. Proposed Amendment to Appendix IX-A and Appendix IX-B - Child Support Guidelines

Discussion

Calculating child support - Defining a child's derivative dependent benefit from the Social Security Administration when the custodial parent is disabled

New Jersey Rules of Court, Appendix IX-A, §10.c., addresses the application of derivative benefits to which a child may be entitled based on either parent's receipt of government benefits including Social Security Disability. The derivative benefit, granted to the child and paid directly to the custodial parent, is designed to replace lost earnings of the disabled parent and is paid in addition to the parent's monthly benefit. The amount of benefit to the child is deducted from the basic child support amount "because the receipt of such benefits reduces the parents' contributions toward the child's living expenses (i.e., the marginal cost of the child)." The deduction of the benefit from the basic support amount results in a significant reduction in the obligor's obligation and, if the derivative benefit equals or exceeds the basic support amount, eliminates the need for a child support order. Such an adjustment is equitable when the child's benefit derives from the non-custodial parent's disability.

The custodial parent maintains his or her household income since the reduction in the non-custodial parent's support obligation is offset by the government benefit to the child. When the disabled parent is the custodial parent, however, the child's household loses significant income from the parent's lost employment income in addition to a reduction or elimination of the non-custodial parent's obligation to support the child. The effect of the deduction from the basic support amount creates a windfall to the obligor by reducing or eliminating his or her obligation to provide support for the child.

The Practice Committee proposes that Appendix IX-A and IX-B be amended to allow the court, in its discretion, to disregard the deduction of the child's derivative benefit from the basic

child support amount in cases in which the benefit is the result of the custodial parent's disability. A clarifying statement can be added to Appendix IX-A §10.c., sole parenting line instructions (Line 12) and shared parenting line instructions (Line 11) of Appendix IX-B, as follows:

> NOTE: There may be circumstances when the CP/PPR is the party who is disabled and the child's share of derivative government benefits such as Social Security Disability greatly reduces child support at a time when the CP/PPR's personal income is also reduced. This creates a situation where the government benefits have the overall affect of being treated as a contribution made entirely by the NCP/PAR which may result in an injustice to the child. Under these circumstances, deviation from the guidelines may be required to prevent a financial hardship in the child's primary household due to the substantial reduction, or possible elimination, of child support caused by the application of the deduction allowed for government benefits against the basic child support amount.

Appendix IX-A (Considerations in the Use of Child Support Guidelines) and Appendix IX-B (Sole Parenting and Shared Parenting Worksheet Line Instructions)

Appendix IX-A attached hereto as Attachment B.

Appendix IX-B attached hereto as Attachment C.

R. Proposed Amendment to Appendix X - Case Management Order

Discussion

Cite to R. 5:5-6 should be corrected to R. 5:5-7 (Technical Change)

The Practice Committee considered an issue relating to the Case Management Order form set forth in Appendix X of the Rules of Court and referenced in R. 5:5-7. The form incorrectly refers to R. 5:5-6 rather than R. 5:5-7, which addresses Case Management Conferences in Family matters.

A note to the existing rule in the 2009 edition of Judge Pressler's annotated Rules Governing the Courts of the State of New Jersey reflects that this rule had been renumbered from R. 5:5-6 to R. 5:5-7 as the result of rule changes adopted by the Supreme Court on September 1, 2006.

The problem is in the heading of the form which appeared on page 2412 of the 2008 edition of the Pressler Rule Book that refers to: "FORM OF CASE MANAGEMENT ORDER RULE 5:5-6."[1] The technical change amends the reference to the current rule designation, R. 5:5-7.

[1] A question was raised as to the accessibility of this form to the public. Some of the appendices, including Appendix X, do not appear in their entirety in the 2009 edition of the book. These appendices are incorporated only by reference in the book. The publisher's notes in the book provide that copies of the form may be obtained free of charge "by fax, e-mail or regular mail" with the limitation of one copy per purchased book. These appendices, however, are available free of charge from the Gann website. Note that the Rules of Court and all appendices are available on the Judiciary's website - www.njcourtsonline.com.

Appendix X

Appendix X attached hereto as Attachment D.[2]

[2] The attached form Case Management Order contains selections for Differentiated Case Management tracks pursuant to requirements set forth in R. 5:1-4, effective April 5, 1999. The Judicial Council approved this form of order as part of the Family Division Best Practices revisions to the Dissolution Operations Manual on December 11, 2003, which were promulgated by Assignment Judge memorandum dated January 5, 2004.

S. Proposed Amendment to Appendix XXIV - Confidential Litigant Information Sheet

Discussion

Deleting Reference to Mother's maiden name in the Confidential Litigant Information Sheet (CLIS) and other technical changes

By letter dated January 21, 2005, the American Civil Liberties Union of New Jersey (NJACLU) wrote to AOC Assistant Director Harry Cassidy, expressing concern that inclusion of the "mother's maiden name" on the Confidential Litigant Information Sheet (CN 10486) required by R. 5:4-2(g) implicated serious privacy concerns. The NJACLU expressed the view that inclusion of this information would not outweigh the privacy interests implicated. Thus, the NJACLU wrote:

> Even if the Courts had an independent justification to collect a non-party's name and address, it would not outweigh the privacy interests implicated. First, the party's mother has an interest in maintaining her privacy. Individuals have a protected "nontrivial" privacy interest in their home address. See Paul P. v. Verniero, 170 F.3d 396, 404 (3d Cir. 1999) ("home addresses are entitled to some privacy protection, whether or not so required by a statute"). Regardless of the fact that the non-party's address may be publicly available, her privacy interests are implicated when her home address is disclosed with other information. Doe v. Poritz, 142 N.J. 1, 83 (1995). In this case, her home address, her maiden name, and information about her child are provided - without her consent and potentially without her knowledge.

The Practice Committee recognizes that, in all likelihood, the reason for the inclusion of this information was to permit differentiation between obligors with the same or similar names. After deliberation, the Practice Committee recommends that the mother's maiden name and address be deleted from Appendix XXIV.

Additionally, a technical change is required to improve the form's user interface. Specifically, amendments are recommended for the sections at the top of the form relating to the following:

"Are You: Plaintiff or Defendant? (circle one)"

"Active Domestic Violence Order in this case? Yes or No (circle one)"

It is recommended that the form use checkboxes for these selections and that the "(circle one)" text be replaced with "(check one)."

Appendix XXIV (Confidential Litigant Information Sheet)

Appendix XXIV attached hereto as Attachment E.

III. Proposed New Rules for Adoption

A. Proposed New R. 2:10-6 and New R. 5:12-7 - Ineffective Assistance of Counsel Appeals

Discussion

Proposed procedures for an ineffective assistance of counsel claim in appeals from judgment terminating parental rights

This recommendation is in response to the Supreme Court's decision of Division of Youth and Family Services v. B.R., 192 N.J. 301 (2007). In B.R., the Court directed that procedures should be established for ineffective assistance of counsel appeals in termination of parental rights cases. This recommendation provides for the adoption of two new rules, R. 2:10-6 and 5:12-7, and amendments to R. 2:9-1, supra.

[New] R. 2:10-6

[New] 2:10-6. Allegation of Ineffective Assistance of Counsel in Termination of Parental Rights Cases.

In appeals from judgments terminating parental rights pursuant to N.J.S.A. 30:4C-15 *et seq.* in which ineffective assistance of counsel has been alleged, the issue shall be raised in the direct appeal of the matter below. The brief submitted by appellate counsel must set forth the factual basis for asserting that trial counsel's performance was deficient and explain why the result would have been different had the lawyer's performance not been deficient. In appropriate cases, counsel shall proffer certifications or other documentary evidence to support the claim. If the appellate court determines that a genuine issue of material disputed fact on the issue of the representation provided by trial defense counsel is raised, the matter may be remanded to the trial judge and proceed in accordance with R. 2:9-1(c) [amendment proposed in this recommendation].

Note: Adopted _____, to be effective _____.

[New] R. 5:12-7

[New] 5:12-7. Claims of Ineffective Assistance of Counsel.

Claims of ineffective assistance of trial counsel shall be raised exclusively on direct appeal of a final judgment or order. The matter shall proceed expeditiously in accordance with R. 2:9-1(c) [amendment proposed in this recommendation] and R. 2:10-6 [new rule proposed in this recommendation].

Note: Adopted _____, to be effective _____.

IV. Issues Considered Without Recommendation

A. Notice Period for Motion for Reconsideration

This was a carry forward issue from the 2004-2007 rules cycle. By letter dated October 17, 2005, the Practice Committee was asked to review the notice period for post-judgment motions for reconsideration. The Practice Committee recognizes that, as a result of its 2007 recommendations, the timing of pre- and post-judgment motions were amended so that both pre- and post-judgment motions were required to be filed with 24 days' notice rather than upon 16 and 29 days' notice respectively, as previously required. The Practice Committee concluded that any dispute that might exist as to whether a motion for reconsideration should be regarded as pre- or post-judgment requiring either 16 or 29 days' notice was resolved by the adoption of a uniform 24-day notice period in 2007. Therefore, the Practice Committee makes no rule recommendation.

