

**Superior Court of New Jersey  
Family Division**



**New Jersey Courts**

Independence • Integrity • Fairness • Quality Service

**Children in Court  
Operations Manual**

**Revised as Approved by Judicial Council  
May 2022**

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## **NOTICE**

This manual is intended to provide procedural and operational guidance for New Jersey judiciary staff in the management of cases within their area of responsibility. The manual was prepared under the supervision of the Conference of Family Presiding Judges, along with the Conference of Family Division Managers and the Family Practice Division of the Administrative Office of the Courts (AOC). It is intended to embody the policies adopted by the New Jersey Supreme Court, the Judicial Council and the Administrative Director of the Courts, but does not itself establish case management policy. It has been approved by the Judicial Council, on the recommendation of the Conference of Family Presiding Judges, in order to promote uniform case management statewide and, as such, court staff are required to adhere to its provisions.

While the manual reflects court policies existing as of the date of its preparation, in the event there is a conflict between the manual and any statement of policy issued by the Supreme Court, the Judicial Council or the Administrative Director of the Courts, that statement of policy, rather than the manual, will be controlling. Other than in that circumstance, however, this manual is binding on court staff.



## INTRODUCTION

The processes and procedures in this manual describe the court system's handling of Children in Court (CIC) cases. This term refers to cases in which the welfare of a child is endangered by the parents or guardians and often involves the removal of a child from the family home. New Jersey has enacted laws and adopted procedures that conform to federal law to govern the process and assure that the safety of children is of paramount concern and that the rights of parents are protected.

### THE CHILD WELFARE SYSTEM IN NEW JERSEY

The Division of Child Protection and Permanency (Division), an agency of the state's Department of Children and Families, is legislatively mandated to provide services to protect children, either in their own homes or by removal to an out of home placement. The Division also provides adoption services for families and children in New Jersey. The Division has local offices in every county of the state, and investigates allegations of abuse or neglect. Local office caseworkers supervise services to families when children have been removed from their homes.

Division staff are trained to investigate abuse and neglect charges, and to work with troubled families. When necessary, the Division removes children from their homes and provides other places for them to live, while their parents remedy the problems. The Division has contracts with a wide range of community agencies that provide many of the direct services to the children and families under the Division's supervision.

Children and families can become involved with the Division in different ways. The Division is required by law to investigate every abuse and neglect allegation and files a report for each investigation with the state's central Child Abuse Registry.

Some children are referred to the Division by teachers or counselors from schools, or by judges, doctors and nurses who see them. N.J.S.A. 9:6-8.10. Sometimes family members or neighbors observe problems and decide to inform the Division. The majority of children are referred to the Division because of neglect due to substance abuse of their parents.

### Division Responsibilities

The Division provides three types of services:

1. Services to support troubled families living together at home;
2. Out of home placement services such as foster care or residential treatment, and reasonable efforts to reunify the family when a child must be removed from his or her home for reasons of safety; and
3. Services to facilitate adoption or other permanent placement if family reunification is not possible.

#### *1. Services in the home*

When the Division investigates an allegation of abuse or neglect, and a judgment is made

that the child will not be at risk of harm remaining at home, in-home services will be offered. The majority of children and families referred to the Division are given services in their own homes while Division staff work with the family to resolve the underlying problems. Services may include counseling, mentoring, homemaker assistance, domestic violence services and/or child care and are intended to stabilize the family's problem areas and to strengthen the family unit.

### ***2. The out of home placement process***

If the Division believes that, after investigating an allegation of abuse or neglect, a child is at risk remaining at home with his or her family, and it provides reasonable efforts to prevent the child's placement, the Division may remove the child temporarily to live somewhere else. The Division will file a court complaint alleging abuse or neglect and seek a judge's order for the child's removal, and an order to compel the parents to accept services. If the Division believes there is imminent danger to the child's life, safety or health, a child may be immediately removed pending an emergency court hearing (within two days). The safety of the child must be the paramount concern whenever the Division investigates abuse or neglect and whenever it makes a decision to remove.

The Division must make reasonable efforts to place the child with a suitable relative or person who has a kinship relationship prior to placing the child with another suitable person. In the alternative, placement may be into a foster home, known in New Jersey as a resource home, although a child's unique situation may require an alternative placement.

### ***3. Out of home placement services***

The initial case goal in most cases when a child is placed out of home is family reunification. Services provided to the parents are intended to remedy the problems that led to the removal of the child. The Division is required to have a written case plan and service agreements with the parents that will clarify everyone's role in the process to achieve the child's safe return. A variety of services is usually offered and may include homemaker assistance, counseling, parenting classes, and referrals to drug and alcohol treatment programs.

Whenever a child is removed from the home, a parent retains the right to regular visits. Visits among siblings must also be arranged periodically. If the Division believes that visits are harmful to the child, it can ask the court to order that visits be limited or that they stop altogether.

### **Family Court Responsibilities**

Family courts have an important role in monitoring agency actions when the Division removes children from their homes. A series of specific judicial determinations and specific types of hearings are required. Strict time lines must be followed in order to ensure that the child remains in out of home placement for as short a time as possible.

### ***Reasonable Efforts Determinations***

Judicial determinations, mandated by state and federal law, must be made as to whether

"reasonable efforts" have been made to prevent a child's removal, whether the child may be placed with a suitable relative or person who has a kinship legal relationship with the child, to reunify the child and family, and to achieve permanency for the child as quickly as possible. These reasonable efforts must be documented in the case record at certain stages of the case, and the court will review the documentation.

### ***Court reviews while a child is in placement***

Regular reviews of all children while they are in placement are required by state and federal law. Placements must have a series of specific court hearings before a judge, including a fact-finding hearing to establish whether abuse or neglect did occur. The court must first consider placement of the child with a suitable relative or person who has a kinship relationship with the child prior to considering if the child should be placed in the custody of a suitable person. In any out of home placement, a permanency hearing is required no later than 365 days after the date of placement, or no later than 30 days after the court makes a determination that reasonable efforts to reunify the child with the family are not required, whichever is sooner. Any hearing or proceeding scheduled before the court may serve as a permanency hearing, provided that notice of that fact is given to all parties in advance. R. 5:12-4(h).

In addition, the Division holds its own periodic review within six months after the date of placement, and annually after that. The reviews, to monitor the case progress, are conducted by the Division's area offices.

### **Termination of Parental Rights**

If it is not possible to reunify a child with his or her family within a reasonable time frame, after a permanency hearing, the Division may file for termination of parental rights seeking guardianship of the child with a goal of adoption.

State and federal law requires that a petition for termination of parental rights be filed when a child has been in placement for 15 of the last 22 months or sooner, if statutory grounds are met. The law allows for exceptions, which must be documented in the case record. See N.J.S.A. 30:4C-15.1.

### **Legal representation**

If a child is in a court-ordered placement, the Division is represented by a Deputy Attorney General, Office of the Attorney General of New Jersey. The Deputy Attorney General continues to represent the Division if a subsequent complaint is filed to terminate parental rights. Children are represented by a Law Guardian, an attorney specializing in child welfare cases who works for the Office of the Public Defender. Parents are represented by an attorney from the Office of the Public Defender, Office of Parental Representation, or a private attorney. The court may appoint a guardian ad litem for a parent if necessary (e.g., mental health concerns).

## JUDICIAL DETERMINATIONS REQUIRED FOR TITLE IV-E REIMBURSEMENT

This section describes all the federally required findings for the State Agency, the Division, to receive federal funding for foster care services. New Jersey Judiciary policy, in most instances, requires more frequent court reviews. Judges and staff must ensure that all of these findings are made.

<b><i>(FEDERAL: Title IV-E of Social Security Act, 42 U.S.C. 670 et seq.)</i></b>	
<b>At the time of removal</b>	<b>RESULT IF NO FINDING</b>
<b>A.</b> Continuance in the home of the parent or legal guardian would be contrary to the child's welfare (42 USC 672 (a)(1)). This finding must be made at the time of the first court order authorizing removal of the child from the home. (45 CFR 1356.21 (c))	<u>NEVER</u> eligible for Title IV-E funding (45 CFR 1356.21 (c))
<b>B.</b> Placement and care are the responsibility of the State Agency. (42 USC 672 (a)(2); 45 CFR 1356.71(d)(1))	No Funding until made
<b>C.</b> Reasonable efforts have been made to prevent or eliminate need for removal. (42 USC 671(a)(15); 42 USC 672(a)(1); 42 CFR 1356.21(b)(1)). This <u>finding</u> must be made <u>within 60 days</u> of the date of removal; the reasonable efforts must have been made prior to removal. (42 CFR 1356.21(b)(1))	<u>NEVER</u> eligible for Title IV-E funding (45 CFR 1356.21(b)(1)(ii))
<b>At Case Reviews</b>	
<b>D.</b> Review child's status and safety no less than once every 6 months from the date the child entered foster care, in order to determine: (1) continuing necessity for the appropriateness of the placement, (2) extent of the agency's compliance with the case plan -- reasonable efforts to safely return the child to the child's home and to finalize the permanent placement of the child, (3) extent of progress which has been made towards alleviating or mitigating the issues which led to placement in foster care, and (4) the likely date by which the child may be returned to and safely maintained at home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in another planned permanent living arrangement. (42 USC 671(a)(15)(B); (C); 42 USC 675(5)(B); 45 CFR 1355.34 (c)(2)(ii); 45 CFR 1355.20)	Funding <u>STOPS</u> Unless Finding is Made
<b>At Permanency Hearing</b>	
<b>E.</b> A permanency hearing must be held to select a permanent plan within 365 days from the date the child is considered to have entered foster care. Subsequent permanency hearings must be held every 365 days or less thereafter until permanency is achieved. (45 CFR 1356.21(b)(2)(I); (42 USC 675(5)(C) and (F); 45 CFR 1355.20)) For dependency cases where no reunification services are offered ("exceptions"), the permanency hearing must be held within 30 days of disposition (45 CFR 1356.21(h)(2)) (See also R. 5:12-4(h))	Funding <u>STOPS</u> Unless Finding Made
<b>Definition of Date Entered Foster Care</b>	
<i>Date the child is considered to have entered foster care</i> means the earlier of: the date of the first judicial finding that the child has been subjected to child abuse or neglect, <i>or</i> the date that is 60 calendar days after the date on which the child is removed from the home (45 CFR 1355.20)	<u>In New Jersey, the ACTUAL date of placement is used.</u>

## **1100 CHILDREN IN COURT -- GENERAL**

### **1101 TEAM SERVICES**

The Children in Court (CIC) team consists of a Team Leader and professional and clerical staff sufficient to perform all CIC functions including, but not limited to:

- managing calendars and scheduling for the court;
- coordinating Child Placement Review (CPR) boards;
- docketing and noticing;
- facilitating movement of cases to safety and permanency, and troubleshooting reasons for delay;
- distributing completed court orders to all relevant parties; and
- participating in local CIC advisory committee meetings.

The CIC team will have the capacity to coordinate all CIC docket types and shall utilize case management standards and procedures, which provide for expeditious processing of cases and serve the permanency needs of children.

Regular meetings should be held at the vicinage level of a CIC Advisory Committee, chaired by the lead CIC judge, and include the CIC team leader, Division local office representatives, CPR board chair, Court Appointed Special Advocate (CASA) representative, Law Guardians, Deputy Attorneys General, Office of Parental Representation attorney, an education representative, and other stakeholders when appropriate. At these meetings, discussions should be held regarding obstacles to the efficient movement of these cases and solutions to the delay.

A statewide Children in Court Improvement Committee (CICIC) shall be maintained to encourage planning and coordination necessary at the state level.

The Family Automated Case Tracking System (FACTS), the official court record, permits quality case management, and monitors compliance with federal and state legal requirements.

### **1102 CONFIDENTIALITY**

Pursuant to R. 1:38-3(d) and Administrative Directive #03-11, court records in child abuse or neglect, CPR (see also R. 5:13-8(a)), termination of parental rights (TPR), and kinship legal guardianship (KLG) matters are confidential.

#### ***Authorization to release audio or video tapes of CIC proceedings***

In the event that an individual requests an audio or video recording of a proceeding using one of

the Judiciary's request forms, the designated court staff should complete the "Court Review of Request for Confidential Court Transcripts, Audio or Video Files" form (CN 11078) and provide it to the designated judge who is authorized to approve or reject the request. The judge should make a decision within three business days and, if necessary, enter a protective order limiting the use of the recording.

***Child Placement Review: FC (R. 5:13-8(a) and N.J.S.A. 30:4C-61(e))***

All hearings under the CPR Act, whether held by the CPR board or the court, shall be conducted in private with only those persons in attendance as have a direct involvement in the proceeding; provided, however, that the court may permit attendance at any board or court proceeding of any person who has an interest in the work of the board or the court as long as such person agrees not to record, disclose, or publish the names, photographs or other identifying information regarding the participants in the proceedings, except as expressly authorized by the court. However, the law requires that parents/legal guardians, the Division, the child (if appropriate), attorneys who have entered an appearance under the FC case, current resource family member(s) and interested persons are provided with written notice of all hearings and reviews. Foster parents, temporary caretakers, or pre-adoptive parents, while not parties to the case, may be heard.

All records are confidential and must be safeguarded from public inspection except as may be authorized by order of the court for good cause shown.

***Abuse or Neglect: FN (N.J.S.A. 9:6-8.10a, -8.10b, -8.47b)***

All records of child abuse or neglect made pursuant to statute, all information obtained by the Division in investigating such reports, and all reports of findings forwarded to the Central Registry of the Division shall be kept confidential and may be disclosed only under expressly authorized circumstances as provided in N.J.S.A. 9:6-8.10b.

A person who violates the above statute shall be guilty of a misdemeanor and subject to a fine of not more than \$1,000.00 or imprisonment for not more than 3 years, or both.

Any person, agency, court, grand jury, or legislative committee receiving reports indicated in the above section must keep such records and reports confidential as well. Records released to the court may be disclosed to the law guardian, attorney, or other appropriate person upon finding that such further disclosure is necessary for determination of an issue before the court.

Records prepared by the Family Division Case Management Office, the Probation Division, or the Division of Child Protection and Permanency for use by the court at any time for the making of an order of disposition are confidential. Disclosure may be made, at the court's discretion, to the law guardian, attorney or other appropriate person. N.J.S.A. 9:6-8.47b.

The general public may be excluded from any hearing under the act, and only such persons or agency representatives may be admitted as have an interest in the case. N.J.S.A. 9:6-8.43b.

***Termination of Parental Rights: FG -- Disclosure of identity of child victim  
(N.J.S.A. 2A:82-46)***

All court documents that state the name, address and identity of a child victim in abuse or neglect cases must be kept confidential. If only one of the three items is present in any court document, court personnel must treat the document as confidential.

Documents in these cases are not to be disclosed to the public unless a judge authorizes the release after giving notice to all parties in the matter.

Hearings for termination of parental rights and guardianship are closed. No child shall be present at a hearing or trial unless the child's testimony is necessary for the court to make a determination in the matter. The testimony of a child may, in the court's discretion, be taken privately in chambers or under such protective orders as the court may provide.

The name of the victim shall not appear in any public record. Initials or a fictitious name must be used in place of the name, address and identity of any victim under 18. Persons who purposely disclose this information are guilty of a disorderly persons offense. These restrictions do not preclude the dissemination of information among judges or court personnel. Care should be taken, however, to ensure that material that may be viewed by the public or media, conforms to the law. FACTS records are confidential. Court lists and other documents that are generally circulated among various personnel within the court building should not contain the names of child victims, instead initials or fictitious names should be used. Likewise, file folders should not display the name of a child victim; initials or a fictitious name should be used. Public access to information contained in a Children in Court case shall be released pursuant to Directive #03-11.

***1103 Order to Appoint a Court Appointed Special Advocate (CASA) (Promulgated May 25, 2010)***

Rule 5:8C states:

In any case in which the welfare of a child is in issue, the court may, on application of any party or on its own motion, appoint a volunteer Court Appointed Special Advocate (CASA), who shall act on the court's behalf to undertake certain activities in furtherance of the child's interests, but who shall not supplant or interfere with the role either of counsel for child appointed pursuant to R. 5:8A or guardian ad litem appointed pursuant to R. 5:8B. Any such CASA shall be a volunteer associated with a court-authorized or court-operated CASA program. The duties and activities of a CASA program and all of its volunteers shall be in accordance with guidelines established by the Administrative Director of the Courts.

When the court determines that it may be appropriate to assign a CASA volunteer to a case, the court shall document the referral to CASA in a court order. When a CASA volunteer has been identified, the court must use the Appointment of Court Appointed Special Advocate (CASA)



Order (CN 10161). The court should ensure that the CASA volunteer has been appointed in accordance with Directive #05-13, "Revised Court Appointed Special Advocates (CASA) Program Standards."

### **1104 Indian Child Welfare Act (ICWA) Findings (Promulgated July 19, 2012)**

Every case involving a child's placement outside of the home requires a determination of whether the Indian Child Welfare Act (ICWA) applies to a child. See 25 U.S.C.A. § 1901, et seq., and the Bureau of Indian Affairs (BIA) Guidelines for more information on ICWA. Initially, the court must determine:

1. Whether the child is an Indian child under ICWA.

ICWA applies when a child under the age of 18 is:

- a member of a federally recognized tribe OR
- eligible to be a member of a federally recognized tribe and the child of a member.

NOTE: Only the tribe or the BIA may determine who is member of the tribe, not the court

2. When it is necessary to make an ICWA finding.

- Foster care placement for child abuse, neglect, maltreatment
- Transfer between foster care placements
- Surrender for adoption
- Termination of parental rights
- Pre-adoptive placement
- Adoption – including private adoptions
- Custody to a non-parent

3. Whether the tribe received proper ICWA notification. See 25 U.S.C.A. § 1912(a).

4. Whether the parents/guardians received proper ICWA notification.

### **1105 Protocol for the Intercounty Transfer of CIC Cases (Promulgated June 1, 2011, Revised September 30, 2014)**

The transfer of a Children in Court (CIC) case (FC and/or FN/FG) to another county should be discouraged and limited to circumstances in which the transfer of venue in the CIC case is in the best interest of the child. Note that venue is not required to change when the Division transfers its file to another Division local office in a different county.

Before the court transfers the case to another county, notice and an opportunity to be heard is provided to all parties. The CIC judge recommends the transfer to the Assignment Judge or designee.

Once the court determines that a transfer is appropriate, the court will enter a multipurpose order, which will state the reasons for the transfer. All pending CIC cases pertaining to that child



should be transferred at the same time to the same county. A cover sheet with a standardized list of information including all relevant data should accompany each transferred file.

Note that transfer should not occur within 60 days of any required review by the court (i.e., a fact-finding hearing or a permanency hearing) or any CPR Board Initial Review or permanency hearing by the CPR Board.

CIC cases in the following categories **shall not** be transferred unless special circumstances exist and the judge in the sending county so states in the court order:

- FC cases with a concurrent FG docket,
- FC cases in the post-termination of parental rights (TPR) phase,
- FG cases, and
- FL cases.

### *Transfer procedure for sending county*

Two orders should be prepared to effectuate the transfer of a CIC case: (1) the order entered by the CIC judge (FC Termination Order, FN Multipurpose Order, or FG Multipurpose Order) and (2) a change of venue order. A transfer will result from a judicial decision set forth in a court order, not as a result of a Notice of Change (NOC) Form.

The order completed by the CIC judge will include the next review date (or a tentative next review date), which the team leader for the sending judge will obtain by telephone from CIC staff in the receiving county (the receiving judge's team leader or the calendar coordinator). If the sending judge's team leader is unable to reach the receiving county's team leader or calendar coordinator, he or she may contact the receiving vicinage's Family Division Manager. Note: Ideally, this next review date should be obtained while the litigants are still in the courtroom so that they will have accurate and complete information in their court order when they leave court that day. The contact information for the CIC team leaders is posted on the Judiciary's InfoNet.

The Assignment Judge or designee (Family Presiding Judge) of the sending county contacts the Assignment Judge or designee (Family Presiding Judge) of the receiving county to discuss the transfer. Prior to contacting either Assignment Judge or designee (Family Presiding Judge), CIC staff in the receiving county will provide a tentative next court date for the sending county to put on the multipurpose order. If the case is to be transferred, then the sending county's Assignment Judge or designee (Family Presiding Judge) will complete a change of venue order. If the case is not to be transferred, court staff in the sending county will advise the attorneys of that fact and provide the next court date in the sending county.

Court staff enters the relevant information in FACTS from the change of venue order on the "Termination of FC" screen, FACTS closes the FC case, and FACTS then initiates the automated transfer process.

The case file is prepared for transfer according to Judiciary policy. The original case file, with a standard cover sheet, is sent by certified mail or by Judiciary contract messenger. It will include

an acknowledgment of receipt to be signed and returned by the receiving county. Receipt may also be acknowledged by email.

### ***Transfer procedure for receiving county***

A county is informed of a pending FN, FC or FG transfer case by telephone call from the sending county's CIC staff to the receiving judge's team leader or calendar coordinator. As noted above, prior to contacting either Assignment Judge or designee (Family Presiding Judge), CIC staff in the receiving county will provide a tentative next court date for the sending county to put on the transfer order.

For all CIC cases, staff in the receiving county either must sign the form acknowledging that the case has been received and return that signed form to the sending county or send an email acknowledgment to the sending county CIC staff. The sending county's change of venue order authorizes the transfer. The receiving county will use the sending county's originating document (Notice of Placement in an FC or the complaint in an FN or FG) as the document to establish the case in FACTS.

The order completed by the CIC judge in the sending county will set forth:

- the reason for the transfer;
- the date, time and location of the next court event and/or the next child placement review (as determined by the receiving county);
- the date of the fact-finding or Title 30 summary hearing (for FN cases); and
- the date of the most recent permanency hearing (if one was held).

For FC and FN cases only, the receiving county's court staff will access the "Establish Case" menu in FACTS and select the "Incoming Transfers" list, select the case to be established, and follow standard procedures to establish the incoming case. FACTS will complete the automated transfer and record, in the appropriate docket, an unscheduled proceeding for the last permanency hearing or fact-finding hearing held by the sending county, and use the generic JJ code for the judge and the generic courtroom codes. The receiving county will schedule the case accordingly.

### ***Transfer Summary Cover Sheet requirements***

Every transferred CIC case file should have a standardized cover sheet, which may either be included as a hard copy or sent by email to the receiving county. The following information must be included on the cover sheet:

- Minor's name
- Date of Birth
- Authority for placement (e.g., court-ordered placement or residential placement agreement)
- Caretaker's name / Caretaker's address (Resource family)
- Parents' names and addresses (including relevant information if parent is incarcerated)
- Docket # of sending county and the Division's NJ Spirit Case #

- If an FC matter, the date of placement and date of next review
- If an FN matter, the date of complaint and the date, time and location of next court event, and date of fact-finding or Title 30 summary hearing
- If an FG matter, the date of the complaint and the date, time and location of next court event
- Date of most recent permanency hearing
- Special considerations, if any (e.g., interpreter is needed, handicapped access required, or any writs for incarcerated parents have been issued.)

