RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
PART V. RULES GOVERNING PRACTICE IN THE CHANCERY DIVISION, FAMILY PART
CHAPTER I. ACTIONS COGNIZABLE; SCOPE AND APPLICABILITY OF RULES; GENERAL PROVISIONS; PROCESS; VENUE; PLEADINGS; PROCESS; APPEARANCES
RULE 5:3. GENERAL PROVISIONS FOR FAMILY ACTIONS

Rule 5:3-1. Applicability

The provisions of R. 5:3 shall apply to all family actions except as is otherwise provided by these rules for juvenile delinquency actions and criminal and quasi-criminal actions tried in the Family Part.

Note: Source-new. Adopted December 20, 1983, to be effective December 31, 1983.

Rule 5:3-2. Closed hearings; record

(a) Hearings on Welfare or Status of a Child. Except as otherwise provided by rule or statute requiring full or partial in camera proceedings, the court, in its discretion, may on its own or party's motion direct that any proceeding or severable part thereof involving the welfare or status of a child be conducted in private. In the child's best interests, the court may further order that a child not be present at a hearing or trial unless the testimony, which may be taken privately in chambers or under such protective orders as the court may provide, is necessary for the determination of the matter. In matters brought by the Division of Child Protection and Permanency, the court shall accommodate the rights of the child as provided by N.J.S.A. 30:4C-61.2, prior to entering a permanency order. A verbatim record shall, however, be made of all in camera proceedings, including in-chamber testimony by or interrogation of a child.

(b) Sealing of Records. The court, upon demonstration of good cause and notice to all interested parties, shall have the authority to order that a Family Part file, or any portion thereof, be sealed.

Note: Source-R. (1969) 5:5-1(b). Adopted December 20, 1983, to be effective December 31, 1983; paragraphs (a) and (b) amended July 14, 1992 to be effective September 1, 1992; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended July 27, 2015 to be effective September 1, 2015.

Rule 5:3-3. Appointment of experts

(a) Medical, Mental Health, and Social Experts. Whenever the court, in its discretion, concludes that disposition of an issue will be assisted by expert opinion, and whether or not the parties propose to offer or have offered their own experts' opinions, the court may order any person under its jurisdiction to be examined by a physician, psychiatrist, psychologist or other health or mental health professional designated by it. No such appointment, however, shall be made of an expert who is providing or has

provided therapy to any member of that person's family. The court may also require a social investigation by a probation officer or other person at any time during the proceeding before it.

(b) Custody/Parenting Disputes. Mental health experts who perform parenting/custody evaluations shall conduct strictly non-partisan evaluations to arrive at their view of the child's best interests, regardless of who engages them. They should consider and include reference to criteria set forth in N.J.S.A. 9:2-4, as well as any other information or factors they believe pertinent to each case.

(c) Economic Experts. Whenever the court concludes that disposition of an economic issue will be assisted by expert opinion, it may in the same manner as provided in Paragraph (a) of this rule appoint an expert to appraise the value of any property or to report and recommend as to any other issue, and may further order any person or entity to produce documents or to make available for inspection any information or property, which is not privileged, that the court determines is necessary to aid the expert in rendering an opinion.

(d) Selection of Experts. Experts appointed hereunder may be selected by the mutual agreement of the parties or independently by the court. The court shall establish the scope of the expert's assignment in the order of appointment. Neither party shall be bound by the report of the expert so appointed.

(e) Investigation by Experts. Any expert appointed by the court shall be permitted to conduct an investigation independently to obtain information reasonable and necessary to complete his or her report from any source, and may make contact directly with any party from whom information is sought within the scope of the order of appointment. The parties shall be entitled to have their attorneys and/or experts present during any examination by a court appointed expert. The expert shall not communicate with the court except upon prior notice to the parties and their attorneys who shall be afforded an opportunity to be present and to be heard during any such communication between the expert and the court. A request for communication with the court may be informally conveyed by the expert by letter or telephonic means, whereafter further communications with the court, which may be conducted informally by conference or conference call, shall be done only with the participation of the parties and their counsel.

(f) Submission of Report. Any finding or report by an expert appointed by the court shall be submitted upon completion to both the court and the parties. At the time of submission of the court's experts' reports, the reports of any other expert may be submitted by either party to the court and the other parties. The parties shall thereafter be permitted a reasonable opportunity to conduct discovery in regard thereto, including, but not limited to, the right to take the deposition of the expert.

(g) Use of Evidence. An expert appointed by the court shall be subject to the same examination as a privately retained expert and the court shall not entertain any presumption in favor of the appointed expert's findings. Any finding or report by an

expert appointed by the court may be entered into evidence upon the court's own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties.