B. Name change of a minor child during a divorce

This was a carry forward issue from the 2004-2007 rules cycle. The specific issue relates to whether a rule amendment dealing with name change applications for children in the context of a divorce would be either necessary or appropriate. Disputes concerning the surname of a child were addressed in Gubernat v. Deremer, 140 N.J. 120 (1995). In that matter, the Supreme Court applied the best interest of the child standard to this issue and further applied a presumption in favor of the custodial parent to the facts then present. Thus, Justice Stein wrote:

> We do not accept the preference that some courts accord to paternal surnames in the context of determining the best interests of the child. See, e.g., Bobo v. Jewell, 38 Ohio St. 3d 330, 528 N.E.2d 180, 184-85 (1988) ("We . . . refrain from defining the best-interest-of-the-child test as purporting to give primary or greater weight to the father's interest in having the child bear the paternal surname."). The preservation of the paternal bond is not and should not be dependent on the retention of the paternal surname; nor is the paternal surname an indispensable element of the relationship between father and child. As one author found: "[T]his impairment of the father-child relationship had been an assumption by the courts, and fathers had not introduced circumstantial or scientific evidence of harm. More significantly, children and fathers frequently testify that they would not love each other less if the child bore a different surname." Doll, supra, 35 How.L.J. at 234 (footnote omitted); see also Seng, supra, 70 Va.L.Rev. at 1339 ("[T]his rationale for the paternal surname presumption confuses the child's best interests with the father's need for a symbol."). Accordingly, in resolving disputes over surnames we apply the best-interests-of-the-child standard free of gender-based notions of parental rights.

Id. at 141.

> The presumption that the parent who exercises physical custody or sole legal custody should determine the surname of the child is firmly grounded in the judicial and legislative recognition that the custodial parent will act in the best interest of the child. Accordingly, we adopt a strong presumption in favor of the surname chosen by the custodial parent. However, we readily envision circumstances in which the presumption could be rebutted. A young child who has used the non-custodial surname for a period of time, is known to all by that surname, expresses

> comfort with the continuation of that surname, and maintains frequent contact with the non-custodial parent might be ill-served by the presumption that the assumption of the custodial surname would be in his or her best interests. Although we accord the presumption substantial weight, it is not irrefutable.
>
> The non-custodial parent bears the burden of demonstrating by a preponderance of the evidence that despite the presumption favoring the custodial parent's choice of name, the chosen surname is not in the best interests of the child. Courts should examine scrupulously all factors relevant to the best interests of the child and should avoid giving weight to any interests unsupported by evidence or rooted in impermissible gender preferences. See Bobo, supra, 528 N.E.2d at 184-85; In re Schidlmeier, supra, 496 A.2d at 1253. The rebuttable character of the custodial-parent presumption serves two ends: it protects the right of the custodial parent to make decisions in the best interests of the child; and it permits judicial intervention, on a sufficient showing by the non-custodial parent, when that decision does not reflect the best interests of the child. See Urbonya, supra, 58 N.D. L. Rev. at 805-06.

Id. at 144-45.

The Practice Committee has concluded that there is no need for the adoption of a rule dealing with name changes for minors during divorce. Rather, as set forth in Gubernat, these matters may be best addressed by the development of case law. Therefore, the Practice Committee makes no rule recommendation.

C. Use of an abbreviated case information statement (CIS) to satisfy the requirements of R. 5:5-4(a) for child support modifications

Currently, R. 5:5-4(a) requires that, when a motion is brought for enforcement or modification of a prior Order or Judgment, a copy of the Order or Judgment sought to be enforced or modified must be appended to the pleading filed in support of the motion and that when a motion is brought for the modification of an Order or Judgment for alimony or child support, a copy of the prior CIS or CISs filed before the entry of the Order or Judgment sought to be modified and a copy a current CIS must be appended to the pleading filed in support of the motion.

The Practice Committee was asked to address whether litigants should be permitted to submit a less formal CIS when modifications are sought.

The Practice Committee carefully considered this issue and has concluded that the rule should not be changed. By requiring the submission of past CISs, the existing rules assist the court in assuring that base point information is available to the court. In the aftermath of Crews v. Crews, 164 N.J. 11 (2000), and Weishaus v. Weishaus, 180 N.J. 131 (2004), it is particularly important that basis information is provided, and maintaining CISs for later use should modifications be brought has specifically been incorporated within R. 5:5-2(e) that provides as follows:

> (e) Marital Standard of Living Declaration. In any matter in which an agreement or settlement contains an award of alimony, (1) the parties shall include a declaration that the marital standard of living is satisfied by the agreement or settlement; or (2) the parties shall by stipulation define the marital standard of living; or (3) the parties shall preserve copies of their respective filed Family Case Information Statements until such time as alimony is terminated; or (4) any party who has not filed a Family Case Information Statement shall prepare Part D ("Monthly Expenses") of the Family Case Information Statement form serving a copy thereof on the other party and preserving that completed Part D until such time as alimony is terminated.

The Practice Committee concluded that, in considering post-judgment modification and enforcement motions, it was important that the court have the benefit of each of the schedules incorporated within the full CIS form so that, not only income and budget information would be available to the court in a standardized form, but also asset and liability information. Accordingly, the Practice Committee has concluded that this issue requires no rule, directive or referral. Therefore, the Practice Committee makes no rule recommendation.

D. Counsel Fees in General and for Appellate Practice

In addition to the recommendation to amend R. 5:3-5(c), supra, the Practice Committee considered R. 5:3-5 in its entirety and the issue of counsel fees for appellate practice relating to Family Part matters. The Practice Committee has reviewed this issue and it believes that there is no need to adopt a rule. Therefore, the Practice Committees makes no additional rule recommendations at this time.

E. Parental Alienation

A letter dated March 23, 2007, from an attorney requested an assessment of parental alienation and whether it is being unfairly used by parents with resources and access to the legal system as a means by which to continue to harass and oppress the other parent. The writer posited that the oppressors are more often the fathers, and the oppressed the mothers and children. The writer expressed a need for continued training for judges, parent coordinators and experts on the potential misuse of this 'phenomenon' (which she said was not recognized by the American Psychiatric Association) to punish mothers for merely doing what they can to protect their children from real risk.

The Practice Committee does not agree with the suggestion in the letter that there must be a creation of "concrete and consistent criteria before one parent who is accused of alienating another has imposed court sanctions."

The letter writer characterized parental alienation as a "syndrome" and "phenomenon" and accurately set forth that neither were recognized by the American Psychiatric Association. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association and provides diagnostic criteria for mental disorders. DSM-IV, the fourth revision to the DSM, does not recognize parental alienation as a "Syndrome" (PAS). There is a great body of literature about parental alienation. Dr. Richard Gardner was a principle advocate of parental alienation being characterized as a syndrome. Dr. Gardner, now deceased, wrote a book entitled, "The Parental Alienation Syndrome." Dr. Gardner opined that he had observed behavior in divorced family situations that justified the diagnosis of "syndrome" to describe alienating behavior by one parent or another in some divorcing families. Dr. Gardner was a controversial expert who sought to take credit for a phenomenon he believed he had discovered and that he wanted classified as a syndrome.

Judge and attorney members of the Practice Committee agreed that they have not encountered any situations that supported the theory of the writer regarding judges, in effect, being manipulated and duped by false claims of alienation. Members agreed that judges are able to distinguish and make the appropriate findings about the causation of certain behavior and its resulting impact on relationships between parents and children.

The Practice Committee recognizes that, in a divorce, children may align themselves with one parent or another. Moreover, it is the Practice Committee's common experience that, in many divorce cases, one parent or another may have some conscious or subconscious influence on the other parent's relationship with a child or children.

The Practice Committee believes that judges receive education and should continue to be educated regarding issues pertaining to true and false allegations of alienating parental behavior and the impact that parental conduct and anger may have on a child's relationship with the other parent. The Practice Committee believes that judges strive to maintain relationships between the children and each of the parents in divorce situations. The Practice Committee does not believe, however, that specific criteria must be defined or conditions precedent to be set in order for a court to find that alienation is occurring and that one parent is inappropriately and adversely affecting the relationship between the children and the other parent. The Practice Committee believes that judges must use their fact finding skills to make determinations about what is best for children and, in that regard, must be aware of all circumstances and factors that affect the child's interactions with each of the parents. The Practice Committee believes that more focus should be placed on judicial education with respect to this issue.

Moreover, it is the Practice Committee's view that this topic does not lend itself to creation of a court rule. Any litigant can accuse any other litigant of any conduct, action

behavior or motivation. The court must sort it out factually with the aid of experts, if necessary. Courts must determine whether a parent is acting inappropriately with respect to influencing a child's relationship with the other parent and a court should determine the remedies to be employed in the event an adverse finding is made. These issues are fact sensitive and vary from case to case. What may be alienating in one family may not be alienating in another. There is enough dispute and controversy about this topic that each case must be judged on its own merits based on the expertise available to provide insight and guidance on a case by case basis to the trier of fact.

Therefore, the Practice Committee makes no rule recommendation.

F. Evaluate systemic pressure to settle domestic violence cases

A letter dated March 23, 2007, from an attorney suggested that the system to handle domestic violence cases pressures litigants to settle these matters. The Practice Committee has reviewed the court procedures for processing domestic violence cases. Standard operating procedures do not foster or approve of practices that would culminate in pressure on either the plaintiff or defendant to settle a domestic violence case. Furthermore, mediation of domestic violence cases is expressly prohibited by N.J.S.A. 2C:25-29(a). Current judicial training expressly provides that the court should never put pressure on litigants to settle domestic violence cases. If there are specific incidents of this occurrence, it should be brought to the attention of the Family Presiding Judge in the vicinage in question. The Practice Committee does not believe the issue requires further action. Therefore, the Practice Committee makes no rule recommendation.

G. Child support - Entering the judgment and credit reporting immediately upon establishment of the child support case

Correspondence from an attorney dated April 3, 2007 expressed concern with "Probation's hyper-vigilance" in the reporting of child support delinquencies to consumer credit reporting agencies (a.k.a. credit bureaus).[3] The attorney acknowledged that the law requires this information to be reported; nonetheless, he seeks the Court's assistance in fashioning a remedy, presumably by court rule, which would not allow a Probation account to be established for at least 30 days before the delinquency would be reported. According to the writer, this would allow the obligor to satisfy the arrears before his or her credit rating is adversely affected.

The federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) requires the States, as a condition of receiving federal funds, to institute measures to report periodically unpaid child support to credit bureaus. The law requires that States provide the non-custodial parent with due process. It permits reporting only to recognized consumer credit reporting agencies. The information that must be reported includes the name of the delinquent non-custodial parent and the amount of the child support arrears.

Consumer reporting agencies are defined by 15 U.S.C. § 1681a(f) as follows:

> any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

The federal Office of Child Support Enforcement (OCSE) Federal Tax Refund Offset program provides a pre-offset notice to non-custodial parents. This notice includes a statement

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[3] By letter dated April 10, 2007, Frank Louis, Esq. forwarded the attorney's correspondence to Judge Serpentelli for possible action by the Family Practice Committee.

warning the non-custodial parent that child support arrearages may be reported as a delinquent debt to a consumer credit reporting agency. Credit bureau reporting primarily serves as a valuable enforcement tool in that it encourages obligors to make timely child support payments to avoid a negative credit rating.

Pursuant to N.J.S.A. 2A:17-56.21, the State IV-D agency is required to make available the name of any delinquent obligor and the amount of overdue support owed by the obligor to consumer credit reporting agencies, subject to privacy safeguards and due process. Current practice requires that the obligor owe a minimum of $1,000 in arrears before notice of intended credit reporting is issued; any amount of past due support, however, qualifies for notification.

Credit bureau reporting is an automated process and may occur only after an affected obligor has been afforded all due process required by law, including notice and a reasonable opportunity to contest the accuracy of information to be reported. All delinquent child support accounts that are properly coded on New Jersey's Automated Child Support Enforcement System (ACSES) and meet the eligibility criteria are included in a report. On a quarterly basis (the last Saturday in February, May, August and November), ACSES generates a report of delinquent obligors and this information is sent electronically to the three major consumer credit reporting agencies (Equifax, Experian, and TransUnion). Before the end of the calendar quarter, a notice is sent to the obligor indicating that the arrears will be reported to the consumer credit reporting agencies, and the obligor will have the opportunity to dispute the reporting at an administrative review. The obligor also may file a motion to stop the credit bureau reporting.

Past due child support obligations become judgments automatically by operation of law. Generally, judgment information is stored in the Judiciary's paper and electronic records, which are available to the public. Electronic case docket information is available to the public, through

the Superior Court Clerk's Office in Trenton, in four ways: public access terminals, bulk reports, computer dial-up access, and, to a limited extent, Internet posting.

Once docketed, judgment information is public information that can be obtained by anyone. Any interested person, such as an obligee or obligee's representative, is not precluded from obtaining information from the public record and also reporting it to the consumer credit reporting agencies. Credit bureaus generally receive judgment information in quarterly reports, and usually do not actively seek out this information.

The Practice Committee finds no hyper-vigilance in reporting delinquencies to consumer credit reporting agencies. Adequate safeguards are built into the reporting system to ensure that due process has been met. Prior to reporting information to consumer credit reporting agencies, child support obligors are notified. Obligors are provided with the opportunity to correct errors or to pay the arrears before any delinquencies are reported. Accordingly, the Practice Committee recommends no rule amendment to address this issue.

H. Model Orders to Show Cause (AOC Directive 16-05)

On November 16, 2005, Philip S. Carchman, J.A.D., then Acting Administrative Director of the Courts, issued AOC Directive #16-05, which established uniform provisions to be included in all orders to show cause (OTSC) used as original process. The intent of the directive was to ensure that all orders to show cause used as initial process contain standardized and complete information necessary for a court to act. The directive also noted that the Supreme Court asked the respective rules committees to draft and submit proposed amendments to the Rules of Court to include these three model forms in the appendices to the rules and also to provide necessary references to the existence of these forms and their required use in the relevant rules.

Pursuant to R. 5:7-5(d) and AOC Directive #5-95, in the context of child support enforcement, the Probation Division is authorized to apply for an OTSC against a noncompliant employer or other source of income, and to proceed with contempt proceedings to enforce payor compliance under R. 1:10-3. In order to ensure that it is in compliance with AOC Directive #16-05, the AOC Probation Services Division reviewed its procedures and determined that they do not fit within the directive. Seeking procedural and operational guidance, the AOC Probation Services Division sought additional internal AOC review and comment on the procedures and forms.

The Practice Committee held this issue from the 2004-2007 rules cycle, and now addresses it in the current cycle. The Probation Division enforces employer noncompliance by OTSC in accordance with §1603 of the Probation Child Support Enforcement (PCSE) Operations Manual, and as authorized by R. 5-7-5(d) and AOC Directive #5-95. It was determined that the OTSC process and forms that Probation uses for employer noncompliance with income withholding orders does not conflict with AOC Directive #16-05.

The OTSC process and forms authorized by AOC Directive #5-95 are used only for Probation-initiated actions against noncompliant payors. All other OTSC actions, including those arising out of child support matters not supervised by Probation, are governed by the provisions of AOC Directive #16-05. Accordingly, the Practice Committee recommends no amendment to R. 5-7-5(d).

I. Child support modification and emancipation hearings for cases involving one obligor and multiple families

Discussion

Venue and notice requirements for serial family obligations

Over the course of several rules cycles, the Practice Committee has reviewed the recurring issue of obligors with multiple support obligations to address the issues of venue and equality of support orders when an obligor has cases in multiple counties. The general policies regarding such cases are set forth in the Rules of Court, Appendix IX-A, specifically in §10, "Adjustments to the Support Obligation, (b) Multiple Family Obligations" and in §21, "Other Factors that May Require an Adjustment to a Guidelines Based Award." Section 21 provides that, having "one obligor owing support to more than one family (e.g. multiple prior support orders)," gives the court discretion to adjust a Guidelines based child support award. Appendix IX-A, §10 (b) provides:

> (b) 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 above resulted from amendments in 2000 and expresses the general policy as to the court's responsibility to the obligor with multiple obligations and the children who are the subject of the child support orders. Venue is a pivotal issue to adjudicating these cases. The Practice

Committee discussed whether the solution was to consolidate all the cases in one venue. There is nothing easy in addressing serial obligor cases. The Practice Committee identified various obstacles in modifying serial obligor cases in order to adjust the support in multiple cases:

- different venues;
- attempts to list all cases together for one hearing was often frustrating since lack of service on one matter required all cases to be rescheduled;
- notices generated by the Family Automated Case Tracking System (FACTS) for modification could not issue unless all matters could be heard in the county of venue, thus requiring manual notices (Probation is unable to schedule these cases for modification).

In the current rules cycle, the Practice Committee balanced the interests of the obligor, the multiple families located in different counties, and court resources. The Practice Committee found that the existing procedure (i.e., inter-vicinage communication to fashion a remedy, as determined by the judges presiding over such matters) is sufficient to address this issue. The Practice Committee recommends no amendment to the Rules of Court, as the courts already have the discretion to adjust orders equitably as warranted.

The Practice Committee recognizes the benefits of advising interested parties that application to modify child support has been filed by a party on a related case or cases. Such information could allow interested parties to file their own applications for appropriate relief. Such a protocol may be feasible at some future time through developing NJKiDS[4] technology, which could allow the system to identify and notice parties automatically in these situations. The technology is not currently available and therefore the Practice Committee makes no rule recommendation.

[4] NJKiDS is the automated child support enforcement and case tracking system that will replace ACSES in the near future.

Whether child support guidelines technology could provide for offsets related to the other orders to assist in the determination of the modification similar to the programming used for establishments

With respect to addressing serial family obligations through technology, the Practice Committee found that guidelines technology is not necessary to allow the courts to provide for offsets related to other orders. The courts already have the discretion to enter orders that provide for offsets. Therefore, the Practice Committee makes no rule recommendation.

J. (1) Deviations of calculations among commercial child support guidelines software and (2) Unavailability of the child support guidelines software used by the courts to private litigants

By correspondence dated November 19, 2007, an attorney asked the Practice Committee to review issues relating to child support guidelines calculation software and whether the software used by the courts will be available to the public. The attorney expressed concerns that differences exist in various commercial child support guidelines programs, and that the PSI web-based application used by the Judiciary is not available to private attorneys. The AOC advised this attorney that the differences in the results obtained from the various commercial programs were caused by variations in the parameters entered by the users and that such differences were not found to be significant. This issue was resolved by way of communication between the AOC and the attorney. Further, the AOC advised the attorney that the New Jersey Department of Human Services, Division of Family Development, was having technical problems with providing the web-based calculator to private litigants and attorneys.

The Practice Committee makes no rule recommendation.

K. (1) Clarification of Appendix IX personal tax withholding allowances amended on March 11, 2008 and (2) Table limits of Appendix IX-H

By fax sent on March 26, 2008, an individual asked Richard Russell, Esq., a member of the Practice Committee, to consider this issue. Mr. Russell communicated with the individual, explaining that the withholding allowances were based on the federal W-4 form. After receiving this explanation, the individual verbally withdrew his request for review. Accordingly, the Practice Committee recommends that no further action be taken.

L. Case information statement: Statement of Liabilities contains column for equitable distribution that does not match the Statement of Assets column for equitable distribution

In the Family Part CIS, under Part E, Balance Sheet of All Family Assets and Liabilities, Statement of Assets, the third column states, "Date of purchase/acquisition. If claim that asset is exempt, state reason and value of what is claimed to be exempt." In this column, the litigant indicates whether a claim is made that the asset identified is exempt from equitable distribution, and states the reason and the value of what is claimed to be exempt. Under Statement of Liabilities section, however, a member of the Practice Committee asserted that the language in the equitable distribution column is not the same. The Practice Committee recognizes the difference; however, the Practice Committee believes that a rule amendment is not necessary at this time because it would involve only one minor change to the CIS and the litigant may still elect to provide said information on the current CIS without any change to the form.