### ***Case file organization format***

The file of a transferred CIC case should be organized in the following sequence:

1. Cover sheet
2. Acknowledgment of Receipt (to be sent back to sending county, unless email is used to acknowledge receipt)
3. Signed Transfer Order
4. Notice of Change (the Division's form) for FC cases, if available
5. All court orders, with the most recent on the top
6. Case file
7. Copy of file jacket and docket sheet, if informational

### ***Additional Procedures***

While the original case file goes to the receiving county, the sending county must retain a copy of the case file. That case file copy should be retained consistent with the provisions of the Judiciary's Records Retention Schedule.

Each county CIC team shall designate a specific staff member as the CIC contact person and shall advise the AOC Family Practice Division as to any changes in that designation. The AOC Family Practice Division shall maintain and distribute a statewide list of CIC contact persons. Additionally, the statewide list of CIC team leaders is posted on the Judiciary InfoNet.

### ***1106 Co-occurring Child Abuse and Domestic Violence (Directive #14-17)***

Administrative Directive #14-17 prescribes ways to aid the victims of domestic violence and the victims of child abuse. The Family Division of the Superior Court brings into one division all case types involving families or those in family-like settings. This directive sets forth a single unified policy and operational guidance on how the Judiciary responds to the co-occurrence of child abuse or neglect and domestic violence.

The policy of the Judiciary is that in each situation where the court finds co-occurrence, it should consider:

- protecting victims from physical harm;
- providing adequate social and economic support for families; and
- providing access to services that are respectful, culturally relevant and responsive to the unique strengths and concerns of that family.

Additionally, to the extent authorized by law, the Judiciary recognizes its role to hold the perpetrators accountable for their abusive behavior, to consider appropriate legal interventions and, when required, to order that both the victim and the perpetrator be provided with the kind of social services that can help stop the violence.

Each vicinage has established a joint committee on children and domestic violence. This committee includes representatives of the Judiciary, the Division's local office and domestic violence stakeholders. These joint groups implement the requirements of Directive #14-17 and the protocols and policies of DCF. The joint committees ensure more productive relationships and facilitate communications among DCF, the Judiciary, and victim advocacy groups. The counties have called upon the membership of the CIC Advisory Committees and the county domestic violence working groups to participate in the joint committees.

***1107 Permanency Hearings for Juvenile Delinquency (FJ) and Family Crisis (FF) Matters (Promulgated September 22, 2006)***

Permanency hearings must be held for juvenile delinquency and family crisis matters for any child who is in a Division out of home placement regardless of whether the juvenile was in a Division out of home placement at the time of the delinquency charge or was placed by the Division as a result of the juvenile delinquency proceeding. The permanency hearing must be held to select a permanency plan for the Division-involved youth no later than 365 days from the child's placement date and subsequent permanency hearings must be held every 365 days or less thereafter until the child achieves permanency.

Alternatively, in accordance with the Adoption and Safe Families Act (ASFA), if a child has been removed from home and a judge determines that reasonable efforts to return the child home are not required (block 2b or 2c or 2d is checked on the Reasonable Efforts Order (CN 10810 (in court) or CN 10811 (in chambers))), then a permanency hearing must occur within 30 days of that determination. If reasonable efforts are not required due to imminent danger to the child's life, safety or health (block 2a has been checked on the Reasonable Efforts Order (CN 10810 (in court) or CN 10811 (in chambers))), then the permanency hearing may be held within 365 days.

There are occasions when a juvenile is the subject of a CIC case and a juvenile delinquency or family crisis case at the same time. Under the circumstances set forth in the September 22, 2006 assignment judge memorandum, a single judge – the juvenile judge – should handle both cases whenever possible.

The following list of examples is not exhaustive but provides guidance as to when permanency hearings must be conducted by a juvenile judge. Under certain circumstances, a CIC judge

should conduct the permanency hearing and an example of that circumstance is also provided.

1. A child is the subject of a juvenile complaint (FJ docket) or family crisis petition (FF docket), but there is no prior Division involvement. The disposition includes a Division out of home placement. An FC case is docketed and the child is tracked through the FC case. The juvenile judge is the most familiar with the child's placement. Therefore, the juvenile judge who placed the child with the Division should conduct the permanency hearings and any summary hearings requested by the CPR board.

2. A child is the subject of a juvenile complaint (FJ docket) or family crisis petition (FF docket). The disposition is a term in a juvenile facility. After the child is released, he or she is placed in a Division out of home placement. An FC case is docketed and the child is tracked through the FC case. The juvenile judge is the most familiar with the child's case. Therefore, the juvenile judge who entered the disposition should conduct the initial permanency hearing as well as any subsequent permanency hearings and summary hearings requested by the CPR board.

3. A child is in a Division out of home placement (existing FC docket). The child commits an act of juvenile delinquency. The juvenile matter (FJ docket) is docketed and disposed. The child is returned to a Division placement. The CIC judge is the most familiar with the child's placement and therefore should conduct the permanency hearings and summary hearings.

If the judge who heard the juvenile case and entered the disposition is no longer in the Family Part, the Family Presiding Judge will assign the case to another Family Part judge. If the juvenile judge and CIC judge have been equally involved with the child, the Family Presiding Judge will determine which judge should conduct the permanency hearings. Case processing of the FC permanency hearings is the responsibility of the CIC team.

Under these circumstances, the CIC team completes and provides the order to the juvenile team leader for the juvenile judge's review and signature. The appropriate form will be the court's Permanency Order (CN 10259). Appearances may be revised to reflect appearances of the county prosecutor and/or representatives from the family crisis intervention unit or care management organization. If the juvenile has never been involved in an FN or FG matter, the Office of the Attorney General, Office of Law Guardian and Office of Parental Representation will not appear for this hearing.

### **1108 Mediation**

The court may order all CIC cases to mediation. See Section 2000 for details.

### **1109 Noticing Requirements**

Except as otherwise provided in this manual, the entry of future hearing date(s) in the court orders shall constitute notice of those hearings. Court orders served on attorneys shall constitute service to the attorney's clients.

### **1110 Order to Terminate Appointment of Court Appointed Special Advocate (CASA) / Change in Volunteer (CN 11708) (Promulgated September 30, 2014)**

This order is to be used when the court terminates from the matter: (a) a specific CASA volunteer, or (b) all CASA involvement.

## **1200 THE FEDERAL ADOPTION AND SAFE FAMILIES ACT: AN OVERVIEW**

The federal Adoption and Safe Families Act (ASFA) was signed into law on November 19, 1997. The law established as public policy that the health and safety of the child are of paramount concern whenever a child is placed in foster care. On March 31, 1999, New Jersey legislation was enacted to bring the state into compliance with the requirements of the federal law. The legislation, on both the state and federal level, made significant changes intended to strengthen the child welfare system's timely response to the problem of children languishing in foster care placements.

Key concepts of ASFA are:

- *A child's health and safety shall be of paramount concern* in determining what efforts should be made to reunify families;
- Reasonable efforts to prevent a child's placement or to reunify a family will not be required in certain circumstances;
- Services provided to families whose children are in foster care must be improved and expanded;
- In all cases, permanency needs to be expedited, whether the goal is to return home or move the child to adoption, and specific timeframes are stated in the law;
- Child outcomes and state accountability must be increasingly emphasized;
- Juveniles in placement (including those involved in juvenile justice and family crisis) are subject to the same federal requirements for documentation and regular reviews;
- Failure to comply with federal requirements and their documentation will result in denial of federal funds to the State of New Jersey.

### ***Child protection is emphasized***

This public policy represents a swing of the pendulum back to the concept of primary child protection after decades of emphasis on family reunification. Documentation is required throughout the time the child's case is in court showing that the child's health, safety and permanency are being seriously considered for all decisions made regarding the child's placement, services and future.

### ***Reasonable efforts documentation requirements are expanded***

Reasonable efforts to prevent the child's placement and to reunify families have been standard requirements for many years. ASFA requires more specific documentation, as well as a third level of reasonable efforts determination - efforts to achieve permanency for the child. Implementation of the reasonable efforts provisions will be a key feature of the effectiveness of the laws.

### ***Documentation on judicial orders is clarified***

The "contrary to the welfare" judicial determination must be made on the first order that sanctions (even temporarily) removal from the home. This requirement also applies to juvenile delinquency and family crisis matters. The juvenile form order provides space for the "contrary

to the welfare" finding. Reasonable efforts determinations must be made within 60 days of the date of placement. Judicial determinations must be explicitly documented, making case-specific findings and so stated in the court order. Neither affidavits nor *nunc pro tunc* orders nor mere reference to the state statute will be accepted as documentation in support of reasonable efforts and contrary to the welfare judicial determinations. If the reasonable efforts and contrary to the welfare judicial determinations were not included as required in the appropriate court orders, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

***Advocacy on behalf of a child by relatives, resource parents, and pre-adoptive parents is expanded***

Requirements for written notice of court hearings is now required to be provided to a child's caretaker, relatives, resource parents and pre-adoptive parents, although this law does not allow them to become parties to the case.

***Permanency decisions, including termination of parental rights, are on a timeframe***

Permanency hearings, defined by the law, must be held within the first 365 days of placement, and must continue to be held annually until permanency is achieved. If reasonable efforts to reunify the family are not required, then a permanency hearing must be held within 30 days. In addition, the law requires that a petition for termination of parental rights (TPR) must be filed when a child is in out of home placement for 15 of the last 22 months. In New Jersey, when the court has approved the permanency goal of adoption, the TPR complaint should be filed within 45 days of the permanency hearing.

***Concurrent planning is required***

Concurrent planning, simultaneous casework taking place for both family reunification and adoption, is required. This means that the Division must take steps to prepare a case for adoption while reasonable efforts are made to reunify the family.

***Continuous legal representation for children and parents is provided***

The New Jersey statutes provide funds to be allocated to the Office of the Public Defender to represent children and parents in abuse or neglect cases and to continue that representation when a complaint for TPR has been filed.



## 1300 THE CHILD PLACEMENT REVIEW ACT

### ***Purpose and Legislative Mandate***

In 1978, the Child Placement Review (CPR) Act, N.J.S.A. 30:4C-50, et seq., established citizen review boards as an arm of the courts to review children in foster care placements. The CPR board process was created at a time when most removals of children from their homes were through voluntary placement agreements between the Division and a child's parent(s). When a parent was accused of abuse or neglect, the Division would ask the parent to sign an agreement relinquishing custody to the Division so that it could place the child in a temporary foster home. In that situation, only an FC case is established. Judges had only limited oversight of voluntary placement cases, specifically, an initial review of the child's case file 15 days after the child's placement, occasional summary hearings, and entry of the annual Permanency Order. CPR boards conducted in-person reviews and made recommendations for the judge's consideration.

The CPR board process described in the preceding paragraph predated the enactment of the 1997 federal Adoption and Safe Families Act (ASFA), which requires state child welfare systems to focus on the safety of children in foster care and to find permanent homes through adoption or other permanent placement. In 2005, the Division eliminated voluntary placements involving abused or neglected children; the Division now files a formal complaint (FN docket) with the court for every such litigated case. Voluntary placements are now used only in cases where abuse or neglect has never been alleged (i.e., residential placement or an independent living agreement). Judges oversee court-ordered placements, with each case reviewed by a judge every two to three months.

A court-ordered placement may occur under the following dockets: child protection (FN - See N.J.S.A. 9:6-8.21, et seq. or N.J.S.A. 30:4C-11, et seq.), guardianship (FG - See N.J.S.A. 30:4C-1, et seq.), juvenile delinquency (FJ - See N.J.S.A. 2A:4A-20, et seq.) or family crisis (FF - See N.J.S.A. 2A:4A-87).

A reviewable placement is defined in the law (N.J.S.A. 30:4C-52). It provides:

"Child placed outside his home" means a child under the care, custody or guardianship of the division who resides in a resource family home, group home, residential treatment facility, shelter for the care of abused or neglected children or juveniles considered as juvenile-family crisis cases, or independent living arrangement operated by or approved for payment by the division, or a child who has been placed by the division in the home of a person who is not related to the child and does not receive any payment for the care of the child from the division, or a child placed by the court in juvenile-family crisis cases pursuant to P.L.1982, c.77 (C.2A:4A-20 et seq.), but does not include a child placed by the court in the home of a person related to the child who does not receive any payment from the division for the care of the child.<sup>1</sup>

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<sup>1</sup> See also DYFS v. G.M., 198 N.J. 382 (N.J. 2009).

The federal rules and regulations define a foster care placement as 24-hour substitute care for children placed away from their parents or guardians where the licensing and payment status is irrelevant. See 45 CFR 1355.20. Therefore, whether a placement is paid or unpaid will not affect its status as reviewable. In New Jersey, a resource family is equivalent to a foster family as defined in the federal law.

### ***Review of Children in Placement***

Pursuant to N.J.S.A. 30:4C-58, all children in placement must be reviewed within 60 days of the date of placement and at least annually thereafter. The out of home placement starts with the actual date of placement, **not** the date the Notice of Placement is received. A permanency hearing must be held annually from the date of placement.<sup>2</sup> For FC cases with no concurrent FN or FG, a CPR board may, on behalf of the court, conduct the permanency hearing. For FC cases with concurrent or previous CIC litigation, the court conducts the permanency hearing.

Details of the process are set forth in Directive #16-17, "Better Protection for Children -- Improved Oversight of Abused and Neglected Children in Foster Care."

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<sup>2</sup> If reasonable efforts to reunify are not required, the permanency hearing must be held within 30 days. See N.J.S.A. 30:4C-61.2.

## **1400 FC: CHILD PLACEMENT REVIEW CASE PROCESSING STEPS**

### ***Jurisdiction (N.J.S.A. 30:4C-53 and R. 5:1-2(a))***

All actions under the Child Placement Review (CPR) Act are heard in the Superior Court, Chancery Division, Family Part.

### ***Venue (N.J.S.A. 30:4C-52 and R. 5:2-1(b)(1))***

FC cases with no FN or FG litigation are heard in the county where the Division of Child Protection and Permanency (the Division) or other approved agency (juvenile-family crisis intervention unit) has established supervision of the child. FC cases with concurrent CIC litigation should be heard in the county where the FN, FG or FL is ongoing.

FC post-termination of parental rights matters shall remain in the county that entered the Judgment of Guardianship unless special circumstances exist. See Section 1105 for Transfer Policy.

### ***1401 Notice of Placement***

Within 5 calendar days of an initial or repeat out of home placement, the Division must file a Notice of Placement (NOP) with the Children in Court (CIC) Team and the case is created in the Family Automated Case Tracking System (FACTS). All NOPs are filed with the court electronically through an automated process. This NOP should contain complete, case specific documentation regarding reasonable efforts to prevent the placement and why it is contrary to the welfare of the child to remain in the home. A copy of the signed residential placement agreement or independent living agreement that authorized the placement should be filed by the Division no later than 10 days after placement.

#### Types of Placement Notices

1. Residential Placement Agreement/Independent Living Agreement (FC-only) - Initial 15 Day Court Review
2. Abuse or Neglect/Guardianship (FC with concurrent FN or FG) - No Initial 15 Day Court Review
3. Juvenile/Family Crisis (FC with concurrent FJ or FF) - No Initial 15 Day Court Review
4. Safe Haven Act (FC with concurrent FN or FG) - No Initial 15 Day Court Review

### ***1402 Case Establishment***

Within three court days, the case is docketed in FACTS and a file is prepared. The aging of the out of home placement starts from the actual date of placement, not the date the NOP was received or the date the case was docketed. The case is assigned to the appropriate CPR board

and judge. In the case of a repeat placement, refer the case to the CPR board that previously reviewed the child's case. If a sibling has an open FC case, assign this child's case to the same CPR board. In the case of active litigation, assign the case to the judge handling that litigation.

For FC-only cases, the CIC team (not the CPR board) shall prepare the Initial 15 Day Court Order (CN 10254) to be signed by the judge within 15 days of placement.

The Division should provide documentation of its reasonable efforts to prevent the child's placement. CIC staff examines the documentation in preparation for the court's initial (15 Day) court review and the CPR Board's Initial Review at 60 days. Those proceedings are scheduled in FACTS.

Notice of the CPR Initial Board Review is sent to the parents and to all interested persons involved in this stage of the case. The CIC team provides its informational brochure, *A Guide to New Jersey Child Placement Review*, to the child (if appropriate), and to the parent/legal guardian, and social service providers, as determined by the court. The court may waive notice to the child if the court determines it is in the child's best interest to do so.

Within 10 calendar days before the date of the initial (15 Day) court review, any pertinent information or written materials should be submitted to the CIC team to assist the court in making its determination.

### **1403 Initial (15 Day) Court Review (N.J.S.A. 30:4C-54) - Within 20 days of child's date of placement**

The purpose of the initial court review is to make an initial determination in residential placement or independent living agreement cases as to whether reasonable efforts were made to prevent the placement, and whether continuing to allow the child to remain in the home would be contrary to the safety and welfare of the child.

1. The "**contrary to the welfare**" judicial determination must be made on the first order that sanctions (even temporarily) removal from the home. These findings must be case-specific and must be explicitly documented in the Initial (15-Day) Court Order (CN 10254). Court staff prepares the order for the court's review and signature.

2. The court shall also determine whether the Division has made all "**reasonable efforts to prevent placement.**" The court must state the case-specific findings in the Initial (15-Day) Court Order (CN 10254). In the rare event that this reasonable efforts finding is not made on the Initial (15-Day) Court Order, then such finding must be made on the CPR Board Initial Review Order (CN 10253) for voluntary cases.

The Division's failure to provide information as to its efforts to prevent placement shall not be the sole basis for the court's order to return a child home. The court may order a summary hearing if information is not sufficient to make any of the above determinations. The judge should schedule a summary hearing if it could result in a return home with supportive services or a preferable alternative placement.

The court review must be held within 15 days after the receipt of the notice of initial or repeated placement (that is, within 20 days after the date of the placement). For this review, the CIC staff will review all information and written materials submitted with the NOP, and prepare the Initial (15-Day) Court Order (CN 10254) for the judge's signature. Judicial determinations must be explicitly documented, made on a case-by-case basis and so stated in the court order. The order should be entered into FACTS. Copies of the order should be provided to the parent(s), the child (if appropriate) and the Division.

Every case involving a child's placement outside of the home requires a determination of whether the Indian Child Welfare Act applies to a child. See section 1104 for more detail.

### **1404 CPR Board Initial Review -- Day 60 (N.J.S.A. 30:4C-58 and -59)**

#### Purpose

The CPR Board Initial Review procedure provides a comprehensive, structured and informative session for parents, foster parents, Division caseworkers and other child welfare stakeholders. CPR boards review all cases at 60 days after the Division places the child.

At this early stage of the case, the CPR board is responsible for gathering information regarding the child's placement and any potential barriers to finding a permanent home for the child. Among other things, the CPR board will obtain the following information at the 60 day review:

- a. Whether the Division has placed siblings together in foster care.
- b. Whether the Division has promoted sufficient visitation between the child and his or her parents and between the child and his or her siblings.
- c. Whether the Division sought and assessed relatives as placement options (including relatives who reside abroad).
- d. Whether the Division assessed the child, parents, and foster parents for services and provided necessary services to them.
- e. Whether the Division has scheduled a comprehensive medical examination for the child.
- f. Whether the Division has ensured that the child remains in his or her same school where appropriate when the child is placed in a foster home located in a different school district.

Division caseworkers or their supervisors will be required to attend the CPR Board Initial Review.

#### Notice

Parents/Legal Guardians, the Division, the child (if appropriate), attorneys who have entered an appearance under the FC case, current resource family member(s) and interested persons are provided with written notice of this review no later than 15 days before the 60 day review.

CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

The Division is required to submit its court report (Division Form 26-80) and all relevant reports to the CIC team within 30 days of placement. Court staff must distribute these documents to CPR board members no fewer than seven days before the CPR board review date.

Process for litigated and voluntary cases

In **litigated cases**, those cases with a related FN, FJ, FF or FG docket number, the CPR board shall review the child only at the CPR Board Initial Review. In these litigated cases, the court shall conduct all other reviews.

In **voluntary placements**, those made pursuant to Independent Living Agreements and Residential Placement Agreements (also known as non-litigated cases), the following reviews will be conducted to ensure the child's health, safety and permanence: The initial 15 Day Review, the CPR Board Initial Review, status reviews and if required by the law, special reviews.

In voluntary cases, as part of the review of case documentation, the CPR board discusses the facts of the case and statements, if any, of interested persons, and makes one of the following recommendations:

A. Continued placement of the child outside of the home is not in the child's best interest and the child should be returned home within two (2) weeks and the Division or designated agency, as appropriate, shall provide reasonable and available services which are necessary to implement the return home;

B. Continued temporary placement outside of the home is in the child's best interest until the long-term goal is achieved;

C. Continued temporary placement outside of the home is in the child's best interest, but there is not sufficient information for the board to make a recommendation, therefore, the board requests the court to order the Division or designated agency, as appropriate, to provide the needed information within two (2) weeks of the court order. A summary hearing will be scheduled when there is insufficient information to make a recommendation.

In all cases, the CPR board should carefully examine whether reasonable efforts were made to prevent the placement and whether these efforts were documented in a court order.

CPR boards will use the protocol, the CPR Initial Board Review Checklist (Checklist) and the CPR Board Initial Review Recommendation to the Judge Form (CN 11355) for the 60 day review as set forth in Directive #16-17. The completed Checklist must be provided to the judge handling the litigated case. The Checklist is to be used only by the court and the CPR board, and is not to be distributed to any parties in the case. Court staff must place in the FN case file, if applicable, a copy of the checklist and the related Recommendation to the Judge Form.

In voluntary cases, within ten days after the review, the entire Recommendation to the Judge Form must be mailed to the Division, parents, and attorneys who have entered an appearance. Parents should also receive the approved recommendation cover letter, which provides them with 11 days to respond in writing to the CPR Board's recommendation. Resource families and other

interested persons should receive only the front page of the CPR Board Recommendation to the Judge Form. They do not receive the approved recommendation cover letter.

In all cases, the Recommendation to the Judge Form is entered in FACTS by the CIC team and a copy of the completed Recommendation to the Judge Form must be provided to the judge reviewing that child's case under the FN/ FG/ FL/ FF/ FJ/ FA dockets. The findings must be entered in FACTS and the proceeding must be completed in FACTS.

CIC staff must inform the CPR Board members of the content of the most recent court order. The CPR Board recommendation will generally be consistent with the court's findings. If the recommendation is not consistent with the court's findings, the CPR Board should provide a written explanation on the Recommendation to the Judge Form and, in voluntary cases, request a summary hearing.

In voluntary cases, CIC staff prepares a CPR Board Initial Review Order (CN 10253) consistent with the CPR board's recommendation. Any submissions received by CIC staff are attached to the order for the judge's review prior to signature. The judge will sign a CPR Board Initial Review Order within 21 calendar days of the CPR board review. This order is entered in FACTS by the CIC team. The order is distributed to the child (if appropriate), parent/legal guardian, counsel who have entered appearances and the Division.

