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June 2, 2023

The Hon. Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Rules Comments  
Hughes Justice Complex  
P.O. Box 037  
Trenton, New Jersey 08625-0037  
Via email [Comments.Mailbox@njcourts.gov](mailto:Comments.Mailbox@njcourts.gov)

**Re: Comments to Proposed Amendments to Rule 5:12-4**

Dear Judge Grant,

Thank you for allowing the New Jersey Office of the Public Defender, Office of the Law Guardian (OLG) the opportunity to submit comments to the proposed amendments to Rule 5:12-4, the protocol for handling child protection complaints that contain allegations of both abuse or neglect and allegations under N.J.S.A. 30:4C-12.

The OLG represents approximately 5,300 children and young adults in litigation brought under Titles Nine and Thirty by the New Jersey Division of Child Protection and Permanency (DCP&P) in all twenty-one counties of New Jersey at the trial and appellate levels. The office's expansive representation of children in child welfare cases makes it uniquely situated to comment on the proposed amendment.

The OLG writes to express its concern that the proposed amendment reduces the full application of the Title Nine statutes governing fact-finding and disposition hearings and N.J.S.A. 30:4C-12.

Generally, the amendment does so by combining the separate frameworks of the two statutes into a progression not contemplated by the Legislature.<sup>1</sup> As proposed, section (k) requires courts to resolve Title Nine allegations before Title Thirty allegations. The amendment's application is not limited to Title Nine fact-finding hearings where the court accepts evidence that pertains to both statutes. Rather, it can be interpreted to apply to all stages of an FN case. Strictly applied, this

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<sup>1</sup> New Jersey Div. of Youth & Family Servs. v. T.S., 426 N.J. Super. 54, 66 (App. Div. 2012).



may limit the court's flexibility to tailor case management to the families before the court.

For example, there may be cases in which the court deems it necessary to hold a summary hearing to establish jurisdiction under N.J.S.A. 30:4C-12 pending the adjudication of a fact-finding hearing that may be delayed for any number of reasons, including those outside the control of the parties and the court. Section (k) could impede the court from holding a Title Thirty summary hearing before a fact-finding hearing, even though statutorily permissible.

Turning to the specific language proposed, the language is at odds with the statutes and case law implicated by section (k), and it does not mirror the language used in the preceding sections of the court rule.

*First*, section (k) limits application of the rule to DCP&P's filing of a complaint under both Titles Nine and Thirty. Pursuant to N.J.S.A. 9:8.34 to -8.35, persons and agencies other than DCP&P also have standing to file a Title Nine complaint. At a minimum, section (k) should be expanded to apply in those instances as well. Broadening the language of section (k) to account for those circumstances is necessary to give full effect to the statutes, which provide an avenue for all concerns of abuse or neglect of a child to be brought before the Family Part.

*Second*, the language of section (k)(i) is more akin to the criminal docket, with references to DCP&P's burden to prove abuse and neglect and the "Title 9 count," than the child welfare docket, where the statutory goals are child protection and provision of services aimed at preventing abuse and neglect in the future. "The purpose of the fact-finding hearing in an abuse or neglect proceeding is to determine whether a child is an abused or neglected child...not to assign guilt to a defendant. Under the statutory framework, 'the safety of the child shall be of paramount concern.'"<sup>2</sup> The Family Part's objective at a fact-finding hearing is to determine if facts sufficient to sustain the complaint are established, and if so, to enter an order finding that the child is an abused or neglected child.<sup>3</sup> There is no requirement that DCP&P prove parental culpability, nor that DCP&P provide the established facts.

Further, section (k)(i) is duplicative of the protocol established by the Legislature in N.J.S.A. 9:6-8.47 to -8.53 concerning the sequence of fact-finding and disposition hearings. Thus, it is not a necessary addition to the court rules.

*Third*, proposed section (k)(ii) detailing the process by which the court should apply the established facts to allegations brought under N.J.S.A. 30:4C-12 similarly strays from the broad terms of the statute and its interpretation by our courts. The language of section (k)(ii) includes references to circumstances in which a parent has "failed to provide for the safety of a child" and the "Title 30 count." The amendment instructs courts to dismiss the Title Thirty case immediately if "DCP&P has not met its burden of proving failure to provide for the safety of a child." The proposed rule

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<sup>2</sup> New Jersey Div. of Youth & Family Servs. v. I.H.C., 415 N.J. Super. 551, 581 (App. Div. 2010).

<sup>3</sup> N.J.S.A. 9:6-8.50.



improperly restricts the reach of the applicable statute. In addition to concerns for child safety, N.J.S.A. 30:4C-12 refers to concerns for a child’s education, proper care and maintenance, health, and protection, and endangerment of the child as additional bases for agency and judicial oversight if warranted.

N.J.S.A. 30:4C-12 authorizes the court to issue an order placing the child under the care and supervision or custody of the division, “if satisfied that the best interests of the child so require.” The best interest of the child standard “is an expression of the court’s special responsibility to safeguard the interests of the child . . . because the child cannot be presumed to be protected by the adversarial process.”<sup>4</sup> The language of section (k)(ii) minimizes application of N.J.S.A. 30:4C-12 to situations in which a parent affirmatively fails to provide for a child’s safety. “Imposing a fault-based finding in respect of a parent or parents would impede the apparent legislative intent to facilitate services to children in need when parental consent is withheld, a parent is absent, or parental involvement would itself be an impediment to the child’s health, safety, or welfare.”<sup>5</sup> Accordingly, the amendment drastically reduces the scope of N.J.S.A. 30:4C-12, potentially undermining the Legislature’s intent to provide the mechanism by which our courts can ensure that the health and safety needs of all children in New Jersey are met.

The OLG appreciates the opportunity to provide comments to the Court and stands ready to assist if further review is needed. We applaud the Court’s efforts to protect our state’s most vulnerable citizens and request that our concerns and commentary are taken into consideration as the Court proceeds further.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Traci Telemaque".

Traci Telemaque  
Assistant Public Defender

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<sup>4</sup> Kinsella v. Kinsella, 150 N.J. 276, 317-18 (1997).

<sup>5</sup> New Jersey Div. of Youth & Family Servs. v. I.S., 214 N.J. 8, 36 (2013).