V. Other Recommendations

A. Whether a rule should be adopted requiring the court to advise both litigants in an application for a restraining order under the Prevention of Domestic Violence Act of their right to be represented by counsel

Discussion

The Practice Committee concluded that, in applications for temporary restraining orders, the Domestic Violence Procedures Manual, sections 4.1.3, 4.3.3 and 4.5.4 already direct staff and the judge hearing the case to ensure that the plaintiff is advised of his or her legal rights and options available. The Practice Committee agreed that the best practice is that both litigants be advised of their right to obtain counsel at the start of the final hearing.

Recommendation

The Practice Committee recommends that, rather than proceed by rule making, this is a training issue to ensure that judges handling these matters are advising litigants, and in particular the defendants, of the right to secure private counsel.

B. Creating Standards for Batterer Intervention Programs

Discussion

A letter dated March 23, 2007, from an attorney indicated that there are no specific standards for batterer intervention programs in domestic violence matters. The letter noted that the courts commingle these programs with anger management programs that do not address anger and control. Currently, there are no specific standards regarding batterer intervention programs. There are variants of opinion nationwide regarding the components, length of program and nature of resources necessary to establish a functional program. Some states have strict protocols and other states have not developed any standards for batterer programs. The Practice Committee understands the New Jersey Coalition for Battered Women has not taken a position concerning what, if any, formal standards should be promulgated for these programs.

Recommendation

The Practice Committee recommends that this issue should be referred to the State Domestic Violence Working Group to determine whether there is a need for specific standards, and if so, to propose recommendations to address this issue.

C. Review alternate or modified models for child support guidelines and inclusion of automobile expenses and insurance in the child support guidelines

Discussion

The issues of reviewing other child support guidelines models and including automobile expenses within the child support guidelines are closely related and they will be addressed together.

Federal law requires the states to review their child support guidelines every four years (quadrennial review). States must examine current economic data to ensure that the awards meet the children's economic needs. States also must review child support cases and see how often they deviate from the guidelines. New Jersey, like most states, adopted the income shares guidelines model, in which child support is determined based on both parents' incomes. The most common alternative to the income shares model is the percentage of income model, which considers only the income of the non-custodial parent. Finally, a few states adopted the Melson model, which is somewhat more complex than the others and provides a self-support reserve for the non-custodial parent. Many states, particularly those with income shares and Melson models, also permit certain deviations from the basic child support calculation to provide for expenses such as health care, child care and private education.

The AOC sponsored two reports to satisfy this quadrennial review requirement: (1) "New Jersey Economic Basis for Updated Child Support Schedule Report," dated March 30, 2004 (Economic Basis Report); and (2) "Findings from Child Support Order Case File Reviews," dated January 12, 2005 (File Reviews Report). The Economic Basis Report reviewed current economic data, and applied more recent Consumer Expenditures Survey ("CEX") data than reflected in the existing child support guidelines. Using the more recent CEX data, 2004 price levels, and income and spending factors specific to New Jersey, the Economic Basis Report

recommended adoption of an updated Child Support Schedule and suggested that an anomaly exists in the self-support reserve. The File Reviews Report set out an analysis of actual New Jersey child support cases to determine the application of and deviation from the child support guidelines. The case file review attempted to verify that any deviation from the child support guidelines was the exception rather than the norm.

On June 15, 2007, the New Jersey Supreme Court adopted the findings of the quadrennial review, which resulted in significant changes in the Appendix IX-F Schedule of Child Support Awards. Subsequent to the adoption of the revised guidelines, concerns were expressed that the income shares model used may have been based on faulty underlying economic research and that the underlying economic data failed to reflect true child-related expenditures, most notably in upper income families. Thus, it was suggested that the guidelines do not accomplish the goal of ensuring that parents, after they break up, continue to spend on their children the same percentage of income that they would have spent if the parents were together. Consequently, the Practice Committee considered whether the New Jersey economic data used in the quadrennial review were accurate. The Practice Committee also considered whether New Jersey should adopt a different guidelines model.

Recommendation

The Practice Committee recommends that expert opinions will be necessary to provide assistance in responding to these questions. The Practice Committee, through AOC staff, has sought the assistance of the New Jersey Department of Human Services, Division of Family Development (New Jersey's Title IV-D agency) to determine if and when funding will be available to conduct an extensive review of current economic data and examination of child support guidelines models in accordance with quadrennial review. Such funding will be

necessary to employ experts to review New Jersey's economic data to determine the most appropriate guidelines model for this state.

As the Practice Committee has not yet received information as to the availability of funding, the Practice Committee could not submit an out of cycle recommendation to amend the child support guidelines methodology and structure. The Practice Committee recommends that the Judiciary and the Division of Family Development continue to discuss the funding and employment of experts to resolve this issue.

D. Review of "rebuttable presumption" language in Appendix IX-A regarding guidelines deviation and identifying expenses covered under the Child Support Guidelines for deviation

Discussion

The Practice Committee held two related issues from the 2004-2007 rules cycle: (1) review of "rebuttable presumption" language in Appendix IX-A of the Rules of Court, to determine whether it should be modified to clarify when deviation is appropriate; (2) identify expenses covered under the guidelines to give the court further guidance in determining whether a deviation is warranted.

The Practice Committee felt that both issues are so closely related that they should be addressed together. Child support guidelines are a rebuttable presumption when determining support and can be disregarded or adjusted if there is a conflict with the presumptive expenses in a particular case or if an injustice would occur through its application. Appendix IX-A, §§ 2 and 3, outlines the nature of the rebuttable presumption and the general principles for deviation. Appendix IX-A, §21, outlines a number of factors that may require deviation or adjustment to a guidelines based support determination. Appendix IX-A, §8, details presumed incurred expenses captured within a guidelines calculation under the categories of housing, food, clothing, transportation, unreimbursed heath care up to and including $250 per child per year, entertainment, and miscellaneous items. Appendix IX-A also details how certain incurred child rearing costs are attributed to fixed (housing), variable (food and transportation) and controlled (the presumed responsibility of the custodial parent) expenses.

It has been suggested that the courts seldom deviate from a child support guidelines calculation. This may be attributed to attorneys not aggressively advocating for deviation in appropriate situations. The Practice Committee also recognizes that the bench and bar may lack understanding of deviation factors set forth in the child support guidelines. The Practice

Committee believes that there is sufficient language in Appendix IX-A to provide direction to lawyers and judges to help identify family situations in which a deviation or adjustment may be warranted and modification to the language of Appendix IX-A is not necessary.

Recommendation

The Practice Committee recommends that, rather than proceed by rule making, these issues can best be dealt with through attorney and judicial education.

VI. Matters Held for Consideration

A. Civil Unions

The Practice Committee has compiled a number of issues relating to civil unions. The Practice Committee believes that these issues require extensive review and discussion. Therefore, the Practice Committee reserves its recommendations of these issues for the next rules cycle.

B. Audio or video taping custody evaluations

The Practice Committee has discussed this issue extensively, but it has not concluded its review of the issue. Therefore, the Practice Committee reserves its recommendations of these issues for the next rules cycle.

C. Whether eight days is sufficient time to reply to a cross motion and whether ten pages is adequate for a reply certification to a cross motion

An attorney questioned whether the eight days now allowed for response to a cross-motion is sufficient and whether a 10-page limit on reply certifications is adequate particularly when a cross-motion involves multiple subparts.

The time frame for responding to cross-motions was adopted as part of the 2007 rule amendments now in effect that require motions to be served on 24-days' notice, responses and cross-motions to be served on 15-days' notice and reply certifications including responses to cross-motions to be filed eight days in advance of the motion hearing. The Practice Committee does not recommend a review of these deadlines within the current rules cycle. The Practice Committee refers this topic to the Conference of Family Presiding Judges for consideration during its deliberations after at least another full year has passed.

It is noted that these issues are related to the clarifying language the Practice Committee recommends to R. 1:6-3(b). The Practice Committee believes that these issues should be reviewed after the Court makes a determination regarding the R. 1:6-3(b) recommendation, supra. After the passage of a reasonable period of time, these topics should then be considered by the Conference of Family Presiding Judges and the Practice Committee.

Therefore, the Practice Committee reserves its recommendations of these issues for the next rules cycle.

D. Proof of service using U.S. Postal Service website's Tracking and Confirmation page

The United States Postal Service (USPS) website does not indicate the name of the person who signs a return receipt (a.k.a. green card) signifying receipt of motions or other notices sent by certified mail. The New Jersey Department of Human Services (DHS) may address this issue, but only as to Title IV-D cases, which include summary actions or post-judgment applications. Therefore, the Practice Committee reserves its recommendations of this issue for the next rules cycle for a more comprehensive review.

E. Whether R. 5:7-1 provides a determination on venue for irreconcilable differences

An attorney contacted the Judiciary with the following statement: "R. 5:7-1 provides a determination on venue for extreme cruelty complaints but does not provide a determination on venue for irreconcilable differences." The Practice Committee has not completed its discussion of this issue. Therefore, the Practice Committee reserves its recommendations of this issue for the next rules cycle.

F. Compensation for Mediators

It has been reported that the Supreme Court's Complementary Dispute Resolution (CDR) Committee is now conducting a review of compensation guidelines for mediators and is considering the establishment of procedures for mediators to obtain payment for services. The Practice Committee reserves action on this topic until the recommendations of the CDR Committee have been made and released. At that point, the Practice Committee recommends that it be permitted to consider the topic.

G. Confirming arbitrations in the Family Part

Discussion at a Practice Committee meeting suggested that the Rules of Court require arbitrations to be confirmed in the Law Division. It was noted that, if an arbitration is held pursuant to a Family Part case, then it should be confirmed in the Family Part. It was noted that this issue should be addressed by the CDR Committee. The Practice Committee reserves its recommendations of this issue for the next rules cycle and asks the Court also to refer this matter to the CDR Committee.