An order will not be generated after the CPR Board Initial Review in litigated cases.

### ***1405 Procedures for a Summary Hearing (N.J.S.A. 30:4C-54 and -61)***

#### Purpose

The court may schedule a summary hearing at any time if:

1. the court has received conflicting statements of material fact;
2. the court concludes that the interests of justice would be served;
3. any party to the case requests the hearing;
4. compliance is lacking with the placement plan, including achievement of permanent placement;
5. the Division has documented an exception to the requirement to provide reasonable efforts to reunify; or
6. the review will serve as a permanency hearing. Note: The permanency hearing code must be entered in addition to the summary hearing code.

A summary hearing is a hearing in an FC case held before the court. Any party entitled to participate in the proceedings may request a summary hearing at any time during the placement.

CPR boards might request summary hearings when there are conflicting statements of fact, or when there is a lack of information and/or documentation. The court has the discretion to grant or deny a summary hearing request. The court may also initiate summary hearings without a request by the CPR board or any party.



### Notice

Ten days' notice is provided to the Division, the child (if appropriate), the parents/legal guardian, the CPR board, the resource family member(s) and counsel who have entered an appearance in the FC case. Note: The fact that resource family members are provided with notice and a right to be heard at summary hearings does not make them parties to the case.

### Process

A copy of the order (CN 10257) resulting from a summary hearing shall be provided to the child (if appropriate), the parents/legal guardian, the Division, CPR board and attorneys who have entered an appearance in the FC case. In voluntary cases, a status review may be scheduled to follow up on any issues to ensure timely compliance. Another summary hearing may also be scheduled.

## **1406 Interim Reviews of Children in Placement**

CIC staff must provide the following to the resource family: Notice of these proceedings, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

### ***Status Review***

The purpose of a status review is to closely monitor one or more specific aspects of a case. It may be requested at any time in the case. In these cases, the CPR board has requested specific information (for example, the results of psychological and/or psychiatric evaluations, or a report from a therapist) and the results are reviewed and discussed from the perspective of keeping the case on track. No notice to parties is required and no Recommendation to the Judge Form is completed.

### ***Special Review***

In voluntary cases, pursuant to N.J.S.A. 30:4C-61.1.a. and -61.1.b., if the Division proposes to return a child home, although the return home is either prohibited by the placement plan approved by the court or expressly contingent upon certain conditions in the placement plan that have not been met, the Division shall promptly notify the board and the court in writing, and the CPR board shall conduct a special review within 15 days of receipt of the notice to consider and evaluate the reasons for the proposed action and determine whether the action ensures the safety and serves the best interests of the child. This is a full CPR board review. All parties are noticed of this review, CPR board recommendations are written and a court order is generated. If a special review does not resolve the issues, the CPR board may choose to request a summary hearing.

## **1407 Permanency Hearings**

### Purpose

The court must review a child's permanency plan at least annually. In all litigated cases, including those where litigation has been terminated, the court conducts this permanency hearing. See section 1600 (FN cases) or 1700 (FG cases) of this manual.



In voluntary placement cases, this requirement can be satisfied by the CPR board conducting a permanency hearing and making a recommendation to the court.

The purpose of these proceedings in voluntary cases is to determine a permanent plan that includes whether the child will be:

1. returned to the parent or guardian, without endangering the child's health or safety; or
2. made eligible for adoption following a termination of parental rights by the Division filing an FG complaint within 45 days of the proceeding; or
3. placed with a relative who obtains custody; or
4. placed with a family member or friend with a plan of Kinship Legal Guardianship (KLG); or
5. placed in another planned permanent living arrangement, provided that the Division has documented compelling reasons why the first four options were not used.

At this review, the focus is on the child's permanency plan and a variety of issues must be addressed. The CPR board review will include, but not be limited to, the consideration and evaluation of such matters as:

1. the safety and health of the child;
2. the circumstances surrounding the placement;
3. the appropriateness of the plan and anticipated date that it will be achieved;
4. the reasonableness of the Division's efforts to achieve that plan;
5. the appropriateness of the services provided to the child and to the resource family;
6. whether the child has siblings who are also placed outside the home;
7. whether the wishes of the child (if age appropriate) were considered regarding placement and development of the placement plan;
8. whether the Division, parents or legal guardian, and the resource family are fulfilling their respective responsibilities in accordance with the placement plan;
9. whether the parents or legal guardian have been afforded the opportunity and been encouraged to participate in a program of regular visitation with the child;
10. whether there are obstacles that hinder or prevent the attainment of the placement plan objectives and goal; and
11. the appropriateness of the services provided to the parent or legal guardian or the circumstances that do not require the Division to make reasonable efforts toward family reunification.

In voluntary cases, the CPR board will:

1. determine whether progress has been made toward completion of the case plan and accomplishing the case goals;
2. review the documentation that reasonable efforts were made to prevent that placement, to reunify the child and family, and to finalize the child's permanent plan. No exceptions are permitted for the requirement to make reasonable efforts to finalize the child's permanent plan.
3. ascertain whether the conditions leading to the original placement have been resolved;
4. determine if the parent(s) have maintained active visitation with the child(ren);

5. determine the extent of compliance with the case plan and progress made in alleviating the cause(s) for placement;
6. explore what new services should be offered that would allow a child's immediate return home and specifically how that result will be accomplished;
7. consider whether the child is beginning to bond with the resource family parents;
8. evaluate whether the Division has complied with federal and state statutory requirements and whether the projected date in the permanency plan is realistic.

### Notice

In a voluntary placement case, the CPR board permanency hearing must be held and a Permanency Order (CN 10255) signed within 365 days of placement or within 365 days of the date of the last Permanency Order. As long as the child remains in placement, the CPR board must hold permanency hearings annually (i.e., within 365 days of the last permanency hearing).

Parents/Legal Guardians, the Division, the child (if appropriate), attorneys who have entered an appearance under the FC case, and current resource family member(s) are provided with written notice of this review no later than 15 days before the permanency hearing.

CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

The Division is required to submit its permanency plan and all relevant reports to the CIC team no fewer than 14 days before the permanency hearing. Court staff must distribute these documents to CPR board members no fewer than seven days before the CPR board review date.

### Process

During the permanency hearing, the CPR board members must complete the Recommendation to the Judge Form (CN 11354). Within ten days after the review, the entire Recommendation to the Judge Form must be mailed to the Division, parents, and attorneys who have entered an appearance. Parents should also receive the approved recommendation cover letter, which provides them with 11 days to respond in writing to the CPR board's recommendation. Resource families and other interested persons should receive only the front page of the CPR board Recommendation to the Judge Form, and not the approved recommendation cover letter. The Recommendation to the Judge Form is entered in FACTS by the CIC team. The findings must be entered and the proceeding must be completed in FACTS.

An FC Permanency Order must be submitted to the court and the judge must sign it within 21 days of the permanency hearing. **Note:** The judge is not bound by the CPR board's proposed order and may modify it.

CIC staff will enter the Permanency Order into FACTS and record whether the plan was approved. The order must be mailed to the Division, parents, and attorneys who have entered an appearance.

In voluntary cases, CIC staff will complete the proceeding in FACTS (for CPR board

permanency hearings). Staff must enter the results of the CPR board recommendation:

A-child goes home

B-child remains in placement

C-not enough information to make a recommendation.

Court staff also must enter whether the court approved the permanency plan (Y=Yes, N=No or Z=barrier). If the plan is not approved or there is a barrier to approval, then another permanency hearing must be scheduled within 30 days and every 30 days thereafter until the court approves a permanency plan.

### **1408 Benchmark Hearings**

The benchmark hearing is a youth-centered event which shall be scheduled by the court. Its success depends on a free-flowing, substantive conversation between the youth and the judge, and the identification of specific measures to help the youth meet their identified goals.

#### Purpose

Benchmark hearings are conducted for older youth in placement, particularly those who have been in placement for several years or who are in an independent living situation to discuss the present and the future. The desired goal is for the judge to have a direct conversation with the youth and go beyond the formality of a court hearing. The goal is to listen and learn the child's needs.

#### Process

Ideally, benchmark hearings should be held for youth at the following five (5) intervals:

- Youth between the ages of 11 and 14, at the discretion of the court, who have been in an out of home placement for one or more years,
- Age 15,
- Age 16,
- Age 17, and
- Ages 18-20.

Court staff should monitor reports to determine the number of youth who meet the eligibility criteria. Judges shall conduct benchmark hearings for all eligible youth.

A ***Benchmark Hearing Checklist*** is available to inform the judge about the youth's current situation. Questions contained in the checklist represent basic background information that the Division of Child Protection and Permanency (DCP&P) caseworker should know for each youth or be in the process of updating during the course of normal casework.

The checklist shall be completed by the youth's caseworker and filed with the court at least two weeks prior to the hearing.

### Case Selection

Youth between the ages of 11 and 14 who have been in placement *for one year or longer* and youth aged 15, 16 & 17 should be scheduled for a benchmark hearing. Youth between the ages of 18 and 20 should also be scheduled for a benchmark hearing with a focus on housing, post-secondary education, and employment. This includes youth residing in group homes, shelters, and treatment resource homes. The decision to schedule a benchmark hearing for youth residing in a residential treatment center shall be made on a case-by-case basis.

If there is an objection to the scheduling of a benchmark hearing, it shall be filed in writing with the court no later than two weeks prior to the hearing, with a copy to all counsel, and include the reason for the objection. Judges may, at their discretion, refrain from holding benchmark hearings for good cause shown, or if the hearing would be detrimental to the youth, and the decision shall be placed on the record.

### Scheduling

Family court staff should identify youth between the ages of 11 and 14 (and who have been in placement more than one year) or ages 15 through 20 during the calendar year. The list of eligible youth should be provided at least every six months to the Judge, DCP&P, and the law guardian.

The date for the benchmark hearing will be selected at a court event. At ***least six weeks*** advance notice of the hearing date should be provided. The benchmark hearing should be scheduled to minimize school disruption.

If DCP&P already has guardianship of the youth, the court may determine on a case-by-case basis whether to schedule a benchmark hearing.

### Participants

Given the purpose of the benchmark hearing, i.e., a free-flowing conversation between the youth and the judge about the youth's goals and needs, participation of all adults involved in the case and counsel is not needed.

The *youth* shall participate. DCP&P shall be responsible for ensuring the youth's attendance at the hearing.

The youth's *law guardian* shall attend the hearing.

*Support person(s) identified by the youth (e.g., coach, teacher or kin)* will be invited by the caseworker to attend the hearing. The law guardian will help the youth identify the support person whom the youth wants present at the hearing. Persons who could upset or inhibit the youth would undermine the purpose of the hearing and should be excluded at the discretion of the judge.

The youth's *caseworker* may be invited to attend the hearing at the discretion of the youth.

If there is a CASA assigned to the case, the CASA may also be invited to attend the hearing at the discretion of the youth.

### Noticing

Since the benchmark hearing will be scheduled at a court event (e.g., a compliance review), the attorneys, parties present and CASA will receive notice of the benchmark hearing date in court. The judge can respond to any questions regarding the purpose of the hearing at that time. If the caseworker is not present at the court event, the DAG will be responsible for advising the caseworker of the benchmark hearing date.

The parents and their attorneys only participate in the hearing if invited by the youth. If the birth parents are not present when the benchmark hearing is scheduled, their attorneys shall be responsible for advising the parents that a benchmark hearing is being scheduled.

If a CASA is not yet assigned to the case when the benchmark hearing is scheduled, the court shall include the benchmark hearing date in the order assigning the CASA to the case.

### Law Guardian & DCP&P Collaboration

The law guardian shall be in contact with the youth to work with them to identify the support person(s) who will be invited to the hearing.

At least three weeks prior to the benchmark hearing date, the law guardian should provide the court with the name, address, email address, and telephone (home, work, and/or cell) number of the support person(s) whom the youth wants at the hearing.

Individual and Family Agreement Case Plan, Part 2. Section B: Planning for Children and Youth in Care will be used for transition planning with adolescents 14-21 and will replace the Transitional Plan for Youth Success (CP&P Form 5-43). This document provides information on the youth's goal. It should be forwarded to the court, with copies to the law guardian, caseworker, and CASA if one is assigned. If a CASA is already assigned to the case, the CASA volunteer can assist the caseworker in completing the checklist.

### Benchmark Hearing Checklist (CN 12886)

The caseworker should complete the Benchmark Hearing Checklist. If the placement is provided through an agency contract, the DCP&P caseworker can seek assistance from the contract provider to complete the checklist. Other professionals working with the youth (such as therapists, psychiatrists, mentors, etc.) should also be contacted for updated information sought in the checklist. If a CASA is already assigned to the case, the CASA volunteer can assist the caseworker in completing the checklist.

DCP&P shall provide the completed Benchmark Hearing Checklist to court staff in the CIC unit at least two weeks prior to the hearing date for review by the judge and shared with the law guardian.

### Hearing Process

Upon receipt of the hearing notice, the caseworker shall attend to the requirements of this

protocol by noticing the individuals whom the youth requests to be present.

The hearing shall be conducted in the courtroom or chambers, at the discretion of the judge. The benchmark hearing shall be recorded. The judge is encouraged to come down from the bench and engage in real conversations with the youth.

The court shall advise all participants at the beginning of the benchmark hearing that the hearing is confidential and is being recorded.

Since the hearing is a conversation between the youth and the judge, the youth can be encouraged to identify the issues they want to discuss with the judge. The judge will also identify issues that need to be addressed. Other parties present can identify other issues they would like to be discussed. Judges are the substitute parental decision-makers, and the expectation is that the conversation will be similar to ones they would have with their own children or relatives. Similarly, judges should explore ideas or strategies to reward the youth for positive behavior, such as improved grades, achieving short-term goals, or other positive actions.

The terms of any agreement made as a result of the benchmark hearing need not be put in writing unless DCP&P needs to take action resulting from the hearing. Any new information resulting from the benchmark hearing, such as a goal change, should be provided to DCP&P to address if necessary.

### ***1409 Notices of Change (N.J.S.A. 30:4C-53)***

The Division is required to submit a Notice of Change (NOC) (Division Form 18-35) to the court when a change of any of the following case information occurs:

- a. change of placement
- b. change of address for any party
- c. change of Division local office (LO), caseworker and/or supervisor
- d. change of case goal
- e. finalization of any permanent plan

CIC staff must enter the NOC in FACTS and update all case information in FACTS (See FACTS FC Manual for more details). It is not necessary for staff to wait for the NOC. A court order authorizes staff to change the case information and to enter the result in FACTS.

If the NOC indicates finalization of a permanent plan, see Section 1409: Closing an FC Case, to determine if it is appropriate to close the case based on the documentation provided.

If the NOC indicates a Division-proposed change of plan, a permanency hearing must be held by either the court, or the CPR board for placements made under residential placement or independent living agreements, within 30 days (N.J.S.A. 30:4C-61). See Section 1407, "Permanency Hearings," for more details.

## **1410 Closing an FC Case**

An FC case must **never be inactivated**. An FC case **shall be closed** when:

1. the child is adopted [FACTS Case Status/Reason Code 05/CC],
2. the child is returned to a parent/legal guardian [FACTS Case Status/Reason Code 05/CJ],
3. the child is permanently placed with a relative (who secures legal and physical custody) [FACTS Case Status/Reason Code 05/CD],
4. KLG is granted [FACTS Case Status/Reason Code 05/CK],
5. the child is permanently placed with an unrelated third party (who secures legal and physical custody) [FACTS Case Status/Reason Code 05/CE],
6. the child is permanently placed under the care of the Division of Developmental Disabilities [FACTS Case Status/Reason Code 05/CH],
7. the child reaches the age of majority and is no longer receiving services from the Division [FACTS Case Status/Reason Code 05/CA],
8. the child marries [FACTS Case Status/Reason Code 05/CG],
9. the child is deceased [FACTS Case Status/Reason Code 05/CB],
10. the child enters the military [FACTS Case Status/Reason Code 05/CF],
11. the child enters a care management organization (CMO) placement [FACTS Case Status/Reason Code 05/CM],
12. the child's case is transferred to another county [FACTS Case Status/Reason Code 05/60], or
13. the child's case is transferred to another state [FACTS Case Status/Reason Code 05/64].

Generally, FC cases are closed based upon a Notice of Change from the Division. The court, however, in its discretion, may determine that an FC case should not be closed regardless of the filing of a Notice of Change.

CIC staff will prepare an FC Termination Order (CN 10313) for all FC cases to be closed. Staff should attach relevant documentation such as the Division's NOC or related court order. The order will be reviewed by the court and signed if appropriate for termination. CIC staff will enter the order and dispose the case in FACTS (See FACTS FC Manual for more details). A copy of the order shall be served on the Division. The file shall be maintained by the CIC team in accordance with the approved records retention policy.

If the court has entered an order finalizing the permanent plan and dismissed the FC case in court, court staff need not wait for a Notice of Change. The court order is sufficient to close the FC case.

## NOTES TO FC

For issues of General Application, see Section 1100.

### ***Note 1 FC: The Role of CPR in Abuse or Neglect Cases***

Deleted pursuant to Directive #16-17.

### ***Note 2 FC: The Role of Child Placement Review in Tracking Permanency in Termination of Parental Rights Cases (N.J.S.A. 30:4C-58.1)***

Deleted pursuant to Directive #16-17.

### ***Note 3 FC: The Role of Child Placement Review in Tracking Permanency in Adoption Cases (N.J.S.A. 30:4C-58.1)***

Deleted pursuant to Directive #16-17.

### ***Note 4 FC: Notification to the Court by the Division of a Placement by Informed Consent***

Deleted pursuant to the Division's Field Operations Procedures and Policy Manual, §1801, effective May 2, 2005.

### ***Note 5 FC: Revocation of Placement by Informed Consent (Voluntary Placement)***

Deleted pursuant to the Division's Field Operations Procedures and Policy Manual, §1801, effective May 2, 2005.

### ***Note 6 FC: Repeated Placement into Resource Family Care (N.J.S.A. 30:4C-53.3, et seq.)***

According to state law, the Division shall not treat a child's repeated placement into resource family care as an initial placement. The child's revised placement plan, updated at the time of the repeated placement shall:

1. summarize the child's previous placement history with the Division,
2. summarize the findings and recommendations of the CPR board, and
3. include a copy of the court order for the removal of the child from the custody of the parents or guardian.

The revised placement plan shall be used by the Division when preparing the child's repeat placement plan. The plan is to be prepared and submitted to the court within 30 days after the



child's repeat placement. The plan is valid for 12 months after the date the child was placed again into foster care.

When calculating ASFA requirements, it is important to note that the date of the *first* out of home placement is the starting point for counting the length of time of a child's placement, even if a repeated out of home placement is made. The requirement for filing a complaint for termination of parental rights (FG) arises when the child has been in out of home placement for 15 out of the last 22 months. If an FG complaint is not filed, the Division must document the specific reasons.

Whenever a child is again placed into foster care, the Division shall prepare a Repeated Placement Plan which shall ensure the goals of safety and permanency through the safe return of the child to his parents or, if this is not possible, through the State's assumption of guardianship for the purpose of finding the child an adoptive home, or if termination of parental rights is not appropriate, through an alternative permanent placement.

The repeated placement plan shall include, but not be limited to:

- specific reasons for the repeated placement of the child, including a description of the problems and conditions in the home which required the child's removal, and a summary of the reasonable efforts made to prevent the repeated placement or the exception to the requirement to make reasonable efforts to prevent placement in accordance with law;
- specific actions to be taken within specific time limits agreed upon by the Division and by the child's parents or guardian to eliminate the problems or conditions which were the basis of the repeated placement included in a permanency plan;
- social services to be provided to the child's parents or guardian, the child and the foster parents during the period the child is in foster care or the exception to the requirement to make reasonable efforts toward family reunification in accordance with law and the goal for the child and anticipated date for achieving the goal, with the focus on promoting the best interest of the child and facilitating the child's safe return to the home, placement for adoption or alternative permanent placement;
- a concurrent plan toward adoption or other permanent alternative which should be available if the plan for reunification fails;
- an assessment of the Division's ability to obtain the child's birth certificate, locate the child's parents for future contact and have access to the child's extended family, in the event that a plan for adoption or an alternative placement becomes necessary;
- a stipulation that the child be placed with the prior foster family, if possible and if in the child's best interest, to provide the child with continuity and stability in the living environment, and
- a permanency plan for the child and the reasonable efforts to achieve the plan, if the Division has established an exception to the requirement to provide reasonable efforts toward family reunification in accordance with law or the child has, in any period of the most recent 22 consecutive months, been in any placement for a total of 15 months.

If the parents or guardian are unwilling or unable to remedy the problems or conditions outlined in the child's repeated placement plan within the specified time limit and despite reasonable

efforts by the Division to provide such services to reunify the family, and if the permanent plan for the child requires the termination of parental rights, the Division should file a petition to terminate the rights of the child's parents pursuant to the law. The Division shall concurrently provide services to facilitate the child's placement into an adoptive home. N.J.S.A. 30:4C-53.4.

**Note 7 FC: Case File Documentation: Required Documents from the Division for CPR Initial Board Review**

At approximately the 30th day of placement, documentation on the case should be received by the CIC team for inclusion in the case folder. Materials will be sent from the Division, from CASA (if applicable), and others (if applicable). The Division documents should include the appropriate court report and any other information relevant to the child's placement. Other materials may include health/medical information, educational information, psychological and/or psychiatric reports, child study team reports, and results of drug testing. If applicable, the residential placement agreement, independent living agreement or other related documents also must be provided. Submitted materials are photocopied and sent to CPR board members by the CIC team staff no less than 7 days before a CPR board review.

Distribution of copies of confidential reports to CPR board members should be made by cost-effective and secure means, preferably employing modern technology. Upon return of confidential records to the court, deliberate care should be taken to assure their destruction or secure recycling.

In voluntary placement cases, the CIC team staff, on behalf of the CPR board, should directly request information from service providers or any other interested parties, as needed, for any full review of the case.

**Note 8 FC: Reasonable Efforts Provisions (N.J.S.A. 30:4C-11.1, -11.2, -11.3, and N.J.S.A. 9:6-8.87)**

"Reasonable Efforts" by the Division to document certain agency activities (as noted below) regarding any child's out of home placement must be addressed by the court periodically throughout the life of the case. Reasonable Efforts refers to those steps taken by the Division, and documented in the case file, to prevent the child's placement, reunify the child with his/her family, and/or achieve a safe, permanent home for the child.

- To prevent the child's placement and maintain the family unit (This should be addressed in the first court order pursuant to CIC Standards if the information is available. ASFA requires this finding to be made no later than 60 days of the placement.)

