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## State of New Jersey

DEPARTMENT OF CHILDREN AND FAMILIES  
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June 5, 2023

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### **Re: Proposed Amendments to Court Rule 5:12-4**

Please accept this as the New Jersey Department of Children and Families' comment to the proposed amendment to N.J. Court Rule 5:12-4. The Department objects to the new rule in so far as it inaccurately sets forth the standard required for the court to establish jurisdiction pursuant to Title 30 as well as the relief that the court may order pursuant to that statute. The Department understands that the court rule does not take precedence over statute, however it is the Department's position that these mischaracterizations will cause confusion and limit options during dually filed litigation. Specifically, the plain language of N.J.S.A. 30:4C-12 provides:

"If . . . it appears that the child requires care and supervision by the division or other action to ensure the health and safety of the child, the division may apply to the Family Part of the Chancery Division of the Superior Court in the county where the child resides for an order making the child a ward of the court and placing the child ***under the care and supervision or custody of the division***. . . . The court, at a summary hearing held upon notice to the division, and to the parent, parents, guardian, or person having custody and control of the child, ***if satisfied that the best interests of the child so require***, may issue an order as requested . . . ."

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First, as the statute clearly provides, the standard for establishing jurisdiction pursuant to Title 30 is “best interests of the child” as opposed to whether “the parent failed to provide for the safety of the child.” This is significant because, while establishing that a parent failed to provide for the safety of a child may warrant a finding of jurisdiction under Title 30 it is not the only basis to support jurisdiction under that statute.

Second, Title 30 provides that the Division, as it often does, may apply to the court for an order placing the child under the “care and supervision **or custody** of the division,” and that such relief may be granted by the court. The court is not restricted to ordering that the parties participate in services, as the proposed rule suggests. Therefore the mischaracterization has the impact of seemingly restricting the broader authority of the court in litigation where Title 30 is pled as a basis for court intervention.

Finally, while Div. of Youth and Family Services v. I.S., 214 N.J. 8 (2013) stands for the proposition that the court cannot continue to exercise jurisdiction under Title 9 if there is no abuse and neglect finding made by the court at a fact-finding, this proposed court rule amendment stretches interpretation of that holding. The proposed language not only prioritizes jurisdiction and a finding under Title 9 as opposed to Title 30, but also requires an order to the litigation that I.S. does not necessitate. As is noted, DCP&P often pleads both Title 9 and Title 30 to facilitate the efficient processing of services to a family. It may in fact benefit a family for the court to establish jurisdiction under Title 30 first, and initiate services in instances where the Title 9 fact-finding evidence or defense to such may not yet be available.

For all of the above reasons, the Department objects to the proposed amendment to New Jersey Court Rule 5:12-4 as a mischaracterization of Title 30 litigation, which would lead to confusion when put into practice in child welfare litigation. The

Department hopes that you will take these comment into consideration before finalizing the language of the proposed rule amendment.

Sincerely,

*Meredith Pindar*

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Meredith Pindar, Director  
Office of Legal Affairs  
New Jersey Department of Children and Families