(h) Use of Private Experts. Nothing in this rule shall be construed to preclude the parties from retaining their own experts, either before or after the appointment of an expert by the court, on the same or similar issues.

(i) Payment; Costs. When the court appoints a medical, mental health, or social expert pursuant to R. 5:3-3(a), an economic expert pursuant to R.5:3-3(b), or should the parties agree on the selection of an expert consistent with R.5:3-3(c), the court may direct who shall pay the cost of such examination, appraisal, or report.

Note: Source-R. (1969) 5:3-5, 5:3-6. Adopted December 20, 1983, to be effective December 31, 1983; caption amended, former rule redesignated paragraph (a) and paragraph (b)(1), (2), (3), (4) and (5) adopted November 7, 1988 to be effective January 2, 1989; former paragraphs (b)(1), (2), (3), (4), and (5) captioned and redesignated as (c), (d), (e), (f) and (g) respectively June 29, 1990 to be effective September 4, 1990; paragraph (a) amended January 21, 1999 to be effective April 5, 1999; paragraph (a) caption and text amended, new paragraph (b) adopted, former paragraph (b) amended and redesignated as paragraph (c), former paragraphs (c) and (d) redesignated as paragraphs (d) and (e), former paragraph (e) amended and redesignated as paragraph (f), former paragraph (f) redesignated as paragraph (g), former paragraph (g) amended and redesignated as paragraph (h), and new paragraph (i) adopted July 28, 2004 to be effective September 1, 2004.

Rule 5:3-4. Counsel: Appearance; Prosecutor

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

(b) Appearances. Where no answer is filed, attorneys representing any party to a proceeding shall enter their appearances promptly with the clerk of the court and, insofar as practicable, shall notify the clerk of the length of time it is anticipated the hearing or trial will take. In summary actions the attorneys, no later than 5 days prior to the date set for the hearing or trial, shall notify the clerk as to whether the matter is contested or uncontested. The parties and their counsel shall be afforded a reasonable time in which to prepare for the hearing or trial in all matters.

(c) Prosecuting Attorney. Whenever required by statute or rule the county prosecutor shall prosecute the complaint on behalf of the State. In any matter where the interest of justice so requires, the court may request the attorney general, the county prosecutor, the municipal attorney or the school board attorney, as appropriate, to appear and prosecute the complaint.

Note: Source-R. (1969) 5:3-3(a)(b)(c). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended June 15, 2007 to be effective September 1, 2007.

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

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

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

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

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

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

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

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

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

(8) the effect of counsel fees awarded on application to the court pursuant

to paragraph (c) of this rule;

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

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

(b) Limitations on Retainer Agreements. During the period of the representation, an attorney shall not take or hold a security interest, mortgage, or other lien on the client's property interests to assure payment of the fee. This Rule shall not, however, prohibit an attorney from taking a security interest in the property of a former client after the conclusion of the matter for which the attorney was retained, provided the requirements of R.P.C. 1.8(a) shall have been satisfied. Nor shall the retainer agreement include a provision for a non-refundable retainer. Contingent fees pursuant to R. 1:21-7 shall only be permitted as to claims based on the tortious conduct of another, and if compensation is contingent, in whole or in part, there shall be a separate contingent fee arrangement complying with R. 1:21-7. No services rendered in connection with the contingent fee representation shall be billed under the retainer agreement required by paragraph (a) of this rule, nor shall any such services be eligible for an award of fees pursuant to paragraph (c) of this rule.

(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, to be paid by any party to the action, including, if deemed to be just, any party successful in the action, on any claim for divorce, dissolution of civil union, termination of domestic partnership, nullity, support, alimony, custody, parenting time, equitable distribution, separate maintenance, enforcement of agreements between spouses, domestic partners, or civil union partners and claims relating to family type matters. All applications or motions seeking an award of attorney fees shall include an affidavit of services at the time of initial filing, as required by paragraph (d) of this rule. 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 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) Affidavit of Services Provided. All applications for the allowance of fees shall

be supported by an affidavit of services addressing the factors enumerated in RPC 1.5(a). The affidavit shall also include a recitation of other factors pertinent in the evaluation of the services rendered, the amount of the allowance applied for, and an itemization of disbursements for which reimbursement is sought. If the court is requested to consider paraprofessional services in making a fee allowance, the affidavit shall include a detailed statement of the time spent and services rendered by paraprofessionals, a summary of the paraprofessionals' qualifications, and the attorney's billing rate for paraprofessional services to clients generally. No portion of any fee allowance claimed for attorneys' services shall duplicate in any way the fees claimed by the attorney for paraprofessional services rendered to the client. For purposes of this rule, "paraprofessional services" shall mean those services rendered by individuals who are qualified through education, work experience or training who perform specifically delegated tasks that are legal in nature under the direction and supervision of attorneys and which tasks an attorney would otherwise be obliged to perform.