H. Child support - Electronic signatures for complaints and orders, and amending Rules of Court relating to the implementation of a new automated child support enforcement system

On December 2, 2008, the Supreme Court entered two orders relaxing various Rules of Court that relate to the implementation of a new automated child support enforcement system in New Jersey. One order addressed the electronic signatures for child support orders and complaints. The second order related to replacing references to "ACSES," the outgoing automated child support enforcement system. In response to these Supreme Court orders, the Practice Committee was asked to develop conforming rule amendment recommendations. Therefore, the Practice Committee will review the relevant Rules of Court and make recommendations in the next rules cycle.

I. Default Judgment

In the 2004-2007 rules cycle, the Practice Committee proposed an amendment to R. 4:43-2 (b), Final Judgment by Default, excepting Family Part matters recognized by Part V, which was adopted. As a result, the Practice Committee acknowledges that a Part V default rule is warranted to address the unique practice requirements of the Family Part. The Practice Committee did review and consider a new default rule primarily with regard to matrimonial cases. Nonetheless, in order for the proposed default rule to address both matrimonial and non-dissolution practices, it is recommended that this issue be carried to the next rules cycle for further consideration. Related to this issue, the Conference of Family Presiding Judges is developing recommendations regarding summary proceedings, and such recommendations will be provided to the Practice Committee for its consideration in the next rules cycle.

VII. Out of Cycle Activity

A. Public Access to Court Records

On November 29, 2007, the Special Committee on Public Access to Court Records submitted its final report (Public Access Report) to the Supreme Court. The Special Committee was directed to conduct a comprehensive review of the Judiciary's policies governing the public's right to inspect and copy court records. In January 2008, the Supreme Court requested comments to the Special Committee's report. In response, the Practice Committee devoted a significant amount of resources and time to discussing the Special Committee's report and providing its comments to the Supreme Court.

A substantial majority of the Practice Committee believes that Family Part records, with limited exceptions, should be kept presumptively closed to public scrutiny subject to individual application for opening records based upon specific criteria. The Practice Committee further recommended that the Supreme Court provide the Practice Committee with the opportunity to conduct a thorough review of existing Part V Rules of Court, so that appropriate amendments and implementing rules may be drafted, and submitted to the Supreme Court.

The Practice Committee provided the following comments:

1. The Practice Committee recognized the Special Committee's R. 1:38-2 recommendation to exempt a number of Family Part documents from public access.

> . . .
> f) Guardian ad litem records and reports to the extent provided under N.J.S.A. 9:2-1;
>
> . . .
>
> h) Criminal, Family, and Probation Division records pertaining to investigations and reports made for a court or pertaining to persons either on probation or ordered to pay child support;
>
> . . .

t) Medical, psychiatric, psychological, and alcohol and drug dependency records, reports, and evaluations in matters related to child support, child custody, or parenting time determinations;

u) Domestic violence records and reports pursuant to N.J.S.A. 2C:25-33;

v) Names and addresses of victims or alleged victims of domestic violence pursuant to N.J.S.A. 2C:25-26, and sexual offenses pursuant to N.J.S.A. 2C:14-12;

w) Family Case Information Statements including all attachments;

x) Confidential Litigant Information Sheets pursuant to Rule 5:4-2(g);

y) Records relating to child victims of sexual abuse pursuant to N.J.S.A. 2A:82-46 and to N.J.S.A. 9:6-8.10a;

z) Child custody evaluations and reports pursuant to Rule 5:8-4 and N.J.S.A. 9:2-3;

aa) Child abuse and neglect records and reports pursuant to N.J.S.A. 9:6-8.10a;

bb) Parental termination records and reports pursuant to Rule 5:12(b);

cc) Paternity records and reports, except for the final judgments or birth certificates pursuant to N.J.S.A. 9:17-42;

dd) Child Placement Review Board records and reports pursuant to Rule 5:13-8;

ee) Child support information received from the New Jersey Department of Human Services pursuant to 42 U.S.C.A. section 654, and N.J.A.C. 10:110-1.7;

ff) Juvenile delinquency records and reports pursuant to Rule 5:19-2 and N.J.S.A. 2A:4A-60;

gg) Adoption records and reports pursuant to N.J.S.A. 9:3-52;

hh) Records of hearings on the welfare or status of a child, to the extent provided under Rule 5:3-2; and

ii) Records of the Juvenile Conference Committees to the extent provided under Rule 5:25-1.

Public Access Report at 18-20. The Practice Committee noted, however, that the list of exempt documents cannot be sufficiently comprehensive to assure appropriate confidentiality. The Practice Committee recommended instead deleting the above

references in the Special Committee's R. 1:38-2 proposal, adopting a general rule exempting Family Part records, and permitting access only to limited information that would include docket information and published opinions. The Practice Committee noted that the general rule should permit motions to be filed in order to open particular records on a case by case basis based upon specific criteria to be drafted.

2. The Practice Committee recognized that court hearings should be, with limited exceptions, open to the public.

3. The Practice Committee acknowledged the Special Committee's recommendation regarding the posting of Family Part records on the Internet. The chart in the Public Access Report indicated that the recommendation for the future on Internet posting stated: "No – Not at this time. Pending analysis of civil & conviction-only docket." Public Access Report at 51. The Practice Committee, however, expressed concerns regarding this noncommittal recommendation.

4. The Practice Committee believes that the Public Access Report, by designating specific Family Part records to be exempt from public access, did not consider the broad range of pleadings and documentary evidence containing highly sensitive and confidential information (including reference to those closed documents) that routinely come to court in Family Part matters. The Practice Committee cited examples of documents submitted in a Family Part case that should be exempt from public access: (a) Certifications attached to Family Part motions, under R. 5:5.4, (b) other supporting attachments including, but not limited to, federal and state personal and corporate income tax returns, business documentation, and appraisals or other expert reports in tax appeal matters,

retirement related orders, Notices for Equitable Distribution, (c) certifications relating to children, (d) submissions to Mandatory Early Settlement Program (MESP) panels.

5. The Practice Committee acknowledged that current court staffing levels make it impossible for court staff to redact from filed documents all exempt documents and all references to those confidential documents. Furthermore, the Practice Committee noted that the obligation of redacting identifiers should not be placed upon counsel. To do so would increase the cost of divorces and prevent counsel from referring to the case information statement or custody report, which are crucial to the legal arguments advanced.
6. The Practice Committee expressed concerns regarding a self-represented litigant's ability to recognize and redact the protected confidential information noted in the Public Access Report.
7. The Practice Committee noted that, pursuant to federal law, all information related to child support matters is confidential; particularly any information protected by Title IV-D of the federal Social Security Act.
8. The Practice Committee recognized that there is a two tiered system of justice in that financially advantaged litigants have access to alternate dispute resolution (ADR) mechanisms that would allow Family Part issues to be resolved by mediators or arbitrators and, in the process, have their matters resolved without information ever entering the public domain. Financially disadvantaged parties, however, would be required to use the courts because they cannot afford to use ADR services. The Practice Committee concluded that this is inherently unfair.

9. The Practice Committee expressed concern with regard to the public's need to view the unsubstantiated allegations of divorce complaints.

10. As to the public's right to observe a judge's performance of his or her duties, the Practice Committee noted that public review of paper pleadings and judicial orders is not necessarily the best way to determine how a judge is performing. The Practice Committee agreed that attending a public court session in an open courtroom and reviewing appellate and trial judges while they conduct proceedings is the most effective method of observing judicial performance.

11. In Recommendation 3.3.2 of the Public Access Report, the Special Committee specifically referred to the Practice Committee's Final Report of the 1990-1992 rules cycle, where the Practice Committee had advocated for open records. The current Practice Committee has concluded, however, that with the advent of greater access through computers and the fear of where expanded openness might lead, the Practice Committee's now 16-year old recommendation should be reconsidered.

12. The Practice Committee reviewed the laws and policies regarding public access to court records in Pennsylvania, Connecticut and New York. In Philadelphia, Pennsylvania, family court records are presumptively closed and a petition for access to court records is required. PA Philadelphia Cty. Family LR Admin.J.Admin. Reg. 97-1. In Connecticut, family court records are presumptively open. Nonetheless, the records may be sealed at the discretion of the judge. See Conn. Prac. Book §25-59A and Conn. Gen. Stat. §46b-11. Similar to Pennsylvania law, New York law regarding public access to family court records is presumptively closed. NY CLS Family Ct Act §166.

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Respectfully submitted,

Hon. Eugene D. Serpentelli, Chair

Dated: January 20, 2009

List of Attachments

A. Complementary Dispute Resolution (CDR) - Notice to the Bar dated December 4, 2006, R. 5:4-2(h) CDR descriptive materials and certifications

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

C. Appendix IX-B - Sole Parenting and Shared Parenting Worksheet Line Instructions

D. Appendix X - Family Part Case Management Order

E. Appendix XXIV - Confidential Litigant Information Sheet

Attachment A

NOTICE TO THE BAR

DIVORCE – DISPUTE RESOLUTION ALTERNATIVES TO CONVENTIONAL LITIGATION – DESCRIPTIVE MATERIAL REQUIRED BY RULE 5:4-2(h); CERTIFICATION FORMS

As part of the July 27 rule amendments that went into effect September 1, the Supreme Court adopted a new paragraph in Rule 5:4-2 ("Complaint") that requires the first pleading of each party in a divorce action to include an affidavit or certification "that the litigant has been informed of the availability of complementary dispute resolution ('CDR') alternatives to conventional litigation, including but not limited to mediation or arbitration, and that the litigant has received descriptive literature regarding such CDR alternatives." Rule 5:4-2(h) ("Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives"). The Court recently adopted a clarifying amendment to that paragraph, changing "descriptive literature" to "descriptive material."