EXCEPTIONS: That a court has determined that reasonable efforts were not necessary due to risk of harm to the child's health and safety AND:

- aggravated circumstances
- enumerated circumstances (crimes)
- prior involuntary termination of parental rights of sibling

- removal was required due to imminent danger to child's life, safety and health
- To reunify the child with his or her family  
(Addressed throughout the child's case, fully documented at the permanency hearing)  
EXCEPTIONS: That a court has determined:
  - aggravated circumstances
  - enumerated circumstances (crimes)
  - prior involuntary termination of parental rights of sibling
- To finalize the child's permanent plan  
(Addressed at all CPR annual permanency hearings in voluntary cases and court permanency hearings -- ASFA requires this finding to be made at all permanency hearings until permanency is achieved.)  
NO EXCEPTIONS

***Note 9 FC: Permanency Hearing in Cases When Reasonable Efforts are Not Required (N.J.S.A. 9:6-8.54 and N.J.S.A. 30:4C-61.2)***

If a judge has determined that reasonable efforts to reunify the family shall not be required, the permanency hearing must be held within 30 days after the judicial determination.

The exceptions to the requirement that reasonable efforts be made to reunify the family are, that a court of competent jurisdiction has determined that:

- the parent has subjected the child to aggravated circumstances of abuse, neglect, cruelty or abandonment;
- the parent has been convicted of committing, aiding or soliciting murder, attempted murder, or manslaughter of a child; or of committing or attempting an assault that resulted or could have resulted in the death of, or significant bodily injury to a child; *or*
- the rights of the parent to another child have been involuntarily terminated.

***Note 10 FC: CPR Board Recommendations Distribution***

Deleted -- This information is set forth in the body of this section of the manual.

***Note 11 FC: Court Order Issued by the Judge after a CPR Board Recommendation in an FC case***

Deleted -- This information is set forth in the body of this section of the manual.

***Note 12 FC: Termination of a Placement by Informed Consent***

Deleted pursuant to the Division's Field Operations Procedures and Policy Manual, §1801, effective May 2, 2005.

### **Note 13 FC: Long Term Foster Care Custody**

"Long Term Foster Care Custody" is no longer an option for placement cases in New Jersey, pursuant to revisions in state law. (N.J.S.A. 30:4C-26.10. Repealed by L. 2004, c. 130, § 128, eff. Sept. 1, 2005).

Long term foster care custody was an arrangement allowing a foster parent the continuing legal right and responsibility to care for a child, until the child reached 18 years of age. Some long term foster care custody cases, finalized years ago, may remain in the FC docket for a few more years, until those children reach age 18. They will continue to be reviewed by the CPR board on an annual basis, but no new cases will be initiated.

Long term foster care custody means the legal status allowing a foster parent the continuing legal right and responsibility to care for a child as defined by court order and the Division's policy until the child becomes 18 years of age.

The court may terminate the long term foster care custody upon the petition of the child, the parent or guardian, the foster parent or the Division, if the court finds that the circumstances of the child have substantially changed and the best interest of the child is no longer served by the agreement.

A long term foster parent appointed pursuant to this act has the rights and duties of a foster parent, and in addition, is authorized to consent to the foster child's surgery and other routine or emergency medical treatment and any other activity requiring written parental consent. They are not authorized to consent to the foster child's adoption or name change. The transfer of custody to a long term foster parent neither creates nor terminates any legal responsibility for the support of the child by the parent. It also does not terminate the parental rights of the parent.

### **Note 14 FC: Red Flagging a Voluntary Case (N.J.S.A. 30:4C-61.1)**

Red flagging a case prohibits the return home of a child in placement, unless the court approves the return following a CPR board review and a subsequent hearing.

When recommending that a case be red flagged, the CPR board should realize that using this option is contrary to the intent of the residential placement or independent living agreement. This option should be recommended only in cases where the CPR board believes that the child would be at serious risk of harm if returned home.

When monitoring red flagged cases, the CPR board may schedule a special review when the Division requests to return the child to the home.

The CPR board must explicitly state that the child is not to be returned home before a court hearing until one or more conditions are met. The CPR board must fully detail those conditions, the reasons for the red-flag recommendation, and the outcomes expected.

As is true of other CPR board recommendations, the Division, parents or interested parties, may

respond by providing additional information and may request a court summary hearing before the court orders a red flag prohibition.

### ***Procedure for Return Home in a Red Flagged Case***

If the Division proposes to return a child home whose FC case is red flagged, the Division must promptly notify the CPR board and the court in writing. The CPR board shall conduct a special review within 15 days of receipt of this notice. The CIC team staff provides written notice to all interested parties of the special review within three court days of receipt of the Division's notice; the 15-day advance notice requirement is waived.

At the special review considering the red flag status, the CPR board considers whether the child's return home is in the best interests of the child, and meets the conditions set by the original decision to red flag the case. The CPR board recommendations must be submitted to the court within five days after the review. The court reviews the CPR board recommendations within 10 days and issues an order within five days concerning the child's placement. However, if any party entitled to participate in the proceeding requests a hearing, the court, with notice to all parties, shall hold a summary hearing within 15 days of receipt of the CPR board's recommendation. The court shall issue its order within five days of the hearing.

The Division shall not return a child home unless the court approves the proposed action and orders the child returned.

### ***Waiver of Red Flag Procedures in Emergency Situations***

In an emergency situation, the court may waive the special review provisions and approve the child's return home upon the request by the Division. Such a request must be accompanied by a written statement that includes the Division's supporting documentation (and specific reasons outlined) that:

1. the out of home placement has been disrupted,
2. no other appropriate alternative placement can be found for the child,
3. the return home will not endanger the child's health, welfare and safety, and
4. an on-site visit to the child's home was made in the determination of 1, 2 and 3 above.

When a child is returned home by the Division in an emergency situation, the CPR board shall conduct a special review within 15 days of the child's return home to confirm that the child's best interests and safety are being protected.

The Division shall conduct a minimum of two on-site visits to the home of the child returned in an emergency situation within the first 10 days of the return to monitor the health, welfare and safety of the child. The court may require additional on-site visits. The Division shall provide a detailed written report of each on-site visit to the court and to the CPR board.

The court shall retain jurisdiction over the placement of a child after the child has been returned home in an emergency situation for up to six months unless there is a subsequent court hearing

or court order. The court order shall be specific as to the length of time the court's jurisdiction will be invoked, as well as the conditions that must be met in order to end jurisdiction.

## **1500 FL: KINSHIP LEGAL GUARDIANSHIP CASE PROCESSING STEPS**

### ***Jurisdiction (N.J.S.A. 3B:12A-3)***

The Superior Court, Chancery Division, Family Part has jurisdiction in matters of kinship legal guardianship (KLG) under N.J.S.A. 3B:12-1, et seq.

### ***Venue (N.J.S.A. 3B:12A-3)***

Venue is established pursuant to R. 5:9A-3 and shall be in the county in which the caregiver resides. However, if there is a pending action brought by the Division of Child Protection and Permanency (the Division) seeking guardianship/termination of parental rights pursuant to N.J.S.A. 30:4C-15, venue will continue to be determined as set forth in R. 5:9-1. That is, in such cases venue will be in the same county in which the pending action was initiated.

### ***Kinship Legal Guardianship Overview***

The KLG Act creates a legal status of "kinship legal guardian" for certain non-parent caregivers of children. A "kinship legal guardian" is a caregiver who is granted that status by the court pursuant to state law, and who is willing to continue to care for a child due to parental incapacity, with the intent to raise the child to adulthood. While KLG is intended to be permanent, it does not terminate the rights and obligations of the natural parents, who, among other things, retain the right to seek parenting time/visitation rights as well as the obligation to financially support their child(ren).

Individuals may file a complaint for the status of a kinship legal guardian, or the Division may seek KLG as an alternate disposition in FN (abuse and neglect) or FG (termination of parental rights) cases. The process begins at the permanency hearing where the court approved KLG as the permanency plan. The Division initiates the case in eCourts with a FL complaint that includes terms incorporating the FG or FN complaint by reference and seeking KLG as a new relief. The court will not accept petitions for KLG for individuals who are eighteen years of age or older.

The KLG Act defines a "caregiver" as a person over 18 years of age, other than a child's parent, who has a "kinship relationship" with the child and who has been providing care and support for the child in the caregiver's home for at least either six consecutive months or nine of the last 15 months. The KLG Act defines "kinship relationship" as either: (1) a family friend connected to the child or to the child's parent through an established positive psychological or emotional relationship or (2) a person with a biological or legal relationship with the child. Accordingly, the caregiver need not be related to the child.

The KLG Act specifies the rights and responsibilities of both the kinship legal guardian and the natural parents. The natural parents retain the authority to consent to a change in the child's name and to consent to adoption of the child. Additionally, the parents still have the basic obligation to provide child support. The KLG Act also specifies certain rights that the kinship legal guardian has with respect to decision-making for the child, including the right to make educational and medical decisions, among other things. The KLG Act does not affect the rights of inheritance and eligibility for benefits or insurance for the child.

The court must consider twelve distinct factors (listed in Section 1504) when determining whether to award kinship legal guardianship. The KLG status terminates when the child reaches eighteen years of age or when the child is no longer enrolled in a secondary education program, whichever event occurs later, or when the court otherwise terminates kinship legal guardianship. The court may vacate the KLG prior to the child's eighteenth birthday under certain circumstances (noted in Section 1506).

### ***The right to counsel***

When the court approves a permanency plan of KLG in an FN or an FG case, a complaint is filed in eCourts and the same attorneys shall continue to represent the parents and the children pursuant to N.J.S.A. 9:6-8.21, et seq. (for FN cases) and N.J.S.A. 30:4C-15.4 (for FG cases). For this reason, the FN or FG case must remain open throughout the duration of the KLG litigation. In all other cases, the statute does not provide for legal representation.

No new Application for Assignment of Counsel is required for the continuation of representation by the Office of the Public Defender from the FN or FG case to the FL case. However, the court must document the need for continued representation on the KLG Multipurpose Order. The CIC team must submit a copy of the KLG Multipurpose Order to the local Office of the Public Defender, Office of Parental Representation to ensure continued representation of the parents.

### ***1501. Filing of the Petition (N.J.S.A. 3B:12A-5)***

KLG cases are processed under the "FL" docket.

No filing fee shall be assessed for any applications or motions relating to KLG under the FL docket. There shall be a separate FL docket for each child for whom KLG is sought. This requires a separate petition for each child, a separate assessment for each child and individual orders for each child. For FN or FG cases involving multiple children, the Division need not file a separate motion for each child to amend the FN or FG complaint.

KLG cases can be filed in three ways:

1. Private Case: A private citizen can petition the court by filing a complaint for Kinship Legal Guardianship (CN 10268). The CIC team will open an FL docket upon the filing of the complaint for Kinship Legal Guardianship.
2. Division Assisted Private Case: The Division can assist a private citizen with the filing of a complaint for Kinship Legal Guardianship (CN 10268) in a non-



litigated Division case. The CIC team will open an FL docket upon the filing of the complaint for Kinship Legal Guardianship.

3. Division Litigated Case: The Division can petition the court through its permanency plan that KLG will be the plan. This is done at the permanency hearing. Upon the court's approval of KLG as the plan, this will be filed in eCourts as an abbreviated FL complaint referencing the litigated case (FN or FG docket).

KLG cases are to be captioned: "*In the Matter of the Kinship Legal Guardianship of [Minor Child's Name].*"

A complete package for the complaint<sup>3</sup> must contain: (1) a Notice to Parents and Interested Parties; (2) a completed Kinship Caregiver Assessment; (3) a Certification of Background Checks prior to acceptance by CIC staff for filing; (4) a copy of the child's report cards from the two most recent semesters if the child is in school or a copy of progress reports from the two most recent semesters if the child is in pre-school; (5) the child's immunization report or a statement as to why a child has not been immunized; (6) a medical report describing the results of the child's most recent physical exam, which must be conducted within 12 months (or less) of the filing date; (7) for Division or Division-assisted KLGs only, the "recommendation" section of Comprehensive Health Evaluations for Children (CHEC) exam report, if such an exam was performed on the child (The court, in its discretion, may request that the full CHEC report be provided); (8) for children three years of age or older, a dental report describing the child's most recent dental exam, which must be conducted within 12 months (or less) of the filing date.

Upon receipt of the complete package, the CIC team will conduct a FACTS check for any current and/or prior Family Part involvement. Any restraining orders for FV should be copied and placed in the FL file for the judge's review. All related files should be made available for the judge's review.

### ***The Kinship Caregiver Assessment***

The KLG Act, under N.J.S.A. 3B:12A-5, requires that a Kinship Caregiver Assessment be completed and provided to the court at the time the petition is filed. A standard Caregiver Assessment Form must be used, and it must be attached to the complaint. The assessment must be completed six months or less prior to the filing of the complaint.

In a private filing, the Caregiver Assessment will be prepared by an approved organization through the Kinship Navigator Program and will be completed at the caregiver's expense. If the petitioner is financially eligible, he or she can seek cash assistance under a kinship care program provided by the state Department of Children and Families. In Division and Division-assisted filings, the Division will complete and pay for the Caregiver Assessment.

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<sup>3</sup> The term "complaint" is used in the manual for clarification and consistency. The terms "petition" and "complaint" are used interchangeably in N.J.S.A. 3B:12-1 et. seq. and N.J.S.A. 30:4C-87.

The caregiver assessment must contain:

1. The full name and address of the person seeking to become the kinship legal guardian;
2. The circumstances of the kinship relationship;
3. The whereabouts of the child's parents, if known;
4. The nature of the parents' incapacity, if known;
5. The wishes of the parents, if known;
6. The ability of the kinship caregiver family to assume permanent care of the child;
7. The child's property and assets, if known;
8. The wishes of the child, if appropriate;
9. Any current involvement of a child or caregiver with the Division;
10. Certification of the caregiver that the caregiver has been providing care and support for the child in the caregiver's home for at least the last six consecutive months or nine of the last 15 months;
11. The results of a criminal history record information (CHRI) check and a domestic violence central registry (DVCR) check of the caregiver and of any other adult residing in the caregiver's household;
12. The results of a child abuse record information (CARI) check arranged for and coordinated by the Division; and
13. The results of the caregiver's home review; and
14. Languages spoken by the caregiver and parents if an interpreter is required.

### ***Complaints without a kinship caregiver assessment***

The CIC team may not accept a KLG complaint for filing without the requisite caregiver assessment. For parties seeking KLG without the required caregiver assessment, the CIC team must first determine whether there is Division involvement. If so, the party should be referred to the Division for completion of the assessment. If there is no Division involvement, the party should be referred to the Kinship Navigator Program for assistance in obtaining the required assessment.

Failure to include the kinship caregiver assessment with the complaint for KLG will result in the return of the complaint to the litigant stamped "Received but not Filed" pursuant to the procedure set forth in Rule 1:5-6(c)(1).

### ***Background Checks (Applies to all KLG Filings)***

Three background checks are required as part of the KLG complaint process pursuant to N.J.S.A. 30:4C-86:

- a. A CHRI check must be conducted by the Division of State Police within 12 months of the complaint filing date (must include fingerprints, State and FBI checks);
- b. A DVCR check must be conducted by the Division of State Police within two (2) months of the complaint filing date; and

- c. A CARI check must be conducted by the Department of Children and Families, Office of Licensing within twelve (12) months of the complaint filing date.

The background checks must be conducted on the caregiver and any adult residing in the caregiver's household prior to the submission of the complaint for Kinship Legal Guardianship. N.J.S.A. 30:4C-86.

In Division-litigated and Division-assisted cases, the Division will receive the results of the three background checks and fill out a Division of Child Protection and Permanency Certification of Completed Background Checks for Kinship Legal Guardianship Form (Certification of Completed Background Checks Form). The Certification of Completed Background Checks Form is submitted to the court at the time of the filing of the KLG complaint as part of the petition package. CIC staff must be in receipt of the Certification of Completed Background Checks Form prior to docketing a KLG complaint.

If the background check reveals an incident (a positive result), a copy of such result must be attached to the Certification of Completed Background Checks Form. If the background check did not reveal an incident (no result), no attached documentation is necessary. However, the attorney for the Division must keep the original background check results in his or her case file at all times and the results must be made available to the court upon request. CIC staff must ensure that all three background checks have been completed prior to docketing a KLG complaint.

NOTE: In private KLG cases, the Kinship Navigator Agency will complete and submit to the court a Navigator Agency Certification of Requested Background Checks for Kinship Legal Guardianship Form (Certification of Requested Background Checks Form) at the time of the filing of the complaint. The Certification of Requested Background Checks Form will indicate the date when the CARI and DVCR checks were requested. Results of the background checks may be included in the complaint package. CIC staff must be in receipt of the Certification of Requested Background Checks as well as the results of the background checks prior to docketing the complaint.

In addition to the background checks, it is recommended that the CIC team run a Promis-Gavel check and a DVCR check on the caregiver and other adults in the household within 24 hours of the court hearing and provide the results to the court. This search can be done through the CIC Search Application.

### ***Service and Notice***

The court cannot award KLG of a child unless proper notice was served on the parents of the child and on any interested party to whom the court previously has awarded custody or parenting time for that child. "Interested parties" include any other party to whom the court has previously awarded legal custody or parenting time for that child. This does not include notice to former resource family caregivers. The law specifies that proper noticing of the child's parents is a factor to be considered in every determination of the appointment of a kinship legal guardian. N.J.S.A. 3B:12A-6(b). Service of process in KLG proceedings shall be in accordance with R.

5:4-4(b) or pursuant to court order in accordance with R. 4:4-4(b)(3). See also R. 5:9A Actions for Kinship Legal Guardianship.

The complaint and any related applications are summary in nature. Accordingly, notice of the proceedings must be mailed by the court to the parent(s) of the child and to any other interested party. Specifically, defendants shall be served via regular and certified mail, return receipt requested, and caregivers and other interested parties shall be sent notice via regular mail.

Service in private KLG cases may be made pursuant to R. 5:4-4(b). In Division-initiated complaints filed pursuant to N.J.S.A. 30:4C-87, if the initial complaint (FN or FG) was properly served on the parent(s) and they cannot be located, R. 5:12-2(b) permits the court to proceed with a hearing.

In Division-litigated cases, the Division is responsible for providing notice that kinship legal guardianship will be the permanent plan, and a copy of the caregiver assessment report to all parties to the case. The court is responsible for providing notice of the hearing on the KLG complaint to all parties to the litigation and to anyone else to whom the court has awarded custody or parenting time. The court is also responsible for providing notice of the KLG hearing to all parties to the litigation and to all interested parties.

In private KLG cases, the court is responsible for providing notice of the complaint for KLG to all parties to the litigation and to all interested parties. The Notice to Parents and Interested Parties of Complaint for Kinship Legal Guardianship Form (CN 10276) is used. The court is also responsible for providing notice of the KLG hearing to all parties and interested parties.

When serving a copy of the petition package, all identifying information must be redacted from the caregiver assessment. Cross out dates of birth, social security numbers, phone numbers, addresses, ages, race and gender. The caregiver assessment is served on the parents and is not served on interested parties. Neither the Certification of Requested Background Checks Form nor the Certification of Completed Background Checks Form is served on parents or interested parties.

Prior to filing for KLG, the agency responsible for preparing the KLG package must perform all diligent efforts to locate the parents. This search includes: (1) all requirements set forth in R. 5:4-4(c); (2) accessing public Internet databases; and (3) parent locator search available through the child support enforcement system. These searches should be performed in preparation for filing the case with the court.

### ***1502. Processing Cases with Division of Child Protection and Permanency (Division) Involvement***

Only the Division has standing to bring a complaint for KLG for children involved in a current FN or FG case. The Division will file an abbreviated complaint for KLG, with the requisite caregiver assessment, and the Division's Certification of Completed Background Checks for KLG Form attached. The Division is responsible for conducting the caregiver assessment in these cases at no cost to the caregiver pursuant to N.J.S.A. 30:4C-86.

If a child is involved in a child placement (FC) case, with no current litigation under the FN or FG dockets, a caregiver interested in becoming a kinship legal guardian must obtain consent from the Division and must then file a private complaint. These cases are referred to as "Division assisted private filings." The Division assists the caregiver by conducting the kinship caregiver assessment at no charge and by completing the background checks. However, since it is the caregiver and not the Division who files the complaint for KLG as the petitioner, these are considered private filings.

### ***Abbreviated FL Complaint in an FN or FG Case***

After considering the permanency plan of KLG in an FN or FG litigation, the court will enter a KLG Multipurpose Order (CN 10273) reflecting one or more of the following:

- a. Continuing care custody and supervision of child with the Division until KLG is granted and continuing all prior orders under FC/FN/FG unless otherwise modified;
- b. Continuing representation of the defendant(s) through the Office of the Public Defender;
- c. Entering default upon a finding that notice was properly served on the parent(s) and on any other party to whom the court has awarded custody or parenting time/visitation;
- d. Signifying that the parties' consent to the entry of judgment for kinship legal guardianship;
- e. Scheduling a hearing; and/or
- f. Awarding KLG to the caregiver.

The court may set the date for submission of the required documents to accompany the complaint. Upon receipt of the complete package, the court may hold the KLG hearing. If KLG is awarded under this KLG Multipurpose Order (CN 10273), a separate KLG Judgment (CN 10270) also must be entered specifying the rights and responsibilities of the parties in accordance with N.J.S.A. 3B:12A-6(e). (See Section 1504, below).

### ***Division Assisted Private Filings: FC-only Case***

For Division assisted private filings:

- a. The caregiver must file the complaint for KLG,
- b. The Division must provide the caregiver assessment, Notice to Parents and Interested Parties of Complaint for KLG Form and the Division's Certification of Completed Background Checks for Kinship Legal Guardianship Form,
- c. The caregiver must obtain consent from the Division if the Division placed the child in the caregiver's home and the child has resided in the home for at least the last six consecutive months or nine of the last 15 months.

The court will schedule an initial hearing as well as any subsequent hearings as deemed

necessary. At any of these hearings, the court will enter a KLG Multipurpose Order reflecting one or more of the following:

- a. Granting/denying KLG;
- b. Dismissing/withdrawing the complaint;
- c. Schedule/ hold a contested hearing;
- d. Order further assessments of parties to the case; and/or
- e. Enter default upon a finding that notice was properly served on the parent(s) and on any other party to whom the court has awarded custody or parenting time/visitation.

If KLG is awarded under this KLG Multipurpose Order, a separate Judgment for KLG (CN 10270) must also be entered specifying the rights and responsibilities of the parties in accordance with N.J.S.A. 3B:12A-6(e). (See Section 1504, below). The recording tape reference of the entire hearing is included in the Multipurpose Order and KLG Judgment unless CourtSmart has been implemented in that courtroom.

When recording the relief results in FACTS for the FC, FN or FG case, the granting of KLG is considered an alternate permanent placement disposition, "Kinship Alternate Placement."

### ***1503. Processing Private Party Applications for Kinship Legal Guardianship***

If a family has had no involvement with the Division, the caregiver or the caregiver's attorney must file the complaint for KLG with the court along with the Notice to Parents and Interested Parties of Complaint for Kinship Legal Guardianship Form (CN 10276) and the Navigator Agency Certification of Requested Background Checks for Kinship Legal Guardianship Form (CN 10267). The caregiver will be responsible for obtaining the assessment and background checks by contacting the local Kinship Navigator agency and working with the program staff. The caregiver assessment will be prepared by the Kinship Navigator agency.