(e) Withdrawal from Representation.

(1) An attorney may withdraw from representation ninety (90) days or more prior to the scheduled trial date on the client's consent in accordance with R. 1:11-2(a)(1). If the client does not consent, the attorney may withdraw only on leave of court as provided in subparagraph (2) of this rule.

(2) Within ninety (90) days of a scheduled trial date, an attorney may withdraw from a matter only by leave of court, on motion with notice to all parties. The motion shall be supported by the attorney's affidavit or certification setting forth the reasons for the application and shall have annexed the written retainer agreement. In deciding the motion, the court shall consider, among other relevant factors, the terms of the written retainer agreement and whether either the attorney or the client has breached the terms of that agreement; the age of the action; the imminence of the scheduled trial; the complexity of the issues; the ability of the client to timely retain substituted counsel; the amount of fees already paid by the client to the attorney; the likelihood that the attorney will receive payment of any balance due under the retainer agreement if the matter is tried; the burden on the attorney if the withdrawal application is not granted; and the prejudice to the client or to any other party.

(3) Upon the filing of a motion or cross-motion to be relieved as counsel, the court, absent good cause, shall sever all other relief sought by the motion or cross-motion from the motion to be relieved as counsel. The court shall first decide the motion to be relieved and, in the order either granting or denying the motion to be relieved, shall include a scheduling order for the filing of responsive pleadings and the return date for all other relief sought in the motion or cross-motion.

Note: Adopted January 21, 1999 to be effective April 5, 1999; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; new paragraph (a)(10) adopted, and paragraphs (d)(1) and (d)(2) amended July 28, 2004 to be effective September 1, 2004; paragraph (c) amended July 16, 2009 to be effective September 1, 2009; paragraph (c) amended and subparagraphs (d)(1) and (d)(2) amended July 21, 2011 to be effective September 1, 2011; subparagraphs (d)(1) and (d)(2) amended July 9, 2013 to be effective

September 1, 2013; paragraph (c) amended, new paragraph (d) adopted, former paragraph (d) redesignated as paragraph (e), and new subparagraph (e)(3) adopted July 28, 2017 to be effective September 1, 2017; subparagraph (a)(9) amended July 29, 2019 to be effective September 1, 2019.

Rule 5:3-6. Continuous Trials

Insofar as practicable, civil family actions should be tried continuously to conclusion and, in the absence of exigent circumstances, shall be so tried in counties in which four or more judges are assigned to the Family Part on a full-time basis.

Note: Adopted January 21, 1999 to be effective April 5, 1999.

Rule 5:3-7. Additional Remedies on Violation of Orders Relating to Parenting Time, Alimony, Financial Maintenance, Support or Domestic Violence Restraining Orders

(a) Custody or Parenting Time Orders. On finding that a party has violated an order respecting custody or parenting time, the court may order, in addition to the remedies provided by R. 1:10-3, any of the following remedies, either singly or in combination: (1) compensatory time with the children; (2) economic sanctions, including but not limited to the award of monetary compensation for the costs resulting from a parent's failure to appear for scheduled parenting time or visitation such as child care expenses incurred by the other parent; (3) modification of transportation arrangements; (4) pick-up and return of the children in a public place; (5) counseling for the children or parents or any of them at the expense of the parent in violation of the order; (6) temporary or permanent modification of the custodial arrangement provided such relief is in the best interest of the children; (7) participation by the parent in violation of the order in an approved community service program; (8) incarceration, with or without work release; (9) issuance of a warrant to be executed upon the further violation of the judgment or order; and (10) any other appropriate equitable remedy.

(b) Alimony, Financial Maintenance, or Child Support Orders. On finding that a party has violated an alimony, financial maintenance, or child support order the court may, in addition to remedies provided by R. 1:10-3, grant any of the following remedies, either singly or in combination: (1) fixing the amount of arrearages and entering a judgment upon which interest accrues; (2) requiring payment of arrearages on a periodic basis; (3) suspension of an occupational license or driver's license consistent with law; (4) economic sanctions; (5) participation by the party in violation of the order in an approved community service program; (6) incarceration, with or without work release; (7) issuance of a warrant to be executed upon the further violation of the judgment or order; and (8) any other appropriate equitable remedy.