In a September 18 Notice to the Bar, I advised that the "descriptive material" was still in the process of being developed by the Committee on Complementary Dispute Resolution. The Committee completed its work and submitted the proposed text and the accompanying certification forms. The Court at its October 10 Administrative Conference approved the "descriptive material" text and the certification forms, subject to some final editing.

That final editing having been made, attached as approved by the Supreme Court is the "descriptive material" on dispute resolution alternatives to conventional divorce litigation, as referenced in Rule 5:4-2(h). Also attached are the two approved certification forms relating to the descriptive literature, one for use by self-represented matrimonial litigants, the other by those litigants represented by counsel. The descriptive material and certification forms should be used effective immediately.

The descriptive material and certification forms also will be published and posted by a Notice to the Bar. Questions may be directed to Assistant Director Harry Cassidy at 609-984-4228.

Note: The adoption of Rule 5:4-2(h) and the promulgation of the attached descriptive material is in no way intended to indicate any change in the Court's policy, grounded in statutes and court rules, against mediation in any matter in which a temporary or final restraining order has been entered pursuant to the Prevention of Domestic Violence Act.

/s/ Philip S. Carchman

Philip S. Carchman, J.A.D.
Acting Administrative Director of the Courts

Dated: December 4, 2006

DIVORCE – DISPUTE RESOLUTION ALTERNATIVES TO CONVENTIONAL LITIGATION*

[Text Promulgated 12/04/06 as Approved by the Supreme Court]

Resolving issues concerning your divorce can be costly and difficult. While only a judge can actually grant a divorce, division of your property and your debts, alimony, child support, custody and parenting time are some of the other issues that may need to be resolved. A judge can decide all issues at trial. However, there are other ways to resolve many of the issues in your divorce. These alternate dispute resolution methods offer greater privacy than resolving the issues in a public trial. They also may be faster and less expensive, and may reduce the level of conflict between you and your spouse during your divorce. You are encouraged to discuss alternative dispute resolution with your lawyer to decide whether these alternate methods may help you and your spouse resolve as many of the issues relating to your divorce as possible before the matter is presented to the judge.

What follows are short descriptions of various forms of alternative dispute resolution that may be used in divorce cases.

MEDIATION**

Mediation is a means of resolving differences with the help of a trained, impartial third party. The parties, with or without lawyers, are brought together by the mediator in a neutral

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* This constitutes the "descriptive material" referenced in Rule 5:4-2(h) that each divorce litigant must receive and certify as having received (using the attached certification forms).

** Note: The adoption of Rule 5:4-2(h) and the promulgation of this descriptive material is in no way intended to indicate any change in the Court's policy, grounded in statutes and court rules, against mediation in any matter in which a temporary or final restraining order has been entered pursuant to the Prevention of Domestic Violence Act.

setting. A mediator does not represent either side and does not offer legal advice. Parties are encouraged to retain an attorney to advise them of their rights during the mediation process. The mediator helps the parties identify the issues, gather the information they need to make informed decisions, and communicate so that they can find a solution agreeable to both. Mediation is designed to facilitate settlements in an informal, non-adversarial manner. The court maintains a roster of approved mediators or you can use private mediation services. The judge would still make the final determination as to whether to grant the divorce.

ARBITRATION

In an arbitration proceeding, an impartial third party decides issues in a case. The parties select the arbitrator and agree on which issues the arbitrator will decide. The parties also agree in advance whether the arbitrator's decisions will be binding on them or instead treated merely as a recommendation. While an arbitrator may decide issues within a divorce case, the judge would still make the final determination as to whether to grant the divorce.

USE OF PROFESSIONALS

Parties in a divorce may also seek the assistance of other skilled professionals to help resolve issues in a case, such as attorneys, accountants or other financial professionals, and various types of mental health professionals (e.g., psychiatrists, psychologists, social workers, therapists). These professionals may help the parties resolve all of the issues or just specific portions of the case. As with mediation and arbitration, parties making use of these professionals to resolve issues in the divorce are encouraged to consult their attorney for advice

throughout this process. While this approach may resolve some issues in the case, the judge would still need to make the final decision to grant the divorce.

COMBINATIONS OF ALTERNATIVES

Depending on your circumstances, it may be helpful for you to use a combination of mediation, arbitration, and skilled professionals to resolve issues in your divorce.

CONCLUSION

Just as every marriage is unique, every divorce is unique as well. The specific circumstances of your divorce determine what method or methods of dispute resolution are best suited to resolve issues in your divorce. You are encouraged to ask your attorney about these alternative dispute resolution methods to resolve issues relating to your divorce.

Using these alternative dispute resolution methods allows you to participate in the decision on those issues, rather than leaving all of the issues to the judge to decide. And presenting the judge with a case in which the only decision remaining is whether to grant the divorce will permit that decision to be made more expeditiously. While the judge must be the one to decide whether to grant the divorce, your role in deciding some or all of the other issues can be enhanced through these alternative dispute resolution methods.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
_____COUNTY
DOCKET NO. FM- _____

_____
Plaintiff

vs.

_____
Defendant

CIVIL ACTION

RULE 5:4-2(h) CERTIFICATION BY SELF-REPRESENTED LITIGANT

_____, of full age, hereby certifies as follows:

1. I am the ☐ Plaintiff ☐ Defendant in the above captioned matter.

2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).

3. I have read the document entitled "Divorce -- Dispute Resolution Alternatives to Conventional Litigation".

4. I thus have been informed as to the availability of complementary dispute resolution alternatives to conventional litigation.

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 willfully false, I am subject to punishment.

Dated: _____

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
_____COUNTY
DOCKET NO. FM- _____

_____
Plaintiff

vs.

_____
Defendant

CIVIL ACTION

RULE 5:4-2(h) CERTIFICATION BY ATTORNEY AND CLIENT

_____, being of full age, hereby certifies as follows:

1. I am the attorney for the ☐ Plaintiff ☐ Defendant in the above captioned matter.

2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).

3. I have provided my client with a copy of the document entitled "Divorce -- Dispute Resolution Alternatives to Conventional Litigation".

4. I have discussed with my client the complementary dispute resolution alternatives to litigation contained in that document.

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 willfully false, I am subject to punishment.

Dated: _____

****

_____, being of full age, hereby certifies as follows:

1. I am the ☐ Plaintiff ☐ Defendant in the above captioned matter and am represented in this divorce matter by _____.

2. I make this Certification pursuant to New Jersey Court Rule 5:4-2(h).

3. I have read the document entitled "Divorce – Dispute Resolution Alternatives to Conventional Litigation."

4. I thus have been informed as to the availability of complementary dispute resolution alternatives to litigation.

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 willfully false, I am subject to punishment.

Dated: _____

Attachment B

APPENDIX IX-A

CONSIDERATIONS IN THE USE OF CHILD SUPPORT GUIDELINES
(Includes Amendments through those effective _____)

1. Philosophy of the Child Support Guidelines

. . . no change.

2. Use of the Child Support Guidelines As a Rebuttable Presumption

. . . no change.

3. Deviating from the Child Support Guidelines

. . . no change.

4. The Income Shares Approach to Sharing Child-Rearing Expenses

. . . no change.

5. Economic Basis for the Child Support Guidelines

. . . no change.

6. Economic Principles Included in the Child Support Guidelines

. . . no change.

7. Assumptions Included in the Child Support Guidelines

. . . no change.

8. Expenses Included in the Child Support Schedules

. . . no change.

9. Expenses That May Be Added to the Basic Child Support Obligation

. . . no change.

10. Adjustments to the Support Obligation

The factors listed below may require an adjustment to the basic child support obligation.

a. *Other Legal Dependents of Either Parent.* . . . no change.

b. *Multiple Family Obligations*. . . . no change.

c. *Government Benefits Paid to or for Children* - In some cases, government benefits may be received by or for a child based on a parent's earnings record, disability, or retirement (e.g., Black Lung, Veterans Disability, Social Security). Such payments are meant to replace the lost earnings of the parent and are paid in addition to the worker's or member's benefits (i.e., payments to family members do not reduce the member's benefits). A parent may also receive other non-means-tested government benefits that are meant to reduce the cost of the child such as adoption subsidies (*N.J.A.C.* 10:121-2). Supplemental Security Income (SSI) and welfare payments received for or on behalf of a child are not included in this category since they supplement parental income based on financial need. If non-means tested benefits are paid to or for a dependent child for whom support is being determined, the benefits must be deducted from the basic support obligation (see *Potter v. Potter*, 169 *N.J. Super.* 140 (App. Div. 1979)*, De La Ossa v. De La Ossa*, 291 *N.J. Super.* 557 (App.Div. 1996), *Pasternak v. Pasternak*, 310 *N.J. Super*. 483 (1997), *Herd v. Herd*, 307 *N.J. Super.* 501 (App.Div.1998)). The deduction is provided because the receipt of such benefits reduces the parents' contributions toward the child's living expenses (i.e., the marginal cost of the child). If the benefits received by the child are greater than the total support obligation (i.e., the amount of the obligation after deducting the benefits is zero), no support award should be ordered while the child is receiving the benefits. The benefits will continue to be paid by the government agency to the custodial parent in lieu of child support. If the total obligation is greater than the benefits received by the child, the non-custodial parent's income share of the residual amount (after deducting the benefits) is the support award to be paid to the custodial parent. Government benefits paid to or for a child that reduce benefits paid to a non-custodial parent (an apportionment) should not be deducted from the basic child support award, but should be used to offset the parent's child support order (i.e., the apportionment represents a payment toward the support order similar to a garnishment). NOTE: There may be circumstances when the CP/PPR is the party who is disabled and the child's share of derivative government benefits such as Social Security Disability greatly reduces child support at a time when the CP/PPR's personal income is also reduced. This creates a situation where the government benefits have the overall affect of being treated as a contribution made entirely by the NCP/PAR which may result in an injustice to the child. Under these circumstances, deviation from the guidelines may be required to prevent a financial hardship in the child's primary household due to the substantial reduction, or possible elimination, of child support caused by the application of the deduction allowed for government benefits against the basic child support amount.