The CIC team will review the complaint, notice, caregiver assessment and Certification of Requested Background Checks Form for completeness. Once the court receives those items and the results of the CARI, DVCR and CHRI checks, the CIC staff will docket the case as an FL matter. CIC staff will mail notice of the hearing as well as a copy of the complaint and caregiver assessment (without the Certification of Requested Background Checks Form) to the parent(s). CIC staff will mail notice of the hearing as well as a copy of the complaint (without caregiver assessment and Certification of Requested Background Checks Form) to all interested parties.

The court will schedule an initial hearing as well as any further subsequent hearings as deemed necessary. At any of these hearings the court will enter a KLG Multipurpose Order for each child reflecting one or more of the following:

- a. Granting/denying KLG;
- b. Dismissing/withdrawing the complaint;
- c. Scheduling/holding a contested hearing;
- d. Ordering further assessments of parties to the case; and/or

- e. Entering default upon a finding that notice was properly served on the parent(s) and on any other party to whom the court has awarded custody or parenting time/visitation.

If KLG is awarded under this KLG Multipurpose Order, for each child a separate Judgment for KLG (CN 10270) must also be entered specifying the rights and responsibilities of the parties in accordance with N.J.S.A. 3B:12A-6(e). The recording tape reference of the entire hearing is included in the form of order unless CourtSmart has been implemented in that courtroom.

#### **1504. KLG Determination and Judgment (N.J.S.A. 3B:12A-6)**

The following factors must be considered by the judge in order to determine kinship legal guardianship:

- a. Whether proper notice was provided to the child's parents;
- b. The best interests of the child;
- c. The Kinship Caregiver Assessment;
- d. In Division cases, the recommendation of the Division, including any parenting time or visitation restrictions;
- e. The potential kinship legal guardian's ability to provide a safe and permanent home for the child;
- f. The wishes of the child's parents, if known to the court;
- g. The wishes of the child if the child is twelve years of age or older, unless unique circumstances exist that make the child's age irrelevant;
- h. The suitability of the kinship caregiver and the caregiver's family to raise the child;
- i. The ability of the caregiver to assume full legal responsibility for the child;
- j. The commitment of the kinship caregiver and the caregiver's family to raise the child to adulthood;
- k. The results from the child abuse records check; and
- l. The results from the criminal history records background check and domestic violence registry check.

To grant KLG the court must find, by clear and convincing evidence:

- a. That each parent's incapacity is of such a serious nature as to demonstrate that the parents are unable, unavailable, or unwilling to perform the regular and expected functions of care and support of the child;
- b. That the parents' inability to perform those functions is unlikely to change in the foreseeable future; and
- c. That awarding KLG is in the child's best interest.

In cases in which the Division is involved with the child as provided in N.J.S.A. 30:4C-85, the court must additionally find that the Division exercised reasonable efforts to reunify the child with the birth parents and that those reunification efforts have proven unsuccessful or unnecessary.



When KLG is awarded, the court must place on the record the findings of fact and conclusions of law, addressing the following factors:

- a. If proper notice was provided to the child's parents;
- b. The best interests of the child;
- c. The Kinship Caregiver Assessment;
- d. In cases in which the Division is involved with the child, the recommendation of the Division, including any parenting time or visitation restrictions;
- e. The potential kinship legal guardian's ability to provide a safe and permanent home for the child;
- f. The wishes of the child's parents, if known to the court;
- g. The child's wishes, when appropriate.

When granting KLG, the court must enter such finding on both the KLG Multipurpose Order for each child and on the Judgment for KLG for each child (CN 10270), which will include the rights and responsibilities of the parties as set forth in the law. The recording tape reference of the entire hearing is included in the form of order unless CourtSmart has been implemented in that courtroom.

The court cannot award KLG of a child unless proper notice was served on the parents of the child and on any other party to whom the court previously has awarded custody or parenting time for that child.

In private filings, court staff must provide only a copy of the KLG Judgment to the caregiver and Navigator Program after KLG is granted.

In Division filings, court staff must provide only a copy of the KLG Judgment to the caregiver. The KLG Multipurpose Order that disposes of the FL case and the KLG Judgment (if granted) must be provided to the Division, parents and attorneys.

### ***1505. Child Support***

Notwithstanding the appointment of a kinship legal guardian, the natural parents retain the responsibility to pay child support. Child support applications are not handled under the FL docket. Any applications for child support in these matters shall be handled under the FD docket in the same manner as any other application for child support pursuant to R. 5:6. The FL is not reopened when there is a child support application. An FD docket is opened to handle the application, and the case proceeds as required by the Non-Dissolution Operations Manual.

The court should advise parents that they have a continuing responsibility to pay child support after the granting of KLG.



### **1506. Closing the FL and Related FN/FG and FC dockets**

An FL case is closed when a Judgment for KLG is granted or denied by order of the court.

An FN or FG should remain open until after the FL has been either granted or denied. By keeping the FN or FG open during the FL process, there is legal representation for the parties. If the FL is granted, then the FN or FG will be closed. If the FL is denied, then the FN or FG will remain open pending disposition of those matters.

An FC is closed after KLG has been granted. The FL is a permanent placement, and therefore, no further review under ASFA is required. If the court has entered an order finalizing the permanent plan of KLG and dismissing the FC case in court, court staff need not wait for a Notice of Change. The court order is sufficient to close the FC case.

If a permanency hearing must be held during the FL process, it is entered under the FC docket for each child and entered under the FN/FG docket. Nothing is recorded under the FL docket for the permanency hearing, only the FC and FN/FG.

### **1507. Amending or Vacating an Order of KLG**

An application to amend or vacate KLG may be made to: (a) vacate the KLG or (b) modify parenting time or visitation.

In cases in which there was Division involvement and the parent(s) are making an application to vacate the KLG and have the child returned to them, the court may refer a parent to the Division for an assessment. Any reports of evaluations ordered by the court in Division litigated cases or Division assisted private cases are to be completed by the Division. In private cases: (1) the court must make an indigency determination; (2) if a party is indigent, the court must pay for the cost of the reports or evaluations; and (3) the court must use any resources available within the Family Part to obtain these reports and evaluations.

The KLG may be vacated by the court prior to the child's eighteenth birthday if:

- a. It is determined by the court that the KLG is no longer in the best interest of the child; or
- b. The court finds, by clear and convincing evidence, that the parental incapacity or inability to care for the child no longer exists and that termination of KLG is in the child's best interest; or
- c. The court finds, by clear and convincing evidence, that the guardian failed or is unable, unavailable, or unwilling to provide proper care and custody of the child and that the guardianship is no longer in the child's best interest.

The CIC team schedules the application to amend or vacate KLG for a court hearing. The case may be referred to mediation at this time. The court is responsible for providing notice of the application to amend or vacate to all parties involved in the prior FL proceeding. In FL cases originally filed by the Division, this includes notice to the Division, the Office of Parental

Representation and the Office of Law Guardian, and the caregiver.<sup>4</sup> The KLG may be modified for visitation only or the court may vacate KLG and grant custody to another individual. The court must record the granting of custody under an FD docket. Whenever the court orders a change in custody, even custody to the parent(s), it will enter the custody order under an FD docket.

In situations where a third party has physical custody of the child while the KLG Judgment is in effect, the third party may file a complaint under the FD docket. The FD team will coordinate with the CIC team to schedule the FD matter. The FL case will be re-opened for the judge to resolve both matters together. If the court grants custody under the FD docket, it will be necessary for the court to vacate the KLG.

In cases where one county grants KLG and a subsequent abuse or neglect complaint is filed against the guardian in another county, the Family Presiding Judges or their designees in both counties must communicate to determine venue of the FL case. If the court handling the FN case enters an order vacating the KLG, CIC staff in that county must forward that order to the Family Presiding Judge of the county where the KLG was venued so that CIC staff in that county will vacate the FL in FACTS.

The court entering the order that vacates the KLG must provide that order to the Division or the Kinship Navigator agency.

### **1508. Time Goal of an FL Case**

A time goal for closing FL cases is six months. Time begins at the date of filing the FL complaint and ends when the court enters a Judgment for KLG or an order denying KLG.

### **1509. Re-opening an FL**

An FL may be re-opened when:

- a. a party to the original kinship action files an application to vacate the FL,
- b. a party to the original kinship action files an application to amend the FL, or
- c. if the Appellate Division has remanded the case to the trial court for further proceedings.

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<sup>4</sup> The Judiciary has been advised that the Office of the Public Defender will provide representation for an application to amend or vacate a KLG to parents who qualify. In addition, the Division will consider providing a DAG for these proceedings. Staff should ensure that parents fill out a new Application for Assignment of Counsel (CN 11727) so an attorney can be appointed from Office of the Public Defender.

### **1510. Termination of the KLG status**

KLG terminates when the child reaches 18 years of age or when the child is no longer continuously enrolled in a secondary education program, whichever event occurs later, or when KLG is otherwise terminated, as described in Sections 1506.

### **1511. Shared Custody**

There should never be an occasion for shared custody of a child between a natural parent and a kinship legal guardian. Although the statute does not specifically prevent this, the court will need to make all required findings before entering the KLG. A court is not able to make these findings (e.g., parental incapacity) if it determines that a parent is capable and willing to take custody of a child.

### **1512. Death of a Kinship Legal Guardian**

If a KLG caregiver passes away, the KLG Judgment is not automatically vacated by law. If a party comes to court seeking custody after a KLG caregiver passes away, the application must be accepted by court staff. The party should file an application to vacate the KLG and make an application for custody under the FD docket. The FD and CIC teams will coordinate to schedule the FD and FL cases for the judge to resolve both matters together. If the court grants custody under the FD docket, it will be necessary for the court to vacate the KLG.

### **1513. Kinship Legal Guardian Hearings**

Pursuant to R. 5:3-2, in hearings involving the Division or Division-assisted matters, the courtroom will be closed. In hearings with no Division involvement, the courtroom will be open unless otherwise ordered by the court.

### **1514. Transfer of Venue**

#### ***Division or Division-assisted cases***

As to Division or Division-assisted cases, the transfer of a case to another county should be discouraged and limited to circumstances in which the transfer of venue in the case is in the best interests of the child.

The case file is prepared for transfer according to standard Judiciary policy. All transferred cases should be organized and include a standardized uniform cover page of basic case information.

#### ***Privately filed cases***

As to cases with no Division involvement, a KLG petition should not be accepted if the child and caregiver do not reside in the county of filing. Once the petition is filed, venue should remain in

the county of filing until final disposition of the KLG (e.g., granting KLG or dismissal of the petition). The transfer of a case to another county should be discouraged. A party, however, may file a post-judgment motion for change of venue, which shall be decided on a case-by-case basis considering the best interests of the child and access to the court by the parties.

The case file is prepared for transfer according to standard Judiciary policy. All transferred cases should be organized and include a standardized uniform cover page of basic case information.

## NOTES TO FL

**For issues of general application, see Section 1100.**

## 1600 FN: CHILD PROTECTION CASE PROCESSING STEPS

### 1600.1 Description of Causes of Action

In civil child protection cases, the Deputy Attorney General (DAG) representing the Division of Child Protection and Permanency (Division) may file one of the following types of complaints, which may result in an FN Order to Show Cause:

1a. FN Complaint for Custody, Care and Supervision: "Regular" Complaint: When the Division determines that a matter is not emergent enough to warrant immediate removal without the court's **prior** permission, the Division may file a complaint to seek custody, care and supervision (FN docket with a concurrent FC). N.J.S.A. 9:6-8.21. Pursuant to N.J.S.A. 9:6-8.25, the CIC team immediately sends a copy of the complaint or the amended complaint to the prosecutor's office.

1b. FN Complaint for Custody, Care and Supervision: Post-Removal Complaint: A child may be removed from the home without a court order under certain emergent circumstances. This is commonly known as a **Dodd removal**. If the Division makes a determination that the child's continuation in the home presents an imminent danger to the child's life or health, and there is insufficient time to apply for a court order prior to the removal, the Division may remove the child but must file an FN complaint within two court days of the child's removal (FN docket with a concurrent FC). N.J.S.A. 9:6-8.30. Pursuant to N.J.S.A. 9:6-8.25, the CIC team immediately sends a copy of the complaint or the amended complaint to the prosecutor's office.

2. FN Complaint for Care and Supervision Without Removal: In cases where the Division is not seeking the removal of the child, but has concerns that the child may be subjected to abuse or neglect without Division intervention, the Division may file an application for care and supervision of that child by filing a care and supervision complaint (FN docket only). N.J.S.A. 9:6-8.18. Pursuant to N.J.S.A. 9:6-8.25, the CIC team immediately sends a copy of the complaint or the amended complaint to the prosecutor's office.

**If, at any later time, the court orders the child's removal, the court must make "contrary to the welfare" and "reasonable efforts to prevent placement" findings on a Supplemental Order (CN 10275).**

3. FN Complaint Under Title 30 -- Care and Supervision or Custody: If there are no specific allegations of abuse or neglect, the Division may file a complaint for care and supervision or custody. N.J.S.A. 30:4C-11 and -12.

4. FN Complaint Under Title 30 -- Order to Investigate: In cases where the Division receives a complaint that the parents have abused/neglected a child, the parents are unfit, or have failed to protect the child, or have failed to ensure the child's health and safety, or is endangering the welfare of such child, the Division must investigate. If the child's parents or guardian refuse to cooperate with this investigation, the Division may file an FN complaint for an Order to Investigate (CN 11079), an order allowing the investigation and requiring the parents' cooperation (FN docket only). N.J.S.A. 30:4C-12.

5. FN Complaint Under N.J.S.A. 30:4C-15.5, *et seq.* -- The Safe Haven Infant Protection Act (Safe Haven Act) permits parents to leave a newborn child in a safe place, such as a police or fire station or hospital, to prevent the child from being abandoned in a potentially dangerous location. In these situations, the Division files a complaint in the FN docket in accordance with the procedure set forth in Administrative Directive #26-21.

### **1601.1 Filing of the Complaint for Custody, Care and Supervision (Title 9) -- Day 1**

In civil child abuse or neglect cases, the Deputy Attorney General (DAG) representing the Division may file a complaint for custody, care and supervision pursuant to Title 9 of the New Jersey statutes, which may result in an FN Order to Show Cause:

1. "Regular" Complaint for Custody, Care and Supervision: When the Division determines that a matter is not emergent enough to warrant immediate removal without the court's **prior** permission, the Division may file a complaint to seek custody, care and supervision. N.J.S.A. 9:6-8.21. (FN docket with a concurrent FC).

2. Post-Removal (emergency removal) Complaint for Custody, Care and Supervision: A child may be removed from the home without a court order under certain emergent circumstances. This is commonly known as a **Dodd removal**. If the Division makes a determination that the child's continuation in the home presents an imminent danger to the child's life or health, and there is insufficient time to apply for a court order prior to the removal, the Division may remove the child but must file an FN complaint within two court days of the child's removal. N.J.S.A. 9:6-8.30. (FN docket with a concurrent FC).

The CIC team receives the complaint. The complaint is stamped filed, dated and docketed in FACTS. The CIC judge will be notified of the complaint. The order to show cause hearing should be scheduled that day at the uniform time under the vicinage policy. The CIC team prepares a file and screens FACTS for prior family court history as soon as possible. Pursuant to N.J.S.A. 9:6-8.25, the CIC team immediately sends a copy of the complaint or the amended complaint to the prosecutor's office.

### **1601.2 Order to Show Cause Hearing (Title 9 removal)**

An order for care, custody and supervision of a child is filed pursuant to N.J.S.A. 9:6-8.31.

The Division must show cause for custody and protective services resulting in the placement of a child. The hearing and resulting order must address custody, protective services, reasonable efforts to prevent the placement<sup>5</sup>, reasonable efforts to place the child with a suitable relative or person who has a kinship relationship prior to placing the child with another suitable person, a finding that returning the child would be contrary to the child's welfare, and a showing that due process requirements have been met.

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<sup>5</sup> NOTE: "Reasonable efforts to prevent placement" should not be confused with "reasonable efforts to reunify" or "reasonable efforts to achieve permanency."

The Division must notify the defendant(s) of its intent to seek an order of the court to approve or allow the removal of a child. The Division must provide notice of the date, time and location of the hearing on the order to show cause so that the defendant(s) may appear. A Law Guardian may appear and be appointed to represent the child in the case.

A representative from the Office of the Public Defender, Office of Parental Representation (OPR) should provisionally appear. Pursuant to the OPR's "Order to Show Cause Attorney Representation" (OSCAR) program<sup>6</sup>, the following protocol must be followed to provide notice to OPR:

1. At the earliest possible time, the Division should provide the defendant parents/guardians with the Application for Assignment of Counsel (CN 11727).
2. The Division must advise OPR immediately of any court action it plans to take or that it has taken already against defendant parents.
3. The Division must provide OPR with copies of the pleadings and other documentation in a timely manner.
4. Each county has established fixed times each day to hear emergency removals. This schedule will permit the Division to provide defendant parents/guardians with specific notice as to the time and date of the order to show cause hearing.

The Order to Show Cause generally includes temporary restraints or other interim relief pending the return date. The Order to Show Cause contains a provision that the defendants may move for dissolution or modification on two days' notice or on such other notice as the court may state in the order.

The parents should have counsel assigned as early in the process as possible. At the hearing on the order to show cause, court staff should provide to the defendants an Application for Assignment of Counsel (CN 11727) if the Division has not already done so, so that counsel can be assigned through the OPR if the defendant is indigent. Court staff also should ensure that the Division has provided a copy of the complaint to the defendant. If the defendants are not indigent, they should be advised that they may retain private counsel.

The defendants may or may not appear at the time of application for the Order to Show Cause. The Division has an obligation to serve all non-appearing defendants with copies of the complaint, Order to Show Cause and Application for Assignment of Counsel within seven days or such other time as the court may approve. The Application for Assignment of Counsel should be accompanied by a notice providing the address and telephone number where the parent/custodian can submit the application to determine eligibility.

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<sup>6</sup> Pursuant to the 2004 Welfare Reform Plan, OPR committed itself to expand parental representation. As part of this expansion, OPR collaborated with the courts and the Division to implement OSCAR, which is intended to provide provisional attorney representation to defendant parents at the earliest opportunity when children have been or will be removed from home.



## Procedure at Order to Show Cause Hearing

Those who appear are: The DAG and the Division's witness (case manager and/or supervisor), the defendants if they have received notice, and attorneys for the defendants (if available). A summary evidential hearing is held, with the DAG eliciting testimony from the Division witness. The court will confirm whether the defendants have been served. Documents attached to the complaint may be admitted into evidence. Defendants also may testify.

If the Division demonstrates the need for removal, the court must make two findings:

1. The **"contrary to the welfare"** judicial determination (i.e., that continued residence in the home would be contrary to the welfare of the child) must be made on the first order that sanctions removal (even temporarily) from the home. Judicial determinations must be made on the record and based on competent evidence and factual findings. These findings must be case-specific and must be explicitly documented in the Order to Show Cause.

2. The court shall also determine whether the Division has made all **"reasonable efforts to prevent placement."** The court must also first consider placement of the child with a suitable relative or person who has a kinship relationship prior to placing the child with another suitable person. This finding must be made on the record and must be supported by specific reference to the evidence. The court must state the case-specific findings in the Order to Show Cause. Best practice is to make this finding in the Order to Show Cause. In the rare event that this reasonable efforts finding is not made in the initial hearing on the order to show cause, then such finding must be made within 60 days of the removal.

**Note:** The court will determine whether the Division was not required to exercise reasonable efforts to prevent placement because of circumstances involving imminent danger to the child's life, safety or health. It must set forth case specific reasons in the order why such efforts were not required.

Both findings must also be stated on the record, set forth in the court order, and be based on a specific reference to evidence. If a "contrary to the welfare" finding has been made, the court will grant care, custody and supervision to the Division. The recording tape reference of the entire hearing is included in the form of order unless the courtroom is CourtSmart-equipped.

Every case involving a child's placement outside of the home requires a determination of whether the Indian Child Welfare Act applies to a child. See Section 1104 for more detail.

The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing.

When the judge signs the order granting the relief sought by the Division, the date for the return on the order to show cause (usually within 10-21 days) is set forth in the court order. The Division should serve the Order to Show Cause and complaint on the defendants who have appeared before they leave court. Court staff may assist the Division in providing to the appearing defendants a copy of the Order to Show Cause before leaving court. The Division also

should arrange to serve any absent defendants.

CIC staff shall notify the resource family member(s) of the date of the return on the order to show cause, and provide a copy of the Resource Family Information Form and *A Guide for Resource Parents* to the resource family.

Court staff shall distribute the *Child Abuse and Neglect Handbook* and the *Parent Calendar* (where available) to the defendants.

The court should **explicitly notify** the defendants at the earliest point, that upon their failure to fully comply with any provision of the court's order, a termination of parental rights complaint may be filed.

### **1601.3 Return on the Order to Show Cause (Title 9 removal) -- Day 10 to 21**

The purpose of this proceeding is to continue the assessment of the child's need for protection and establish a plan of action that will lead to safety and permanency for the child. The hearing on the return of the order to show cause is held between 10 and 21 days after the filing of the complaint. The court will verify that all parties have been served. The court must make specific findings that the parent/guardian is present or has been notified of the hearing (N.J.S.A. 9:6-8.41, R. 5:12-2). All parties should be present and represented by counsel.

This hearing shall be comprehensive. It shall incorporate the development of a service plan designed to secure the safety and welfare of the child as well as encourage family reunification.

Reasonable efforts by the Division to prevent the placement must be addressed at this hearing if they were not completed at the initial hearing. These "reasonable efforts" determinations must be made within 60 days of the removal and based on competent evidence and factual findings, explicitly documented in the order, made on a case-by-case basis and so stated in the court order. At any hearing in which the court determines that reasonable efforts have been made to prevent placement, the basis for that determination is placed on the record and the recording tape reference of the entire hearing is included in the form of order unless the courtroom is CourtSmart-equipped. The plan for permanency and the plan to eliminate risk should begin to develop, and any resulting order(s) should fully address these issues. The court should also examine the initial documentation of the agency's reasonable efforts to reunify the family.

At the hearing on the return of the order to show cause, the court:

1. Confirms legal representation for the parents;
2. Makes further inquiry as to the existence of absent parents, family members or friends who may accept temporary custody;
3. Determines whether the parents understand the complaint;
4. Determines the continued need for any placement or protective services order;
5. Explains to the parents the significance of ASFA and all consequences of the child's out of home placement including the need for permanence within one year of the placement.

A draft proposed FN Multipurpose Order (CN 10261) must be prepared by the DAG in advance of the return on the order to show cause hearing, with necessary modifications made in court. A signed copy of the order is to be distributed to all parties before they leave court. The order serves as notice for the scheduled case management conference, fact-finding and disposition, compliance review and/or permanency hearing.

Judicial determinations must be based on competent evidence and factual findings made on a case-by-case basis and explicitly documented in the court order.

CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

Resource families will not be provided with notice of the FN order to show cause hearing, the FN fact-finding hearing, FG pre-trial conference or the FG trial.