(c) Enforcement of Relief under Provisions of Domestic Violence Restraining Orders Not Subject to Criminal Contempt Complaints. On finding that a party has failed to comply with the provisions of a restraining order issued pursuant to the Prevention of Domestic Violence Act, not subject to criminal contempt (part II relief excluded under N.J.S.A. 2C:25-30), the court may, on notice to the defendant, in addition to the relief

provided by R. 1:10-3, grant any of the following remedies, either singly or in combination: (1) economic sanctions, (2) incarceration with or without work release, (3) issuance of a warrant to be executed upon further violation or non-compliance with the order, (4) any appropriate remedy under paragraph (a) or (b) above, applicable to custody or parenting time issues or alimony or child support issues, and (5) any other appropriate equitable remedy.

Note: Adopted January 21, 1999 to be effective April 5, 1999; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; caption amended, paragraph (a) amended, and new paragraph (c) adopted July 21, 2011 to be effective September 1, 2011; caption amended, and paragraph (b) caption and text amended July 28, 2017 to be effective September 1, 2017.

Rule 5:3-8. Review and Enforcement of Arbitration Awards

(a) Confirmation of Final or Interim Economic Awards. Except for child support awards that are governed by paragraph (c), either party may apply to the court by motion, the return date for which may be shortened by the court pursuant to R. 1:6-3(a), or summarily pursuant to R. 5:4-1 if no other family action is pending, to confirm a final or interim arbitration award. The court shall confirm and enter a judgment in conformity with the final award of the arbitrator, or confirm and enter a pendente lite order in conformity with an interim award of the arbitrator, unless the court determines to correct, modify or vacate the final or interim arbitration award pursuant to the procedures and standards set forth in the Uniform Arbitration Act, N.J.S.A. 2A: 23B-23 or 24 (unless the parties have expanded the scope of review under N.J.S.A. 2A:23B-4(c)); the New Jersey Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A:23A-13 or 14; any other applicable statute; or any other agreed upon framework.

(b) Confirmation of Final or Interim Custody and Parenting Time Awards. Either party may apply to the court by motion, the return date for which may be shortened by the court pursuant to R. 1:6-3(a), or summarily pursuant to R. 5:4-1 if no other family action is pending, to confirm a final or interim child custody and parenting time arbitration award. The court shall confirm and enter a judgment in conformity with the final custody and parenting time award of the arbitrator, or confirm and enter a pendente lite order in conformity with an interim custody and parenting time award of the arbitrator unless the court finds that:

(1) a record of all documentary evidence has not been kept; or

(2) the award does not contain detailed written findings of fact and conclusions of law; or

(3) that a verbatim record of the proceedings was not made, in which case any interim or final award shall be subject to vacation and review de novo by the court; or

(4) there is evidential support establishing a prima facie case of harm to a child, in which event the court shall conduct a hearing and if, after that hearing, there is a finding of harm to a child, the parties' choice of arbitration shall be invalidated, the

court shall vacate the interim or final award and determine de novo the child's best interest. If there is no finding of harm to a child, the court shall confirm and enter a judgment in conformity with the final award of the arbitrator, or confirm and enter a pendente lite order in conformity with an interim award of the arbitrator, unless the court determines to correct, modify or vacate the final or interim arbitration award pursuant to the procedures and standards set forth in the Uniform Arbitration Act, N.J.S.A. 2A: 23B-23 or 24 (unless the parties have expanded the scope of review under N.J.S.A. 2A:23B-4(c)); the New Jersey Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A:23A-13 or 14; any other applicable statute; or any other agreed upon framework.

(c) Confirmation of Final or Interim Child Support Awards. Either party may apply to the court by motion, the return date for which may be shortened by the court pursuant to R. 1:6-3(a), or summarily pursuant to R. 5:4-1 if no other family action is pending, to confirm a final or interim child support arbitration award. The court shall confirm and enter a judgment in conformity with the final child support arbitration award of the arbitrator, or confirm and enter a pendente lite order in conformity with an interim child support award of the arbitrator unless the court finds that there is evidential support establishing a prima facie case of harm to a child, in which event the court shall conduct a hearing and if, after that hearing, there is a finding of harm to a child, the parties' choice of arbitration shall be invalidated, the court shall vacate the interim or final award and determine de novo the child's best interest. If there is no finding of harm to a child, the court shall confirm and enter a judgment in conformity with the final award of the arbitrator, or confirm and enter a pendente lite order in conformity with an interim award of the arbitrator, unless the court determines to correct, modify or vacate the final or interim arbitration award pursuant to the procedures and standards set forth in the Uniform Arbitration Act, N.J.S.A. 2A: 23B-23 or 24 (unless the parties have expanded the scope of review under N.J.S.A. 2A:23B-4(c)); the New Jersey Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A:23A-13 or 14; any other applicable statute; or any other agreed upon framework.

Note: Adopted July 27, 2015 to be effective September 1, 2015.