11. Defining Income

. . . no change.

12. Imputing Income to Parents

. . . no change.

13. Adjustments for PAR Time (formerly Visitation Time)

. . . no change.

14. Shared-Parenting Arrangements

. . . no change.

15. Split-Parenting Arrangements

. . . no change.

16. Child in the Custody of a Third Party

. . . no change.

17. Adjustments for the Age of the Children

. . . no change.

18. College or Other Post-Secondary Education Expenses

. . . no change.

19. Determining Child Support and Alimony or Spousal Support Simultaneously

. . . no change.

20. Extreme Parental Income Situations

. . . no change.

21. Other Factors that May Require an Adjustment to a Guidelines-Based Award

. . . no change.

22. Stipulated Agreements

. . . no change.

23. Modification of Support Awards

. . . no change.

24. Effect of Emancipation of a Child

. . . no change.

25. Support for a Child Who has Reached Majority

. . . no change.

26. Health Insurance for Children

. . . no change.

27. Unpredictable, Non-Recurring Unreimbursed Health-Care In Excess of $250 Per Child Per Year

. . . no change.

28. Distribution of Worksheets and Financial Affidavits

. . . no change.

29. Background Reports and Publications

. . . no change.

Attachment C

APPENDIX IX-B
USE OF THE CHILD SUPPORT GUIDELINES

(Includes Amendments through those effective March 11, 2008)

GENERAL INFORMATION

Completion and Filing of the Worksheet

. . . no change.

Use of Weekly Amounts

. . . no change.

Rounding to Whole Dollars and Percentages

. . . no change.

Defining Parental Roles

. . . no change.

Selection of a Worksheet

. . . no change.

LINE INSTRUCTIONS FOR THE SOLE-PARENTING WORKSHEET

Caption

. . . no change.

Lines 1 through 5 - Determining Income

. . . no change.

Line 1 - Gross Taxable Income

. . . no change.

Line 1a - Mandatory Retirement Contributions

. . . no change.

Line 1b - Alimony Paid

. . . no change.

Line 1c - Alimony Received

. . . no change.

Line 2 - Adjusted Gross Taxable Income

. . . no change.

Line 2a - Withholding Taxes

. . . no change.

Line 2b - Prior Child Support Orders

. . . no change.

Line 2c - Mandatory Union Dues

. . . no change.

Line 2d - Other-Dependent Deduction

. . . no change.

Line 3 - Net Taxable Income

. . . no change.

Line 4 - Non-Taxable Income

. . . no change.

Line 5 - Net Income

. . . no change.

Line 6 - Percentage Share of Income

. . . no change.

Line 7 - Basic Child Support Amount

. . . no change.

Line 8 - Adding Net Work-Related Child Care Costs to the Basic Obligation

. . . no change.

Line 9 - Adding Health Insurance Costs for the Child to the Basic Obligation

. . . no change.

Line 10 - Adding Predictable and Recurring Unreimbursed Health Care to the Basic Obligation

. . . no change.

Line 11 - Adding Court-Approved Predictable and Recurring Extraordinary Expenses to the Basic Support Amount

. . . no change.

Line 12 - Deducting Government Benefits Paid to or for the Child

Enter government benefits received by the child on behalf of either parent on Line 12.

If a child is receiving government benefits based on either parent's earning record, disability, or retirement, the amount of those benefits must be deducted from the total support award (regardless of the effect of the child's benefit payments on benefits paid to the parent). Such benefits include, but are not limited to: Social Security Retirement or Disability, Black Lung, and Veteran's Administration benefits. Also included are non-means-tested government benefits meant to offset the cost of the child such as adoption subsidies (*N.J.A.C*. 10:121-2). SSI, public assistance (TANF), and other means-tested benefits are not government benefits based on a parent's earnings record, disability or retirement and should not be included on Line 12. If the government benefit received by the child is greater than the total support award (i.e., the amount of the total support award after deducting the government benefit is zero or less), the amount of the government benefit that is being paid to or for the child represents the support award. In such cases, the support award should be made payable directly to the

obligee (i.e., from the government agency to the obligee; not through Probation). If the government benefit is less than the total support obligation, it shall continue to be paid directly to the obligee and the residual amount shall be paid through Probation. See Appendix IX-A, paragraph 10(b).

Note that these benefits are not included in the gross income of the recipient parent.

NOTE: There may be circumstances when the CP/PPR is the party who is disabled and the child's share of derivative government benefits such as Social Security Disability greatly reduces child support at a time when the CP/PPR's personal income is also reduced. This creates a situation where the government benefits have the overall affect of being treated as a contribution made entirely by the NCP/PAR which may result in an injustice to the child. Under these circumstances, deviation from the guidelines may be required to prevent a financial hardship in the child's primary household due to the substantial reduction, or possible elimination, of child support caused by the application of the deduction allowed for government benefits against the basic child support amount.

Line 13 - Calculating the Total Child Support Amount

. . . no change.

Line 14 - Parental Share of the Total Child Support Obligation

. . . no change.

Line 15 - Credit for Child- Care Payments

. . . no change.

Line 16 - Credit for Payment of Child's Health Insurance Cost

. . . no change.

Line 17 - Credit for Payment of Child's Predictable and Recurring Unreimbursed Health Care

. . . no change.

Line 18 - Credit for Payment of Court-Approved Extraordinary Expenses

. . . no change.

Line 19 - Adjustment for Parenting Time Variable Expenses

. . . no change.

Line 20 - Figuring Each Parent's Net Support Obligation

. . . no change.

Lines 21, 22, and 23 - Adjusting the Child Support Obligation for Other-Dependents

. . . no change.

Line 21 - Line 20 CS Obligation With Other-Dependent Deduction

. . . no change.

Line 22 - Line 20 CS Obligation Without Other-Dependent Deduction

. . . no change.

Line 23 - Obligation Adjusted for Other Dependents

. . . no change.

Lines 24, 25, and 26 - Maintaining a Self-Support Reserve

. . . no change.

Line 24 - Self-Support Reserve Test

. . . no change.

Line 25 - Maximum Child Support Order

. . . no change.

Line 26 - Child Support Order

. . . no change.

LINE INSTRUCTIONS FOR THE SHARED-PARENTING WORKSHEET

Caption

. . . no change.

Lines 1 through 5 - Determining Income

. . . no change.

Line 1 - Gross Taxable Income

. . . no change.

Line 1a - Mandatory Retirement Contributions

. . . no change.

Line 1b - Alimony Paid

. . . no change.

Line 1c - Alimony Received

. . . no change.

Line 2 - Adjusted Gross Taxable Income

. . . no change.

Line 2a - Withholding Taxes

. . . no change.

Line 2b - Prior Child Support Orders

. . . no change.

Line 2c - Mandatory Union Dues

. . . no change.

Line 2d - Other-Dependent Deduction

. . . no change.

Line 3 - Net Taxable Income

. . . no change.

Line 4 - Non-Taxable Income

. . . no change.

Line 5 - Net Income

. . . no change.

Line 6 - Percentage Share of Income

. . . no change.

Line 7 - Number of Overnights with Each Parent

. . . no change.

Line 8 - Percentage of Overnights with Each Parent

. . . no change.

Line 9 - Basic Child Support Amount

. . . no change.

Line 10 - PAR Shared Parenting Fixed Expenses

. . . no change.

Line 11 - Deducting Government Benefits Paid to or for the Child

Enter the weekly amount of government benefits received by the child on behalf of either parent on Line 11. If a child is receiving government benefits (non-means tested) based on either parent's earning record, disability, or retirement, the amount of those benefits must be deducted from the total support award (regardless of the effect of the child's benefit payments on benefits paid to the parent). Such benefits include, but are not limited to: Social Security Retirement or Disability, Black Lung, and Veteran's Administration benefits. Also included are non-means-tested government benefits meant to offset the cost of the child such as adoption subsidies (*N.J.A.C*. 10:121-2). SSI, public assistance (TANF), and other means-tested benefits are **not** government benefits based on a parent's earnings record, disability or retirement and should not be included on Line 12. If the government benefit received by the child is greater than the total support award (i.e., the amount of the total support award after deducting the government benefit is zero or less), the amount of the government benefit that is being paid to or for the child represents the support award. In such cases, the support award should be made payable directly to the obligee (i.e., from the government agency to the obligee; not through Probation). If the government benefit is less than the total support obligation, it shall continue to be paid directly to the obligee and the residual amount shall be paid through Probation. Note that these benefits are not included in the gross income of the recipient parent. See Appendix IX-A, paragraph 10(b) for more information on the treatment of government benefits.

NOTE: There may be circumstances when the CP/PPR is the party who is disabled and the child's share of derivative government benefits such as Social Security Disability greatly reduces child support at a time when the CP/PPR's personal income is also reduced. This creates a situation where the government benefits have the overall affect of being treated as a contribution made entirely by the NCP/PAR which may result in an injustice to the child. Under these circumstances, deviation from the guidelines may be required to prevent a financial hardship in the child's primary household due to the substantial reduction, or possible elimination, of child support caused by the application of the deduction allowed for government benefits against the basic child support amount.

Line 12 - Shared Parenting Basic Child Support Amount

. . . no change.

Line 13 - PAR Share of Shared Parenting Basic Child Support Amount

. . . no change.

Line 14 - PAR Shared Parenting Variable Expenses

. . . no change.

Line 15 - PAR Adjusted Shared Parenting Basic Child Support Amount

. . . no change.

Lines 16 through 20 - Figuring Supplemental Expenses to be Added to the Shared Parenting Basic Child Support Amount

. . . no change.