Additionally, at this hearing, the court determines whether a fact-finding hearing is needed, or if the parents are prepared to stipulate to one or more complaint allegations. If the parents are not prepared to make this decision or are not yet represented by counsel, the case management conference and/or fact-finding hearing should be scheduled. Fact-finding or stipulation must occur within 120 days of the complaint's filing date.

At any time prior to the fact-finding, a stipulation to one or more of the allegations in the complaint may be offered. If there is a stipulation to some or all of the allegations of the complaint and the finding of abuse or neglect is entered on the record, the court moves to the dispositional hearing and the judge enters a Fact-finding/Stipulation Order (CN 10262) and also enters a Dispositional Order (CN 10261) on the abuse or neglect.

#### **1601.4 Case Management Conference (R. 5:12-4) (Title 9 removal) -- Day 40 to 81**

The purpose of the case management conference is to ensure that the defendants have representation and to prepare for a fact-finding in the absence of a stipulation.

At the CPR 45 day review, the CPR board completes the checklist and the 45 Day Review Recommendation to the Judge Form (CN 11355), which must be provided to the judge handling the litigated case. The court must review these documents and address the issues identified therein.

At a case management conference, the Multipurpose Order (CN 10261) is used and the Case Management Review box is checked. This order will schedule the fact-finding hearing or the date of the proposed stipulation. The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing. This order is to be distributed to all parties before they leave court.

CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family

members who come to court will have a right to be heard.

Resource families will not be provided with notice of the FN order to show cause hearing, the FN fact-finding hearing, FG pre-trial conference or the FG trial.

**1601.5 Fact-finding Hearing/Stipulation (N.J.S.A. 9:6-8.44) (Title 9 removal) -- Day 70 to 120**

A fact-finding is a hearing to determine if a child has been abused or neglected as a result of any act or omission of the defendant(s), or to determine if the child is at imminent risk of serious harm in the defendants' custody. N.J.S.A. 9:6-8.21 and N.J.S.A. 9:6-8.44. The fact-finding hearing is therefore a critical step in the case process.

A fact-finding hearing is held within 120 days of the filing of the complaint if the child is in out of home placement or within 180 days of the filing of the complaint if the child remains in the home.

In lieu of a fact-finding hearing, the defendants may stipulate to facts sufficient to confer jurisdiction on the court. This means that a defendant admits facts as contained in specific paragraphs of the complaint, and agrees that these acts or omissions constitute abuse or neglect, or place the child at imminent risk of serious harm pursuant to N.J.S.A. 9:6-8.21(c). If there is a stipulation to some or all of the allegations of the complaint and the finding of abuse or neglect is entered on the record, the court moves immediately to the dispositional hearing. The judge enters a Stipulation Order and a Dispositional Order (CN 10261) on the abuse or neglect. The Voluntary Stipulation/Admission To Child Abuse or Neglect Pursuant To N.J.S.A. 9:6-8.21(c) Form (Stipulation Form) (CN 11539) must be reviewed with the defendant and completed. Signed copies of the orders, the Stipulation Form and the "list of persons who are subject to child abuse record information (CARI) checks" are distributed to all parties before they leave court.

Judicial determinations must be based on competent evidence. There must be case specific factual findings, and these must be explicitly documented in the court order. The recording tape reference of the entire hearing is included in the form of order unless the courtroom is CourtSmart-equipped.

If no Stipulation Form is signed, a fact-finding hearing proceeds. If facts sufficient to sustain the complaint are established, based on a preponderance of the evidence, the court shall enter a finding as to whether the defendants abused and/or neglected the child. If the clear and convincing evidence standard is to be used, the defendant must be advised on the record of the court's intent to apply that standard before the trial starts.

When a finding of abuse or neglect has been made at a fact-finding hearing, the court shall order: (1) the parents to comply with the Division's plan and (2) the Division to provide or continue such services as are appropriate to protect the child and to rehabilitate the defendants, to the greatest extent possible. The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing. After a finding of abuse or neglect, the court must then move immediately to a dispositional hearing.

If the court finds or the defendant stipulates to abuse or neglect, then the court should review and address the issues set forth in the CPR board 45 Day Review Checklist and the 45 Day Review Recommendation to the Judge Form (CN 11355), if not done previously at the case management conference.

If the court determines that the Division has failed to prove abuse or neglect, but has presented sufficient evidence to proceed under Title 30, the court will dismiss the Title 9 allegation and make the necessary Title 30 finding. See section 1603.4.

### ***1601.6 Dispositional Hearing (N.J.S.A. 9:6-8.47(a) and -8.50) (Title 9 removal) -- Day 70 to 120***

The purpose of the dispositional hearing is to confirm the placement of the child, order a services plan, and enter a disposition of the case. This hearing must be the first hearing held immediately after the fact-finding hearing/stipulation. It should be held on the same day as the stipulation or after a finding of abuse or neglect.

In addition to all evidence presented at the fact-finding hearing, further evidence may be received at the dispositional hearing.

The following dispositional options should be considered by the court:

1. child remains in or is returned home and placed under the supervision of the Division.
2. child is placed with a relative without legal custody.
3. child is placed with a relative with legal custody.
4. child goes to/remains in resource family placement.
5. another disposition set forth in N.J.S.A. 9:6-8.51 is ordered.
6. order of protection set forth in N.J.S.A. 9:6-8.55 is entered.

At the conclusion of this hearing, the court enters the disposition on the FN Multipurpose Order (CN 10261). The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing.

### ***1601.7 Compliance Reviews (Title 9 removal)***

The purpose of the compliance reviews is to inform the court of progress being made by all parties toward meeting the service plan goals.

All court review hearings require the Division to submit written reports, as well as any third party documentation, to the judge, counsel and self-represented parties at least five days before the review date. CIC staff is responsible for monitoring this procedure. The efficient submission and distribution of the required reports should make use of appropriate modern technology.

The Multipurpose Order (CN 10261) should be prepared to modify or update previous court

orders. A draft proposed order must be prepared by the DAG in advance of the compliance review hearing, with necessary modifications made in court. The proposed order should be available for consideration by the court and a signed copy of the order is to be distributed to all parties and counsel before they leave court. The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing.

The court shall establish a definite date by which the Division shall furnish its report (DCF Form 26-80). All counsel or self-represented parties shall receive a copy of this report.

CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

Resource families will not be provided with notice of the FN order to show cause hearing, the FN fact-finding hearing, FG pre-trial conference or the FG trial.

### **1601.8 Permanency Hearing (N.J.S.A. 30:4C-61.2) (Title 9 removal) -- up to Day 365**

The permanency hearing shall be held no later than 365 days after the child's placement date, no later than 30 days after the court has determined that reasonable efforts to reunify the family are not required, or no later than 30 days after a permanency hearing where the court did not approve the Division's permanency plan. At the permanency hearing, the court will review and document the agency's reasonable efforts to reunify the family, as well as the agency's reasonable efforts to place the child in a safe, permanent home. In addition, the court may consider any other evidence.

The permanency hearing shall establish whether the Division's plan and timeframe are appropriate and acceptable, and will document whether and when the child will be:

1. Returned to the parent or guardian (without endangering the child's health or safety), or
2. Made eligible for adoption following termination of parental rights (by the Division filing an FG complaint within 45 days of the court determination), or
3. Placed with an appropriate and willing relative pursuant to a custody or KLG order, or
4. Placed in another permanent living arrangement, provided that the Division has documented compelling reasons why the first three options were not used.

This will be documented in the Permanency Order (CN 10259). If the court finds the Division's plan inappropriate and unacceptable, it must state why, and then must hold another permanency hearing within 30 days and the Division must provide a new plan at that hearing. The recording tape reference of the entire hearing is included in the form of order unless the courtroom is CourtSmart-equipped. The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing. A signed copy of the Permanency Order is to be distributed to all parties before they leave court.

If, subsequent to the review and approval of a plan by the court, the Division proposes to change the long-term goal in the plan or otherwise substantially modify the plan, it shall notify the court in writing, within five days and a new permanency hearing must be held.

CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

Resource families will not be provided with notice of the FN order to show cause hearing, the FN fact-finding hearing, FG pre-trial conference or the FG trial.

### ***Permanency Hearing Findings***

Regardless of the court's approval or rejection of the permanency plan for the child, the court must make specific findings regarding whether the Division has made reasonable efforts to finalize the child's permanency plan. The court will review the Division's documentation that reasonable efforts are being made to finalize the permanency plan, including reunification where appropriate. There are no exceptions to the requirement to finalize the permanency plan.

The court will review the Division's documentation that reasonable efforts have been and continue to be made to reunify the child and family. If the Division proposes that an exception to that requirement exists, and a judicial determination has not previously been made, the judge must approve the exception.

The details of the reasonable efforts determinations should be explicitly documented, made on a case-by-case basis, and so stated in the court order. The recording tape reference of the entire hearing is included in the form of order unless the courtroom is CourtSmart-equipped.

If the court finds that reasonable efforts have been made to finalize the permanency plan, but it rejects the Division's plan, then the Division will not lose federal funds for that placement. If, however, the court finds that reasonable efforts were not made to finalize the permanency plan, but it accepts the Division's plan, federal funds cannot be reimbursed to the Division for the placement.

### ***Requirement to Consider Termination of Parental Rights for Children in Placement***

Unless the Division has documented an exception, the DAG should file the FG complaint (if adoption is the goal) within 45 days of the permanency hearing.

At the 15th month of placement (or after 15 months out of the last 22 months in placement), the Division must file for termination of parental rights and should concurrently identify, recruit, process and approve a qualified family for adoption unless one of the following exceptions is documented in the case record:

1. The child is being cared for by a relative and a permanency plan can be secured without terminating parental rights,



2. The Division has documented a compelling reason why filing such a petition would not be in the best interests of the individual child, or

3. The Division has not provided to the family of the child, such services as the court has deemed necessary for the safe return of the child home (if reasonable efforts to reunify were required in the case).

***30-Day Permanency Hearing When Reasonable Efforts to Reunify Are Not Required  
(N.J.S.A. 30:4C-11.3, N.J.S.A. 9:6-8.54)***

In most cases, the Division has an obligation to help the defendants remedy the problem that caused the child's removal. This is known as the Division's requirement to make reasonable efforts to reunify the child with the parents. If the judge has determined that reasonable efforts need not be made by the Division to reunify the child with the birth family, a permanency hearing must be scheduled by the CIC team and held within 30 days of that determination, and within every 365 days thereafter.

Pursuant to N.J.S.A. 30:4C-11.3, reasonable efforts need not be made to reunify the child with the birth family if a court of competent jurisdiction has determined that:

1. The parent has subjected the child to aggravated circumstances of abuse, neglect, cruelty or abandonment; or

2. The parent has been convicted of committing, aiding or soliciting murder, attempted murder, or manslaughter of a child; or of committing or attempting an assault that resulted or could have resulted in the death of, or significant bodily injury to a child; or

3. The rights of the parent to another child have been involuntarily terminated.

***1601.9 Long Term Foster Care Custody (Title 9 removal)***

"Long Term Foster Care Custody" is no longer an option for placement cases in New Jersey, pursuant to revisions in State law, effective September 1, 2005.

Long term foster care custody was an arrangement allowing a foster parent the continuing legal right and responsibility to care for a child, until the child became 18 years of age. Some long-term foster care cases, finalized years ago, may remain in the FC docket for a few more years, until those children reach 18 years of age. They will continue to be reviewed by the court at least every 365 days, but no new cases may be initiated.

***1601.10 Compliance Reviews Post-Permanency Hearing (Title 9 removal)***

If permanency is not achieved by the time of the permanency hearing, the court will hold continuing compliance reviews until permanency for the child is achieved. As long as the child remains in placement, a permanency hearing is required to be held within 365 days of the previous permanency hearing. The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing.



CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

Resource families will not be provided with notice of the FN order to show cause hearing, the FN fact-finding hearing, FG pre-trial conference or the FG trial.

### **1601.11 Surrender during FN Case (Title 9 removal) (AJ Memo: 05/25/2010)**

If the case involves only one parent/guardian and that person wishes to surrender parental rights during the FN litigation, the Division may move to amend the FN complaint on the record requesting the relief of guardianship by virtue of the surrender. The court will record the surrender using the Voluntary Surrender of Parental Rights Form (CN 10983) and document approval of the surrender on an FN Multipurpose Order (CN 10261). The Division must then file an abridged guardianship complaint to open the FG case. Prior to entering the Judgment of Guardianship, the court must address the other parent's rights. The court then will enter the FG Judgment of Guardianship (CN 10265) and the FG case then will be closed.

If two or more parents are involved in the FN litigation and only one parent wishes to surrender, the FG will not be established until resolution of the other parents' cases in the FN litigation. The court will enter the surrender as to the surrendering parent in the FN case using the Voluntary Surrender of Parental Rights Form (CN 10983) and document approval of the surrender on an FN Multipurpose Order (CN 10261). If the other parents also decide to surrender before the filing of a guardianship complaint, then the Division may move to amend the FN complaint on the record requesting the relief of guardianship by virtue of the surrender. The Division then must file an abridged guardianship complaint to open the FG case. If the FN litigation proceeds to the filing of a guardianship complaint because the other parent(s) are contesting termination of parental rights, then the earlier parent's surrender should be pled in the guardianship complaint.

### **1601.12 Closing an abuse or neglect case (Title 9 removal)**

An FN case shall never be inactivated.

An abuse or neglect case shall be considered closed when:

- a. The complaint is dismissed by the court (e.g., The court found insufficient facts to substantiate any abuse or neglect, the child died, the child is in the care of the Division of Developmental Disabilities, or custody has been granted to a relative with no companion docket),
- b. TPR complaint is filed for ALL non-severed children,
- c. Issues remediated (e.g., The parents' issues have been resolved),
- d. Custody is processed in the FL docket (Kinship legal guardianship is granted),
- e. Defendant(s) died,
- f. Complaint is withdrawn by the Division. This can only be used before a fact-finding proceeding (e.g., The child died, the child is in the care of the Division of Developmental Disabilities, and custody has been granted to a relative with no companion docket),

- g. Case is transferred to another county,
- h. Child reached age of majority (age 18),
- i. Custody is processed in the FD docket

### **1602.1 Filing of the Complaint for Care and Supervision without Removal (Title 9) -- Day 1**

In cases where the Division is not seeking the removal of the child, but has concerns that the child may be subjected to abuse or neglect without Division intervention, the Division may file an application for care and supervision of that child by filing a care/supervision complaint. N.J.S.A. 9:6-8.18 (FN docket only).

**If, at any later time the court orders the child's removal, the court must make "contrary to the welfare" and "reasonable efforts to prevent placement" findings on a Supplemental Order (CN 10275) to be appended to the court's primary order for a proceeding.**

The CIC team receives the complaint. The complaint is stamped filed, dated and docketed in FACTS. The CIC judge will be notified of the complaint. The order to show cause hearing should be scheduled that day at the uniform time under the vicinage policy. The CIC team prepares a file and screens FACTS for prior family court history as soon as possible. Pursuant to N.J.S.A. 9:6-8.25, the CIC team immediately sends a copy of the complaint or the amended complaint to the prosecutor's office.

### **1602.2 Order to Show Cause Hearing (Title 9 in-home)**

A complaint for protective services to give the Division care and supervision (but not custody) of the child may be filed by the Division. N.J.S.A. 9:6-8.18.

The Division must provide the parents with notice of the date, time and location of the hearing on this complaint. A Law Guardian may appear and be appointed to represent the child in the case.

Those who appear are: The DAG and the Division's witness (case manager and/or supervisor), the defendants if they have received notice, and the attorney for the defendants (if available). A summary evidential hearing is held, with the DAG eliciting testimony from the Division witness. The court will confirm whether the defendants have been served. Documents attached to the complaint may be admitted into evidence. Defendants also may testify.

The defendants may or may not appear at the time of application for the Order to Show Cause. If the defendant does appear, he or she is given an Application for Assignment of Counsel to complete, if not already provided by the Division, and a copy of the complaint for review.

The judge either grants or denies the relief sought using the uniform Order to Show Cause that has been prepared in advance by the DAG. When the judge signs the order, the date for the return on the order to show cause (usually within 10-21 days) is set forth in the court order and

serves as notice for that hearing. The Division should serve the Order to Show Cause and complaint on the defendants who have appeared before they leave court. Court staff may assist the Division in providing to the appearing defendants a copy of the Order to Show Cause (CN 10160) before leaving court. The Division should also arrange service on absent defendants. The Division should also provide an Application for Assignment of Counsel to the parents.

### **1602.3 Return on the Order to Show Cause (Title 9 in-home) -- Day 10 to 21**

The purpose of this proceeding is to continue the assessment of the child's need for protection and establish a plan of action that will lead to a resolution of the problems identified in the complaint.

The hearing on the return of the order to show cause is held between 10 and 21 days after the filing of the complaint. The court will verify that all parties have been served. The court must make specific findings that the parent/guardian is present or has been notified of the hearing (N.J.S.A. 9:6-8.41 and R. 5:12-2).

This hearing shall be comprehensive. It shall incorporate the development of a service plan designed to resolve outstanding issues as detailed in the complaint.

At the hearing on the return of the order to show cause, the court:

1. Confirms legal representation for the parents;
2. Determines whether the parents understand the complaint;
3. Determines the continued need for any protective services;
4. Explains to the parents that compliance with services is necessary and failure to comply may result in the Division filing for custody.

Additionally, at this hearing, the court determines whether a fact-finding hearing is needed, or whether the parents are prepared to stipulate to one or more complaint allegations. If the parents are not prepared to make this decision or are not yet represented by counsel, the case management conference and/or fact-finding hearing should be scheduled. Fact-finding or stipulation must occur within 180 days of the complaint's filing date.

At any time prior to the fact-finding, a stipulation to one or more of the allegations in the complaint may be offered. If there is a stipulation to some or all of the allegations of the complaint and the finding of abuse or neglect is entered on the record, the court moves to the dispositional hearing and the judge enters a Fact-finding/Stipulation Order (CN 10262) and a Dispositional Order (CN 10261) on the abuse or neglect.

A draft proposed order must be prepared by the DAG, in advance of the return on the order to show cause hearing, with necessary modifications made in court. The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing. A signed copy of the order is to be distributed to all parties before they leave court.

Judicial determinations must be based on competent evidence and factual findings made on a

case-by-case basis and explicitly documented in the court order.

### **1602.4 Case Management Conference (R. 5:12-4) (Title 9 in-home) -- Day 40 to 81**

The purpose of the case management conference is to ensure that the defendants have representation and to prepare for a fact-finding in the absence of a stipulation.

At a case management conference, the Multipurpose Order (CN 10261) is used and the case management review box is checked. This order will schedule the fact-finding hearing or the date of the proposed stipulation and serves as notice for that court event. This order is to be distributed to all parties before they leave court.

### **1602.5 Fact-finding Hearing/Stipulation (N.J.S.A. 9:6-8.44) (Title 9 in-home) -- Day 70 to 180**

A fact-finding is a hearing to determine if a child has been abused or neglected as a result of any act or omission of the defendant(s), or is at imminent risk of serious harm in the defendant's custody. N.J.S.A. 9:6-8.21 and N.J.S.A. 9:6-8.44. The fact-finding hearing is therefore a critical step in the case process.

A fact-finding hearing is held within 120 days of the filing of the complaint if the child is in out of home placement or within 180 days of the filing of the complaint if the child remains in the home to determine whether abuse or neglect has occurred as alleged in the complaint. N.J.S.A. 9:6-8.50(d).

In lieu of a fact-finding hearing, the defendants may stipulate to facts sufficient to confer jurisdiction on the court. This means that a defendant admits facts as contained in specific paragraphs of the complaint, and agrees that these acts or omissions constitute abuse or neglect, or place the child at imminent risk of serious harm pursuant to N.J.S.A. 9:6-8.21(c). If there is a stipulation to some or all of the allegations of the complaint and the finding of abuse or neglect is entered on the record, the court moves immediately to the dispositional hearing. The judge enters a Stipulation Order (CN 10262) and a Dispositional Order (CN 10261) on the abuse or neglect. The Voluntary Stipulation/Admission to Child Abuse or Neglect Pursuant to N.J.S.A. 9:6-8.21(c) (Stipulation Form) (CN 11539) must be reviewed with the defendant and completed. Signed copies of the orders, the Stipulation Form and the "list of persons who are subject to child abuse record information (CARI) checks" are distributed to all parties before they leave court.

Judicial determinations must be based on competent evidence. There must be case specific factual findings, and these must be explicitly documented in the court order. The recording tape reference of the entire hearing is included in the form of order unless the courtroom is CourtSmart-equipped.

If no Stipulation is signed, a fact-finding hearing proceeds. If facts sufficient to sustain the complaint are substantiated, based on a preponderance of the evidence, the court shall enter a finding as to whether the defendants abused and/or neglected the child. If clear and convincing

evidence has been found, the defendant must be advised of the court's intent to apply that standard and the court must note that on the record.

When a finding of abuse or neglect has been made at a fact-finding hearing, the court shall order: (1) the parents to comply with the Division's plan and (2) the Division to provide or continue such services as are appropriate to protect the child and to rehabilitate the defendants, to the greatest extent possible.

After the findings are entered on the record, the court should move immediately to disposition.

### ***1602.6 Dispositional Hearing (N.J.S.A. 9:6-8.47(a) and -8.50) (Title 9 in-home) -- Day 70 to 180***

The purpose of the dispositional hearing is to confirm the placement of the child, order a services plan, and enter a disposition of the case. This hearing must be the first hearing held immediately after the fact-finding hearing/stipulation. It should be held on the same day as the stipulation or the ruling on the fact-finding.

In addition to all evidence presented at the fact-finding hearing, further evidence may be received at the dispositional hearing.

The following dispositional options should be considered by the court:

1. The child remains home and placed under the supervision of the Division.
2. The child is placed with a relative without legal custody.
3. The child is placed with a relative with legal custody.
4. The child goes to a resource family placement.
5. Another disposition set forth in N.J.S.A. 9:6-8.51 is ordered.
6. An order of protection set forth in N.J.S.A. 9:6-8.55 is entered.

At the conclusion of this hearing, the court enters a Dispositional Order. The order shall set forth the date and time of the next scheduled compliance review hearing and serves as notice of that hearing.

### ***1602.7 Compliance Reviews (Title 9 in-home)***

The purpose of the compliance reviews is to inform the court of progress being made by all parties toward meeting the service plan goals.

All court review hearings require the Division to submit written reports, as well as any third party documentation, to the judge, counsel and self-represented parties at least five days before the review date. CIC staff is responsible for monitoring this procedure. The efficient submission and distribution of the required reports should make use of appropriate modern technology.

The order (CN 10261) should be prepared to modify or update previous court orders. A draft

proposed order must be prepared by the DAG in advance of the compliance review hearing, with necessary modifications made in court. The proposed order should be available for consideration by the court and a signed copy of the order is to be distributed to all parties and counsel before they leave court. The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing.

The court shall establish a definite date by which the Division shall furnish its report (DCF Form 26-80). All counsel or self-represented parties shall receive a copy of this report.