Line 16 - Adding Net Work-Related Child Care Costs

. . . no change.

Line 17 - Adding Health Insurance Costs for the Child

. . . no change.

Line 18 - Adding Predictable and Recurring Unreimbursed Health Care

. . . no change.

Line 19 - Adding Court-Approved Predictable and Recurring Extraordinary Expenses

. . . no change.

Line 20 - Total Supplemental Expenses

. . . no change.

Line 21 - PAR's Share of the Total Supplemental Expenses

. . . no change.

Line 22 - Credit for PAR's Child-Care Payments

. . . no change.

Line 23 - Credit for PAR's Payment of Child's Health Insurance Cost

. . . no change.

Line 24 - Credit for PAR's Payment of Unreimbursed Health Care

. . . no change.

Line 25 - Credit for PAR's Payment of Court-Approved Extraordinary Expenses

. . . no change.

Line 26 - PAR's Total Payments for Supplemental Expenses

. . . no change.

Line 27 - PAR's Net Supplemental Expenses

. . . no change.

Line 28 - PAR's Net Child Support Obligation

. . . no change.

Lines 29, 30, and 31 - Adjusting the Child Support Obligation for Other Dependents

. . . no change.

Line 29 - Line 28 PAR CS Obligation WITH Other Dependent Deduction

. . . no change.

Line 30 - Line 28 PAR CS Obligation WITHOUT Other Dependent Deduction

. . . no change.

Line 31 - Adjusted PAR CS Obligation

. . . no change.

Lines 32 and 33 - Maintaining a Self-Support Reserve

. . . no change.

Line 32 - Self-Support Reserve Test

. . . no change.

Line 33 - PAR's Maximum Child Support Order

. . . no change.

Line 34 - Child Support Order

. . . no change.

Line 35 - PPR Household Income Test

. . . no change.

Attachment D

_____,
Plaintiff,

v.

_____,
Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - FAMILY PART
COUNTY OF
DOCKET NO. FM -

CIVIL ACTION

CASE MANAGEMENT ORDER
(R. [5:5-6] 5:5-7)

This matter being opened to the Court on _____, 20_____,

☐ (a) during a case management conference before:
_____

☐ (b) during a telephonic conference with:
_____

☐ (c) by consent of both attorneys

Plaintiff being represented by _____, of the firm of _____, and the Defendant being represented by _____of the firm of_____

and good cause existing for entry of this Order,

IT IS hereby ORDERED that the above titled matter is assigned to the following track. **(If custody is in issue the case shall be placed on the Priority Track.)**

☐ A. EXPEDITED TRACK (Discovery shall not exceed 90 days)
If checked go directly to Page 3.

☐ B. STANDARD TRACK (Discovery shall not exceed 120 days)

☐ C. PRIORITY TRACK (Discovery to be set at first Case Management Conference)

☐ D. COMPLEX TRACK (Discovery to be set at first Case Management Conference)

IT FURTHER APPEARING that on the issue of **Custody and Parenting Time:**

☐ There are no children. ☐ The children are emancipated.
☐ DV Order in effect.
☐ Custody is an issue. ☐ Custody not in issue.
☐ All issues relating to Custody and Parenting Time have been resolved pursuant to the Custody/Parenting Time stipulation attached hereto.
☐ The matter is referred to Custody/Parenting Time mediation.
☐ The Custody/Parenting Time Plan, required pursuant to R. 5:8-5 is attached hereto/or will be submitted by _____.

IT FURTHER APPEARING that the following issues are in dispute:

☐ Child Support ☐ Counsel Fees
☐ Cause of Action
☐ Alimony ☐ Medical Insurance
☐ Other Issues: _____
☐ Equitable Distribution ☐ Life Insurance

IT IS FURTHER ORDERED that the following be furnished no later than the dates indicated:

Case Information Statement filed? Plaintiff (Yes ☐ / No ☐) Defendant (Yes ☐ / No ☐)

CIS to be filed by Plaintiff ☐ / Defendant ☐ / Both ☐ by_____, 20_____

Plaintiff ☐ / Defendant ☐ / Both ☐ - shall propound Interrogatories/Notice to Produce by _____, 20___

Plaintiff ☐ / Defendant ☐ / Both ☐ - shall answer Interrogatories and comply with Notice to Produce by _____, 20___

Plaintiff ☐ / Defendant ☐ / Both ☐ - shall complete Depositions by_____20_____

Plaintiff ☐ / Defendant ☐ / Both ☐ - shall produce proof of bank account balances, pension, or other records, such as: _____ by _____, 20____

Plaintiff ☐ / Defendant ☐ / Both ☐ shall also:
_____
_____

	Date (00/00/0000)	Joint or Court Appointed Expert	Plaintiff Expert	Defendant Expert	Cost Paid by (H/W)
Real Estate appraisals to be completed by	_____	☐	☐	☐	_____
Personalty appraisals to be completed by	_____	☐	☐	☐	_____
Business appraisals to be completed by	_____	☐	☐	☐	_____
Pension appraisals to be completed by	_____	☐	☐	☐	_____

Other (Expert Reports or related issues):
_____
_____
_____
_____

IT IS FURTHER ORDERED that this matter shall be scheduled before the County Early Settlement Panel on _____, 20_____, at _____.

IT IS FURTHER ORDERED that a second Case Management Conference has been scheduled on _____, 20 ____, at _____, before _____

IT IS FURTHER ORDERED that all motions, emergent applications, plenary hearings and the ultimate trial of this matter, if necessary, shall be handled by Judge _____. All future correspondence to the Court shall be forwarded to the Judge assigned. **The attorney appearing in Priority or Complex Track Cases should be familiar with and have full authority to participate in the case.**

IT IS FURTHER ORDERED
_____
_____
_____
_____
_____

Trial Date _____ ☐ Trial Date To Be Determined

_____
, J.S.C.

We hereby consent to the form and entry
of the within Order.

_____ _____
Attorney for Plaintiff Attorney for Defendant

Attorney Address: _____ Attorney Address: _____
_____ _____

Phone: _____ Fax No. _____ Phone: _____ Fax No. _____

IMPORTANT

DO NOT provide an undisclosed address and telephone number of a party if a Domestic Violence Restraining Order is in effect.

Plaintiff: _____
Address: _____
_____
Phone: _____ Fax No. _____

Defendant: _____
Address: _____
_____
Phone: _____ Fax No. _____

Case Management Conference
And
Track Assignment Standards and Procedures

In accordance with Court Rule [5:5-6] 5:5-7, Case Management Conferences in Civil Family Actions and 5:1-4(b) Procedures for Track Assignment, the following procedures shall guide the court in implementing these rules.

1. An initial case management conference shall be held for all initial filings of divorce within 30 days after the Family Court receives the last permissible responsive pleading.

2. A notice shall be sent to all parties with the time and place of the initial case management conference. Included in the notice should be a blank case management order which may be completed by counsel and forwarded to court for review and approval.

3. In determining track assignments pursuant to Rule 5:1-4, the court shall consider an attorney's request for a track assignment. If all the attorneys agree on a track assignment, the case shall not be assigned to another track except if good cause is shown and after providing the opportunity for all attorneys to be heard on the matter. If the track assignment cannot be agreed upon by the attorneys, the court shall assign the track that affords the greatest degree of management and notify the parties of the track assignment.

4. A Case Management Conference may be conducted by a judge or staff designated by a judge. The conference may be held in person or by telephone.

5. Attorneys may submit to the court a Case Management Consent Order for review and approval. The Case Management Consent Order shall provide the court with all the information required to effectively manage the case including dates for completion of all applicable issues outlined in the order and appropriate signatures.

6. The initial Case Management Conference shall result in a case management order which shall clearly depict, on the front of the order, the designated track for the case. The case management order shall also fix the schedule for discovery and any future case management conferences that may be necessary or trial dates when appropriate.

7. A case may be reassigned to a different track, other than the initial track assignment, on the court's motion or upon application of a party. Such an application may be made informally, but must be in writing to the court, copy to the other party, stipulating the reason(s) for the request for reassignment. The court shall make the final determination and notify the parties.

Attachment E

Confidential Litigant Information Sheet (R. 5:4-2(g))

To Assure Accuracy of Court Records

To be filled out by plaintiff or defendant or attorney

Collection of the following information is pursuant to N.J.S.A. 2A:17-56.60 and R. 5:7-4.

Confidentiality of this information must be maintained.

Docket #	**CS**

Your Name **(last, first, middle initial):**

Are You: ☐ **Plaintiff** or ☐ **Defendant?** (check [circle] one) **Active Domestic Violence Order in this case?** ☐ **Yes** or ☐ **No** (check [circle] one)	**Social Security Number**	**Date of Birth**	**Place of Birth**	**Driver's License Number (state of issuance)**

Address	**Telephone Number**

Employer Name and Address (or other income source)	**Telephone Number**

Professional, Occupational, Recreational Licenses (Types and Numbers)	**Attorney Name and Address**

Health Coverage for Children (available through parent filling out this form)

Health Care Provider _____ *Policy #* _____ *Group #* _____

Dental Care Provider _____ *Policy #* _____ *Group #* _____

Prescription Drug Provider _____ *Policy #* _____ *Group #* _____

Children Information

Name (last, first, middle initial)	**Date of Birth**	**Race**	**Sex**	**Social Security Number**	**Place of Birth**
1.					
2.					
3.					
4.					
5.					
6.					

Sex	**Race**	**Height**	**Weight**	**Eyes**	**Hair**

Auto License Plate # (State of issuance)	**Car (model, make, year)**	**[Mother's maiden name and address]**

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.

_____ _____

Date **Signature**

Note: Form adopted July 28, 2004 to be effective September 1, 2004; amended June 15, 2007 to be effective September 1, 2007; amended to be effective _____.

Revised Form Effective: mm/yyyy, CN: 10486-English