If applicable, CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard. Resource families will not be provided with notice of the FN order to show cause hearing, the FN fact-finding hearing, FG pre-trial conference or the FG trial.

### **1602.8 Closing an abuse or neglect case (Title 9 in-home)**

An FN case shall never be inactivated.

An abuse or neglect case shall be considered closed when:

- a. The complaint is dismissed by the court (e.g., The court found insufficient facts to substantiate any abuse or neglect, the child died, the child is in the care of the Division of Developmental Disabilities, or custody has been granted to a relative with no companion docket),
- b. Issues remediated (e.g., The parents' issues have been resolved),
- c. Defendant(s) died,
- d. Complaint is withdrawn by the Division. This can only be used before a fact-finding proceeding (e.g., The child died, the child is in the care of the Division of Developmental Disabilities, and custody has been granted to a relative with no companion docket),
- e. Case is transferred to another county,
- f. Child reached age of majority (age 18),
- g. Custody is processed in the FD docket

### **1603.1 Filing of the Complaint for Care and Supervision or Custody (Title 30) -- Day 1**

If there are no specific allegations of abuse or neglect, the Division may file a complaint for care and supervision or custody. N.J.S.A. 30:4C-11 and -12. The Division must provide any known parents with notice of the date, time and location of the hearing on this complaint.

The CIC team receives the complaint. The complaint is stamped filed, dated and docketed in FACTS. The CIC judge will be notified of the complaint. The order to show cause hearing should be scheduled that day at the uniform time under the vicinage policy. The CIC team

prepares a file and screens FACTS for prior family court history as soon as possible.

### **1603.2 Order to Show Cause Hearing (Title 30)**

If the Division finds that the child is in need of care and supervision or custody, it may petition the court 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 defendants should be advised that they may retain private counsel. The defendants may or may not appear at the time of application for the order to show cause. The Division has an obligation to serve all non-appearing defendants with copies of the complaint and the Order to Show Cause within seven days or such other time as the court may approve.

The court will approve or dismiss the complaint and if approved, the Division will receive care and supervision, or care, custody and supervision of the child(ren) under N.J.S.A. 30:4C-12.

The form of order (FN Order to Show Cause pursuant to Title 30 - CN 11706) should be used.

Those who appear are the DAG, the Division's witnesses (case manager and/or supervisor), the defendants if they have received notice, and the attorney for the defendants (if available). At the order to show cause hearing, an evidential hearing is held, which is summary in nature, with the DAG eliciting testimony from the Division witness. The court will confirm whether the defendants have been served. Documents attached to the complaint may be admitted into evidence. Defendants also may testify.

When the judge signs the order granting the relief sought by the Division, the date for the return on the order to show cause (usually within 10-21 days) is set forth in the court order and serves as notice for that hearing. The Division should serve the Order to Show Cause and complaint on the defendants who have appeared before they leave court. Court staff may assist the Division in providing to the appearing defendants a copy of the Order to Show Cause before leaving court. The Division also should arrange to serve any absent defendants.

If applicable, CIC staff shall notify the resource family member(s) of the date of the return on the order to show cause, provide a copy of the Resource Family Information Form and *A Guide for Resource Parents* to the resource family.

Court staff shall distribute the *Child Abuse and Neglect Handbook* and the *Parent Calendar* (where available) to the defendants.

The court should **explicitly notify** the parents at the earliest point, that upon their failure to fully comply with any provision of the court's order, a termination of parental rights complaint may be filed.



## ***Custody***

For those matters where the Division also seeks custody of the child(ren) pursuant to N.J.S.A. 30:4C-12, the Division must show cause for custody and protective services resulting in the placement of a child. The hearing and resulting order must address custody, protective services, reasonable efforts to prevent the placement<sup>7</sup>, a finding that return of the child would be contrary to the welfare of the child, and a showing that due process requirements have been met.

The Division must notify the defendant(s) of its intent to seek an order of the court to approve or allow the removal of a child. The Division must provide notice of the date, time and location of the order to show cause hearing so that the defendant(s) may appear.

The Order to Show Cause generally includes temporary restraints or other interim relief pending the return date. The Order to Show Cause contains a provision that the defendants may move for dissolution or modification on two days' notice or on such other notice as the court may state in the order.

### **Court findings if Division custody is authorized**

If the Division demonstrates the need for removal, the court must make two findings:

1. The "**contrary to the welfare**" judicial determination (i.e., that continued residence in the home would be contrary to the welfare of the child) must be made on the first order that sanctions (even temporarily) removal from the home. Judicial determinations must be made on the record and based on competent evidence and factual findings. These findings must be case-specific and must be explicitly documented in the Order to Show Cause.

2. The court shall also determine whether the Division has made all "**reasonable efforts to prevent placement.**" The court should first consider placement of the child with a suitable relative or person who has a kinship relationship when considering if the child should be placed in the custody of suitable person. This finding must be made on the record and must be supported by specific reference to the evidence. The court must state the case-specific findings in the Order to Show Cause. Best practice is to make this finding in the Order to Show Cause. In the rare event that this "reasonable efforts" finding is not made in the initial hearing on the order to show cause, then such finding must be made within 60 days of the removal.

**Note:** The court will determine whether the Division was not required to exercise reasonable efforts to prevent placement because of circumstances involving imminent danger to the child's life, safety or health. It must set forth case specific reasons in the order why such efforts were not required.

Both findings also must be stated on the record, set forth in the court order, and be based on specific reference to evidence. If a "contrary to the welfare" finding has been made, the court

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<sup>7</sup> NOTE: "Reasonable efforts to prevent placement" should not be confused with "reasonable efforts to reunify" or "reasonable efforts to achieve permanency."



will grant care, custody and supervision to the Division. For courtrooms not equipped with CourtSmart, the recording tape reference of the entire hearing shall be included in the form of order.

Every case involving a child's placement outside of the home requires a determination of whether the Indian Child Welfare Act applies to a child. See section 1104 for more detail.

### ***1603.3 Return on the Order to Show Cause (Title 30) -- Day 10 to 21***

The purpose of this proceeding is for the court to determine whether the child should continue to be a ward of the court, to inquire as to whether the defendants have retained counsel and to establish a plan of action that will lead to safety and permanency for the child. The return on the order to show cause hearing is held between 10 and 21 days after the filing of the complaint. The court will verify that all parties have been served. The court must make specific findings that the parent/guardian is present or has been notified of the hearing (R. 5:12-2 and R. 4:4-4).

A draft proposed order must be prepared by the DAG in advance of the return on the order to show cause hearing, with necessary modifications made in court. A signed copy of the order is to be distributed to all parties before they leave court. The order shall set forth the date and time of the next scheduled hearing (Title 30 summary hearing) and serves as notice of that hearing.

Judicial determinations must be based on competent evidence and factual findings made on a case-by-case basis and explicitly documented in the court order.

### ***1603.4 Title 30 Summary Hearing (N.J.S.A. 30:4C-12) -- Day 22 to 180***

Pursuant to N.J.S.A. 30:4C-12, the purpose of the Title 30 summary hearing is for the court to determine whether a parent or parents, guardian, or person having custody and control of any child within this State, is unfit to be entrusted with the care and education of such child, or fails to provide such child with proper protection, maintenance and education, or fails to ensure the health and safety of the child, or endangers the welfare of such child. The court, with proper notice to the parties, and having given the defendant the opportunity to review the Division's records, may issue an order as requested by the Division, if satisfied that the best interests of the child so require. This order shall not be effective for more than six months, unless the court, at a subsequent hearing on notice to the defendants, upon application by the Division, extends the time of the order. After the Title 30 summary hearing, there are two potential outcomes that may be documented:

1. The complaint is dismissed and the relief is denied.
2. The court may issue an order continuing the child under the care and supervision or custody of the Division pursuant to N.J.S.A. 30:4C-12, as the circumstances of the child may require. This order is effective for only six months from the date of the Title 30 Summary Hearing Order (CN 11705), except that the Division may request and the court may grant an extension at a subsequent Title 30 summary hearing held upon notice to the parties. Compliance

reviews shall be held every two to three months until the court terminates the case. Within 30 days of the court's order and while the child is in the Division's care, the Division shall initiate a search for the child's mother or father, if their whereabouts are not known. The search shall be completed within 45 days, and the results shall be valid for six months after the date it was completed.

If an action under Title 30 is dismissed and the Division subsequently files a complaint under Title 9 alone, a new docket number will be assigned to the case.

The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing. All subsequent hearings to review compliance with services shall be compliance review hearings.

Note: If the court accepts an admission from a defendant that the family is in need of services from the Division pursuant to N.J.S.A. 30:4C-12, the Voluntary Admission Pursuant to N.J.S.A. 30:4C-12 form (CN 11707) shall be used.

### **1603.5 Compliance Reviews (Title 30)**

The purpose of the compliance reviews is to inform the court of progress being made by all parties toward meeting the service plan goals. Compliance reviews shall be held every two to three months until the court terminates the case.

All court review hearings require the Division to submit written reports, as well as any third-party documentation, to the judge, counsel and *pro se* parties at least five days before the review date. CIC staff is responsible for monitoring this procedure. The efficient submission and distribution of the required reports should make use of appropriate modern technology.

The order (CN 10261) should be prepared to modify or update previous court orders. A draft proposed order must be prepared by the DAG in advance of the compliance review hearing, with necessary modifications made in court. The proposed order should be available for consideration by the court and a signed copy of the order is to be distributed to all parties and counsel before they leave court. The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing.

The court shall establish a definite date by which the Division shall furnish its report (DCF Form 26-80). All counsel or *pro se* parties shall receive a copy of this report.

If applicable, CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

Resource families will not be provided with notice of the FN order to show cause hearing, FN Title 30 summary hearings, the FG pre-trial conference or the FG trial.

### **1603.6 Permanency Hearing (N.J.S.A. 30:4C-61.2) (Title 30) -- up to Day 365**

In cases where the child is in an out of home placement, the permanency hearing shall be held no later than 365 days after the child's placement date, no later than 30 days after the court has determined that reasonable efforts to reunify the family are not required, or no later than 30 days after a permanency hearing where the court did not approve the Division's permanency plan. At the permanency hearing, the court will review and document the Division's reasonable efforts to reunify the family, as well as the Division's reasonable efforts to place the child in a safe, permanent home. In addition, the court may consider any other evidence.

The permanency hearing shall establish whether the Division's plan and timeframe are appropriate and acceptable, and will document whether and when the child will be:

1. Returned to the parent or guardian (without endangering the child's health or safety), or
2. Made eligible for adoption following termination of parental rights (by the Division filing an FG complaint within 45 days of the court determination), or
3. Placed with an appropriate and willing relative or person who has a kinship relationship with the child pursuant to a custody or KLG order, or
4. Placed in another permanent living arrangement, provided that the Division has documented compelling reasons why the first three options were not used.

This will be documented in the Permanency Order (CN 10259). If the court finds the Division's plan inappropriate and unacceptable, it must state why, and then must hold another permanency hearing within 30 days and the Division must provide a new plan at that subsequent permanency hearing. The recording tape reference of the entire hearing is included in the form of order unless the courtroom is CourtSmart-equipped. The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing. A signed copy of the Permanency Order is to be distributed to all parties before they leave court.

If, subsequent to the review and approval of a plan by the court, the Division proposes to change the long-term goal in the plan or otherwise substantially modify the plan, it shall notify the court in writing, within five days and a new permanency hearing must be held within 30 days of the notification.

CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

Resource families will not be provided with notice of the FN order to show cause hearing, FN Title 30 summary hearings, the FG pre-trial conference or the FG trial.

#### ***Permanency Hearing Findings***

Regardless of the court's approval or rejection of the permanency plan for the child, the court must make specific findings regarding whether the Division has made reasonable efforts to finalize the child's permanency plan. The court will review the Division's documentation that

reasonable efforts are being made to finalize the permanency plan, including reunification where appropriate. There are no exceptions to the requirement to finalize the permanency plan.

The court will review the Division's documentation that reasonable efforts have been and continue to be made to reunify the child and family. If the Division proposes that an exception to that requirement exists, and a judicial determination has not previously been made, the judge must approve the exception.

The details of the reasonable efforts determinations should be explicitly documented, made on a case-by-case basis, and so stated in the court order. The recording tape reference of the entire hearing is included in the form of order unless the courtroom is CourtSmart-equipped.

If the court finds that reasonable efforts have been made to finalize the permanency plan, but it rejects the Division's plan, then the Division will not lose federal funds for that placement. If, however, the court finds that reasonable efforts were not made to finalize the permanency plan, but it accepts the Division's plan, federal funds cannot be reimbursed to the Division for the placement.

### ***Requirement to Consider Termination of Parental Rights for Children in Placement***

Unless the Division has documented an exception, the DAG should file the FG complaint (if adoption is the goal) within 45 days of the permanency hearing.

At the 15th month of placement (or after 15 months out of the last 22 months in placement), the Division must file for termination of parental rights and should concurrently identify, recruit, process and approve a qualified family for adoption unless one of the following exceptions is documented in the case record:

1. The child is being cared for by a relative and a permanency plan can be secured without terminating parental rights;
2. The Division has documented a compelling reason why filing such a petition would not be in the best interests of the individual child; or
3. The Division has not provided to the family of the child, such services as the court has deemed necessary for the safe return of the child home (if reasonable efforts to reunify were required in the case).

### ***Permanency Hearing When Reasonable Efforts to Reunify Are Not Required (N.J.S.A. 30:4C-11.3, N.J.S.A. 9:6-8.54)***

In most cases, the Division has an obligation to help the defendants remedy the problem that caused the child's removal. This is known as the Division's requirement to make reasonable efforts to reunify the child with the parents. If the judge has determined that reasonable efforts need not be made by the Division to reunify the child with the birth family, a permanency hearing must be scheduled by the CIC team and held within 30 days of that determination, and within every 365 days thereafter.

Pursuant to N.J.S.A. 30:4C-11.3, reasonable efforts need not be made to reunify the child with the birth family if a court of competent jurisdiction has determined that:

1. The parent has subjected the child to aggravated circumstances of abuse, neglect, cruelty or abandonment; or
2. The parent has been convicted of committing, aiding or soliciting murder, attempted murder, or manslaughter of a child; or of committing or attempting an assault that resulted or could have resulted in the death of, or significant bodily injury to a child; or
3. The rights of the parent to another child have been involuntarily terminated.

### **1603.7 Compliance Reviews Post-Permanency Hearing (Title 30)**

If permanency is not achieved by the time of the permanency hearing, the court will hold continuing compliance reviews until permanency for the child is achieved. As long as the child remains in placement, a permanency hearing is required to be held within 365 days of the previous permanency hearing. The order shall set forth the date and time of the next scheduled hearing and serves as notice of that hearing.

CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

Resource families will not be provided with notice of the FN order to show cause hearing, the FN Title 30 summary hearings, FG pre-trial conference or the FG trial.

### **1603.8 Closing a Title 30 care and supervision or custody case (Child is in Division custody)**

An FN case shall never be inactivated.

A Title 30 care and supervision or custody case shall be considered closed when:

- a. The complaint is dismissed by the court because the court has not made the child a ward of the court placing the child under the care and supervision or custody of the Division,
- b. TPR complaint is filed for ALL non-severed children,
- c. Issues remediated (e.g., The parents' issues have been resolved),
- d. Custody is processed in the FL docket (Kinship legal guardianship is granted),
- e. Defendant(s) died,
- f. Complaint is withdrawn by the Division. This can only be used before a summary hearing proceeding (e.g., The child died, the child is in the care of the Division of Developmental Disabilities, and custody has been granted to a relative with no companion docket),
- g. Case is transferred to another county,
- h. Child reached age of majority (age 18),
- i. Custody is processed in the FD docket

### **1604.1 Filing of the Complaint for Investigation (Title 30) -- Day 1**

In cases where the Division receives a complaint that the parents have abused/neglected a child, the parents are unfit, or have failed to protect the child, or have failed to ensure the child's health and safety, or is endangering the welfare of such child, the Division must investigate. If the child's parents or guardian refuse to cooperate with this investigation, the Division may file an FN complaint for an Order to Investigate, an order allowing the investigation and requiring the parents' cooperation (FN docket only). N.J.S.A. 30:4C-12.

The CIC team receives the complaint. The complaint is stamped filed, dated and docketed in FACTS. The CIC judge will be notified of the complaint. The order to show cause hearing should be scheduled that day at the uniform time under the vicinage policy. The CIC team prepares a file and screens FACTS for prior family court history as soon as possible.

### **1604.2 Order to Show Cause Hearing (Title 30 investigate)**

The Division must serve the complaint on the parents and provide them with notice of the hearing. The form of order (FN Order to Investigate - CN 11079) should be used. At an order to show cause hearing, the court will approve or dismiss the complaint.

The defendants should be advised that they may retain private counsel. The defendants may or may not appear at the order to show cause hearing. The Division has an obligation to serve all non-appearing defendants with copies of the complaint and the Order to Show Cause within seven days or such other time as the court may approve.

Those who appear are the DAG, the Division's witnesses (case manager and/or supervisor), the defendants if they have received notice, and the attorney for the defendants (if available). An evidential hearing, which is summary in nature, is held, with the DAG eliciting testimony from the Division witness. The court will confirm whether the defendants have been served. Documents attached to the complaint may be admitted into evidence. Defendants also may testify.

Potential outcomes of the order to show cause hearing are:

1. Complaint for Investigation is dismissed; or
2. The relief is granted and the court shall enter an order authorizing the investigation:
  - a. The court terminates the case; or
  - b. The court sets forth in the order the date for the return on the order to show cause (usually within 10-21 days), which serves as notice for that hearing. The Division should serve the Order to Show Cause and complaint on the defendants who have appeared before they leave court. Court staff may assist the Division in providing to the appearing defendants a copy of the Order to Show Cause before leaving court. The Division also should arrange to serve any absent defendants.

### **1604.3 Return on the Order to Show Cause (Title 30 investigate) -- Day 10 to 21**

The court determines whether the investigation has been completed or the defendants have shown cause as to why they are preventing the Division from conducting its investigation. The return on the order to show cause hearing is held between 10 and 21 days after the filing of the complaint. The court will verify that all parties have been served. The court must make specific findings that the parent/guardian is present or has been notified of the hearing (R. 5:12-2 and R. 4:4-4).

A draft proposed order must be prepared by the DAG in advance of the return on the order to show cause hearing, with necessary modifications made in court. A signed copy of the order is to be distributed to all parties before they leave court.

At the return on the order to show cause, the court may dispose or dismiss the complaint for investigation or the Division may withdraw the complaint.

### **1604.4 Closing an investigation case**

An FN case shall never be inactivated.

An FN order to investigate case shall be considered closed when:

- a. The complaint is dismissed by the court (denied)
- b. Investigation granted
- c. The complaint is withdrawn by the Division

### **1604.5 Continuing Division action**

After the order to investigate case is closed, and if the Division determines further court action is necessary, the Division may file a new complaint seeking relief under Title 9 or Title 30.

### **1605.1 Filing of the Complaint for Care and Supervision or Custody (Safe Haven Act)**

The Safe Haven Act, N.J.S.A. 30:4C:15.5 et seq., permits parents to leave a newborn child in a safe place, such as a police or fire station or hospital, to prevent the child from being abandoned in a potentially dangerous situation.

After assuming custody, care, and supervision of a child left in a Safe Haven Location, the Division shall file a complaint within two court days.

### **1605.2 Order to Show Cause Hearing (Safe Haven Act)**

At the order to show cause hearing, the court must determine: (1) whether the Safe Haven Act



applies to the case and whether reasonable efforts to prevent placement are required; and (2) whether the Division is required to make reasonable efforts to reunify the child with a parent pursuant to N.J.S.A. 30:4C-15.8.

### ***1605.3 Identification of Kin and Reunification (Safe Haven Act)***

If the Division becomes aware of the identity of the child's parent(s) or relative(s) before parental rights are terminated, the Division shall consult with the Deputy Attorney General to determine whether to attempt to contact the parent(s) or notify members of the birth family of the existence of the child, to thereby work with the parent(s) or family in developing a permanent plan for the infant, or to pursue another course of action. If, based on the factors set forth in N.J.A.C. 3A:18-1.12, the Division concludes it is appropriate to do so, the Division is to locate the relative(s) or parent(s) and immediately arrange for genetic testing. The genetic test results must be submitted in writing to the court and all attorneys within three days of receipt by the Division.

Under the Safe Haven Act, if a putative biological parent(s) presents themselves to seek reunification with the child, and the Division receives genetic test results confirming paternity or maternity, the Division will:

- File a motion amending the complaint to name the parent(s);
- Serve the parent(s) with the amended complaint and a case management hearing will be scheduled within 21 days with notice to the parent(s); and
- Provide to the parent(s) a blank Application for Assignment of Counsel (CN 11727) to complete.

### ***1605.4 Closing a Safe Haven Act Case***

An FN case shall never be inactivated.

A Safe Haven Act case shall be considered closed when:

- a. The complaint is dismissed by the court because the court has not made the child a ward of the court placing the child under the care and supervision or custody of the Division,
- b. TPR complaint is filed for ALL non-severed children (See Safe Haven procedure in the FG section of this manual),
- c. Complaint is withdrawn by the Division,
- d. Case is transferred to another county.



## **NOTES TO FN**

**For issues of general application, see Section 1100.**

## **1700 FG: CASE PROCESSING STEPS FOR TERMINATION OF PARENTAL RIGHTS (GUARDIANSHIP) CASES**

### ***Jurisdiction (R. 5:1-2 and N.J.S.A. 30:4C-15)***

The Superior Court, Chancery Division, Family Part has jurisdiction in termination of parental rights (TPR) cases.

### ***Venue***

Rule 5:9-1 provides that venue in an action by an approved agency for the termination of parental rights is laid in the county in which the plaintiff agency has its principal office in New Jersey, except:

1. If the parents of a child were granted a divorce from each other in New Jersey or if there has been a prior custody proceeding or order concerning the child and the court did not previously award custody of the child to an approved agency, venue shall be in the same county where the divorce occurred.
2. Venue in an involuntary termination case is laid in the county where the child resides.

N.J.S.A. 30:4C-15 provides that venue is "in the county where such child may be" at the time of the filing of the petition (complaint). In practice, in cases where the Division of Child Protection and Permanency (Division) is the plaintiff seeking to terminate parental rights, venue is in the county wherein the Division's local office handling that child's case is located.

### ***Termination of Parental Rights***

TPR cases are also referred to as "Guardianship" cases because once parental rights are terminated, guardianship of the child(ren) is granted to the plaintiff, the Division.

TPR complaints are filed by the Division. Thus, this Manual will primarily discuss these cases.

TPR complaints are generally filed after the Division has already filed abuse or neglect (FN docket) or "Child Protective Services" litigation alleging that the child has been neglected or abused and efforts to reunify the family have failed. TPR is a prerequisite in order for a child to be adopted.

The balancing of parental rights with the child's right to permanency, safety and security requires aggressive case processing and management toward prompt court resolution. Federal and state legislation requires that when a child has been in placement for 15 of the last 22 months, the Division must file a TPR complaint. N.J.S.A. 30:4C-15. While recognizing that there are certain specific legal exceptions to this standard, the court must be vigilant in assuring movement of these cases in compliance with State and federal mandates. The CIC team should ensure that court reviews continue to be scheduled during the FG litigation. TPR cases should be given

calendar priority and should be closely monitored by the CIC team to assure prompt conclusion. Whenever possible, the judge who presided over the FN matter should hear the TPR (FG docket) case.

### ***Permanency Hearings***

The requirement for the court to conduct permanency hearings does not cease once the TPR complaint has been filed. These hearings shall continue to be held annually (i.e., within 365 days of the last permanency hearing) until the child achieves permanency. See Assignment Judge memorandum, "Children-in-Court -- Permanency Hearings – Measurement of Backlog," dated February 2, 2006. Any court hearing can serve as a permanency hearing, as long as proper notice has been provided and the resulting court order includes the court's determinations on the permanency issues. The recording tape reference of the entire hearing is included in the form of order unless CourtSmart has been implemented in the courtroom.

CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

Resource families will not be provided with notice of the FN order to show cause hearing, the FN fact-finding hearing, FN Title 30 summary hearings, FG pre-trial conference or the FG trial.

### ***1701 Filing of the Complaint (N.J.S.A. 30:4C-15) - Day 1***

An FG complaint or petition may be filed by the Deputy Attorney General (DAG) for the Division, by any person interested in the child, or by any association or approved agency interested in the child. However, a complaint filed by anyone other than the Division may only be filed pursuant to paragraphs (a) and (f) of N.J.S.A. 30:4C-15 and the plaintiff must serve the Division with a copy of the complaint.

The complaint should be filed within 45 days of the permanency hearing whenever the goal of TPR was approved. A court hearing should be scheduled to monitor the Division's compliance with this requirement. At the first FG proceeding or otherwise directed by the judge, the FN litigation is terminated as to the child(ren) for whom the TPR complaint has been filed.

The complaint is accompanied by an Order to Show Cause (OSC). This order is reviewed, signed and dated by the judge after the judge's review of the TPR complaint. The OSC is made returnable on a date in the future, which is calculated to allow time for the Division to locate and serve the child(ren)'s parents. Ideally, the return date on the OSC should not be more than 30 days after the date of the filing of the TPR complaint. Both the complaint and the OSC are stamped "Filed" on the same date and these documents are entered into FACTS by the CIC team.

The CIC team retains the original and one copy of the complaint and OSC for each defendant in the case. The copies will later be sent to the Office of Parental Representation of the Public Defender's Office (OPR) along with each defendant's completed Application for Assignment of Counsel.

It is the Division's responsibility to submit the original and sufficient copies of the complaint so that the court may retain the number of copies it requires and so that the Division will be able to receive the number of conformed documents it may require.

The Division must also arrange service on the defendants pursuant to R. 5:12-2(a) and shall serve a copy of the complaint and OSC on the Law Guardian (LG) in the case. The LG is usually the same attorney who represented the child(ren) in the FN case. When the Division serves the defendants with the pleadings, it should also furnish the defendants with an Application for Assignment of Counsel if not previously done. The Application for Assignment of Counsel should be completed, signed by the defendants and returned to court for processing by the CIC team. If the defendant is found to be indigent by the judge or staff, a copy of the Application for Assignment of Counsel shall be sent to the OPR along with a copy of the complaint and OSC so that OPR may assign defense counsel to represent each indigent defendant. Defendants who are not indigent may retain private counsel to represent them in the TPR litigation.

The court, in its discretion, may enter a scheduling order, which establishes dates for completing various tasks.<sup>8</sup>

### ***1702 Return on the Order to Show Cause -- Day 30 (Day 35 if parents are out of state)***

The return on the OSC hearing shall be held 15-30 days from signing the OSC. Pursuant to R. 5:12-2(a), defendants should be properly served. Time may be extended for out of state service.

The judge monitors these cases to ensure that the Division searches for the parents. While the Division will search for parents, the CIC team should also utilize its resources, if available, to locate missing parents (FACTS, PROMIS GAVEL and inmate locator service of the Department of Corrections).

Affidavits of diligent inquiry shall be required where a party has not been personally served. The court shall make provision for such substituted service as may be appropriate.

At this hearing, the court will order the Division to provide a copy of the child's birth certificate and social security card to the court. The early provision of those documents will ensure that an adoption is not delayed for lack of this documentation when an adoption is ready to be finalized.

The purpose of the hearing on the return on the OSC is to determine whether cause has been shown for the relief requested and to establish a comprehensive case management plan to resolve the case. A signed copy of the order is to be distributed to all parties before they leave court.

If the defendants appear and are not represented, court staff will provide an Application for Assignment of Counsel (CN 11727) for completion. If a defendant is indigent, staff should follow procedures as indicated above, so that counsel will be assigned by OPR. If a defendant is not indigent, the court will advise the defendant of the right to retain private counsel. The court

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<sup>8</sup> A model Guardianship Scheduling Order (CN 11735) may be used by the court to set forth the schedule of tasks or events to be followed by the parties.

should also ascertain the defendants' current addresses.

If the defendants fail to appear without good cause after having been served, the court should enter a default and schedule a proof hearing<sup>9</sup>. A copy of the order scheduling the proof hearing shall be mailed to the parents and be given to all counsel. A decision should be rendered the same day as the proof hearing. If, at this time, only one parent is defaulted, the FG Multipurpose Order is used to document the default. The FG Judgment of Guardianship (CN 10265) should be used only to document the disposition of all defendants in the case. The FG Judgment is used at the end of the FG case. The presence of the defense attorney without the client does not constitute an appearance of the litigant.

The CIC team will update FACTS, distribute court orders, and schedule the case. Copies of orders shall be mailed to any defendant or attorney who failed to appear at the hearing.

CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

Resource families will not be provided with notice of the FN order to show cause hearing, the FN fact-finding hearing, FN Title 30 summary hearings, FG pre-trial conference or the FG trial.

In contested cases, the court will advise the DAG and parents' attorneys to complete evaluations before the next court hearing, the case management conference. Interim hearings may be scheduled to monitor compliance with this requirement. Defense counsel should be instructed not to await the completion of the Division's evaluations before completing their own.

The case also may be scheduled for mediation.

## **1703 Voluntary Surrenders (N.J.S.A. 9:2-17)**

### ***General Surrender***

Parental rights can be surrendered voluntarily, resulting in a court order terminating parental rights signed by the judge. N.J.S.A. 9:3-41. When a defendant agrees to a general surrender, a caregiver is not named specifically and this surrender is irrevocable. A parent should surrender his or her parental rights under oath, on the record, subject to cross-examination. The Voluntary Surrender of Parental Rights Form (CN 10983) is used in conjunction with the order documenting the surrender (CN 10264).

### ***Identified Surrender***

Parental rights can be surrendered voluntarily, resulting in a court order terminating parental rights signed by the judge. A second form of voluntary surrender is the identified surrender

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<sup>9</sup> See R. 4:43-2(b). See also DYFS v. L.H., 340 N.J. Super. 617 (App. Div. 2001) (plenary proof hearing is required when entering a default to terminate parental rights); In re Guardianship of N.J., 340 N.J. Super. 558 (App. Div. 2001) (trial court was permitted to conduct proof hearing based on documentary evidence).

whereby a parent surrenders his or her parental rights, identifying a specific person(s) as the prospective adoptive parent(s). The Voluntary Surrender of Parental Rights Form is used in conjunction with the order documenting the surrender (CN 10264). If the adoption by the identified person cannot be made final for any reason, this surrender is void, and the court should expect the Division to present a new plan to the court within five days under the FC (child placement review) docket or FG docket. If a new plan is not provided to the court, then a summary hearing must be scheduled as soon as possible to address this issue.

***Surrender or Termination of One Parent; Rights of Other Parent (N.J.S.A. 9:2-15)***

Surrender of custody by or termination of the parental rights of one parent shall not affect the rights of the other parent; nor may one parent act as the agent or representative of the other parent.

***1704 Safe Haven Cases***

If under the FN docket, the court determined that the Safe Haven Act applies and that reasonable efforts to reunify the child with the parent(s) are not required, the Division shall file a complaint for guardianship terminating parental rights under the FG docket in accordance with N.J.S.A. 30:4C-15.1(b)(3) and N.J.A.C. 3A:18-1.10. A termination of parental rights (TPR) trial or proof hearing will be scheduled within 30 days of the Division's filing for TPR. The court will render a decision on the date the TPR is heard, if possible, but no later than 14 days after the trial/proof hearing.

***1705 Case Management Conference(s) - Day 60-90***

The court shall continue monitoring the timely movement of the case to resolution, ensuring that all needed evaluations have been completed. Thereafter, the court shall establish a date for exchange of discovery and witness lists. This information and the date of the next scheduled court event will be included in the order. A signed copy of the order is to be distributed to the parents and counsel before they leave court.

If a defendant is not present after having been personally served, a default may be entered.

If the parents' attorneys are not prepared with names and dates for expert evaluations, they should be instructed to do so by a certain date and the CIC team shall follow up to confirm that this has occurred. Efforts shall be made in every case to schedule evaluations so that adjournments of the trial date will not be necessary.

The court will order the Division to conduct a child abuse record information (CARI) check and other name checks (Promis/Gavel for criminal matters, domestic violence central registry (DVCR) and Automated Complaint System (ACS) for municipal matters) of adults in the resource home at this time. These searches may identify barriers to timely permanency and provide the Division sufficient time to address any issues identified through these searches. The CIC Document Search Engine, the application that facilitates name checks of Judiciary systems (Promis-Gavel, DVCR and ACS), has been implemented in all Division local offices (LOs).

The CIC team will update FACTS, enter the order, schedule the case, track court receipt of needed reports and/or evaluations, and conduct follow-up on outstanding items.

CIC staff must provide the following to the resource family: Notice of this proceeding, the Resource Family Information Form, and *A Guide to Resource Parents*. Resource family members who come to court will have a right to be heard.

Resource families will not be provided with notice of the FN order to show cause hearing, the FN fact-finding hearing, FN Title 30 summary hearings, FG pre-trial conference or the FG trial.

### **1706 Pre-Trial Conference - Day 120**

The primary purpose of the Pre-Trial Conference is to ensure that the trial can begin as scheduled. It should be held no later than 30 days before the trial date. The judge will assess whether trial preparations are proceeding as arranged, whether witness lists have been provided and discovery has been exchanged. The judge will also review whether alternatives such as relative resources and identified surrenders have been fully considered by counsel.

### **1707 Trial - Day 150**

The purpose of the trial is to make a final determination concerning the termination of parental rights. Because TPR cases should be given priority, the court should hold continuous trial dates until completion as much as possible. Efforts should be made to avoid trial interruptions.

No adjournment of trial shall be granted without good cause shown, with a new trial date immediately provided by the court and set forth in the Case Management Order.

The dates of trial should be recorded in the final order and the log sheets should be kept on file.

### **1708 Decision upon Conclusion of the Trial - Day 180**

The decision by the court, whether written or verbal, should be rendered at the conclusion of the trial, or no later than 14 days after the trial concludes. If a decision is not rendered immediately following conclusion of the trial, this is a reserved decision. The date and time for delivery of the written or bench opinion shall be set forth in a FG Multipurpose Order (CN 10264). A standard form of FG Judgment (CN 10265) should be signed by the judge on the day of the decision. If TPR is ordered, the judge awards guardianship of the child to the Division, and the FG case is closed. Note: The Advisory Notice for Parents and Counsel When Parental Rights are Terminated Form must be attached to the Judgment of Guardianship. See also Assignment Judge memorandum, "Family -- Terminating Child Support When the Court Terminates Parental Rights," dated February 24, 2010.

The court will confirm that the child's birth certificate and social security card have been submitted before entering the judgment terminating parental rights. Failure to obtain a physical social security card for the child should not be considered a barrier to the Division's signing the

consent to adopt the child. In those cases in which the card has not been obtained, if a child has a valid social security number and birth certificate, the court will order the Division to sign and forward its adoption consent to the attorney retained to represent the resource parents for the adoption. Provided that there are no other barriers to finalizing the adoption, the Division must finalize consent for the adoption and forward it to the attorney. When the Division sends its consent to adopt to the attorney retained to represent the resource parents for the adoption, the Division attaches to the consent a letter of transmittal. The court will order the Division to file a copy of the transmittal letter with the court, and that the submission must include the date that the Division mailed the consent to the adoption attorney. Upon receipt of a copy of the letter, court staff will place that document in the court file tracking the child's Division placement (FC docket case file). The judge will address the matter if the letter is not in the file at the first post-termination review.

If termination is not ordered, the FG case is closed. The FN case should be reopened for continued supervision by the court. The Division should provide an alternate plan, which shall be considered at a permanency hearing within 30 days.

The Family Division's jurisdiction over the case and active involvement in the case shall continue if a child continues in out of home placement until permanency is achieved. Until that goal is reached, the FC case will remain open and the child's case will be reviewed by the court at periodic post-termination summary hearings. The court shall hold summary hearings at least every 90 days, or less frequently in the judge's discretion until such time as permanency has been achieved. As long as the child remains in placement and until permanency is achieved, permanency hearings shall be held at least annually (within 365 days of the last permanency hearing) under the FC docket.

### ***1709 Closing an FG Case***

An FG case must never be inactivated. A termination of parental rights (FG) case shall be considered closed when:

- termination was granted, entered by default after a proof hearing,
- termination was granted, entered by general surrender,
- termination was granted, entered by identified surrender,
- termination was granted, entered by trial determination,
- termination was denied, entered by trial determination,
- the case was amended to kinship legal guardianship, KLG entered,
- the case was dismissed due to the complaint being withdrawn,
- the case was transferred to another county, or
- the case was transferred to another state.



## **NOTES TO FG**

**For issues of general application, see Section 1100.**

### ***Note 1 FG: Statistical Measures for FG Cases***

1. FG permanency hearing Order within 365 days of date of placement or date of last permanency hearing (entry of the following codes will update the FC case in FACTS):
  - Y = Yes - permanency plan approved
  - N = No - permanency plan was not approved (time continues to run) - The court shall compel the Division to submit a new plan, and a permanency hearing shall be held within 30 days.
  - Z = Barrier to approving permanency plan (time continues to run) - The court shall compel the Division to submit a new plan, and a permanency hearing shall be held within 30 days.

### ***Note 2 FG: Expediting TPR Appeals***

See Administrative Directive #18-17 for detailed procedures on TPR appeals.

## **1800 FC / FA: POST-TERMINATION COURT REVIEW PROCESS IN ADOPTION (Directive #16-17)**

After the court has terminated a parent's rights, the court, not the CPR board, will oversee the child's placement until the child is adopted or has obtained another permanent placement. The Adoption and Safe Families Act (ASFA) requires annual permanency hearings, even when an adoption complaint has been filed.

Following the completion of a TPR case where a Judgment of Guardianship has been issued, the court shall set a return date within 90 days to review the status of each child. When adoption is the goal, the purpose of the summary hearing is to track the status of the filing of an adoption complaint. Subsequent summary hearings before the court shall be held at least every 90 days, or less frequently in the judge's discretion until such time as the adoption complaint is filed.

In post-termination of parental rights cases where there is still an open child placement case under the FC docket, the court has the authority to compel the Division to ensure finalization of the adoption. This includes oversight regarding the provision of certain documents to the adoption attorney in the consent that will be essential to filing the adoption complaint. Therefore, at the court's first review after it has terminated parental rights under the FG docket, the court will order the Division to complete and send its consent packet to the adoption attorney. The court's order will provide that the Division's adoption consent packet transmitted to the adoption attorney must contain, at a minimum, the following: all relevant documents set forth in R. 5:10-3, the agency report (also known as the court report), the Judgment of Guardianship (FG Judgment or a surrender and supporting documentation), the Adoption Agency Background Checklist and Certification Form required pursuant to R. 5:10-8, the results of the state and federal fingerprint check (valid one year from filing the adoption complaint), the Division's waivers (if applicable) and criminal history waivers (if applicable), appeal status if the child is legally free pursuant to an FG Judgment, attorney transmittal letter, and long form birth certificate.

For those children whose case goal is no longer adoption, the court shall schedule a summary hearing within 90 days. The focus of the summary hearing shall be on eliminating barriers to permanency. Subsequent summary hearings before the court shall be held at least every 90 days, or less frequently in the judge's discretion until such time as permanency has been achieved. Notice of this hearing shall be provided to the resource parent. The Deputy Attorney General and Law Guardian are required to be present for the hearings. A Court Appointed Special Advocate (CASA) volunteer, if assigned, shall provide a report to the court and counsel at least one week before the hearing and may attend the hearing. The child also may attend the hearings at the court's discretion.

## **1900 ADOPTION**

### ***General***

Adoption is a statutorily created relationship. The statutes provide certain specific procedures to be followed and indicate that they shall be liberally construed in the best interests of children.

Adoption creates the same relationship as that of birth parents and children, which include those associated legal rights, privileges and responsibilities. These processes are irrevocable in the absence of fraud or duress.

For purposes of this section "parent" means a biological parent or parents, including the birth father of a child born out of wedlock who has acknowledged the child or to whom the court has ordered notice to be given, or a parent or parents by adoption.

Adoptions generally fall into three general categories:

- approved agency adoptions, which include placements by the Division of Child Protection and Permanency (Division) and private adoption agencies
- private placement adoptions
- stepparent adoptions

There should be an established link between the County Surrogate and the CIC team in every county. Pursuant to R. 1:5-6, the Surrogate is the clerk to the Superior Court in matters of adoption.

### ***Who may adopt (N.J.S.A. 9:3-43)***

Any person may institute an action for adoption except that a married person may do so only with the written consent of the spouse or jointly with the spouse in the same action or if living separate and apart from the spouse.

A plaintiff, at the time of the institution of the action, shall have attained the age of 18 years and shall be at least 10 years older than the child to be adopted, except the court for good cause shown may waive either requirement and the waiver shall be recited in any judgment of adoption entered.

### ***Jurisdiction (R. 5:1-2 and N.J.S.A. 9:3-42)***

The Superior Court, Chancery Division, Family Part has jurisdiction in an action for adoption.

**Venue (R. 5:10-1 and N.J.S.A. 9:3-42)**

Venue in an action for adoption shall be in:

1. the county in which the prospective parent resides, or
2. the county where the child resided immediately prior to placement for adoption,
3. if the child is less than three months of age, the county in which the child was born, or
4. except, whenever the child to be adopted has been received into the home of a prospective parent from an approved agency, the action may be instituted in the Superior Court, Chancery Division, Family Part of any county in which the approved agency has an office.

**1901. Filing of the Complaint (R. 5:10-2, -3 and N.J.S.A. 9:3-44)**

Whenever a person received a child into her home for the purpose of adoption, other than from an approved agency, a complaint for adoption is to be filed within 45 days after receiving the child. If the person receiving the child has been approved previously for placement for adoption in accordance with provisions of N.J.S.A. 9:3-39.1, the person shall, immediately upon receiving the child, notify the approved agency which granted approval for receiving the child.

Each adoption complaint applies to one and only one adoptee.

Surrogate staff must review the contents of the adoption complaint to ensure that it complies with R. 5:10-3 and -4.

**1902. Post-Complaint Submissions (R. 5:10-5)**

Rule 5:10-5 states:

- (a) At least ten business days before a preliminary hearing the following shall be filed with the court:
- (1) For private stepparent adoptions and direct private placement adoptions, fingerprint and Division of Child Protection and Permanency name checks.
  - (2) Form of order upon completion of preliminary hearing.
  - (3) Proof of service on the biological or legal parent or parents or any of the following if not previously submitted:
    - (A) Termination of parental rights judgment;
    - (B) Parent's death certificate;
    - (C) Affidavit of diligent inquiry to locate the parent or parents;
    - (D) Surrender of parental rights to agency;
    - (E) Judicial surrender order;
    - (F) Denial of paternity form;

(G) Evidence that the biological father does not appear on the child's birth certificate, and he has not taken action pursuant to N.J.S.A. 9:3-45(b)(6);

(H) Proof of service of a notice of intent to place the child for adoption pursuant to N.J.S.A. 9:3-45(b)(3) with no objection having been filed;

(I) Affidavit executed by the placing parent that the parent cannot identify or refuses to identify the other biological or legal parent.

(b) At least ten business days before a final hearing, the following shall be filed with the court, unless previously submitted:

(1) A proposed judgment of adoption for each child being adopted.

(2) Final agency report or reports.

(3) Consent from agency for private agency placements.

(4) Proof of service or affidavit of inquiry on a biological or legal parent or parents in cases where the Division of Child Protection and Permanency did not place the child, if parental rights have not been previously terminated, or irrevocably surrendered in the case of an agency placement.

(5) An approved Interstate Compact for the Placement of Children request if applicable.

(6) Report of Adoption Form from Bureau of Vital Statistics. For children born outside of New Jersey, the plaintiff or plaintiff's attorney is responsible for obtaining the amended birth certificate.

(7) Check payable to "Treasurer, State of New Jersey" if the child was born in New Jersey or if the action seeks a foreign readoption or an adoption of a child born in a foreign country.

(8) For adoptions in which a foreign country conveyed guardianship or custody for the purpose of adoption in the United States:

(A) Post-placement reports from the approved adoption agency if required by the court,

(B) The final court report of the approved New Jersey adoption agency supervising the placement, and

(C) The final consent of adoption from the approved New Jersey adoption agency supervising the placement.

(c) If a final hearing is waived in a non-agency private adoption pursuant to N.J.S.A. 9:3-48(c)(4), the documents required in paragraph (b) must be provided to the court at least ten business days before the preliminary hearing.

(d) For adoptions in which a foreign country conveyed guardianship or custody for the purpose of adoption in the United States:

(1) If an approved New Jersey adoption agency is supervising the placement, then the court rules relating to agency adoption shall apply.

(2) If the child is placed directly with the plaintiffs for purposes of a private adoption in the United States, then the court rules relating to a direct private placement adoption shall apply.

Note: New Rule 5:10-5 adopted (and former Rule 5:10-5 redesignated as Rule 5:10-8) July 21, 2011 to be effective September 1, 2011; subparagraphs (a)(1) and (b)(4) amended July 9, 2013 to be effective September 1, 2013.

### ***1903. Preliminary Hearing (R. 5:10-8 and N.J.S.A. 9:3-48)***

For matters where a child is placed in a home not by an approved adoption agency, a preliminary hearing shall be scheduled 60 to 90 days from the complaint filing date. "The preliminary hearing shall be in camera and shall have for its purpose the determination of the circumstances under which the child was relinquished by his parents and received into the home of the plaintiff, the status of the parental rights of the parents, the fitness of the child for adoption and the fitness of the plaintiff to adopt the child and to provide a suitable home." N.J.S.A. 9:3-48(b).

The medical histories of the biological parents shall also be submitted to the court and shall be retained in the court's file. If no medical history is available or if the biological parent or parents refuse to complete one, the approved agency shall note that in its report to the court.

#### ***Background Checklist and Certification by Approved Agency***

The approved agency shall provide to the court a Background Checklist and Certification Form (CN 11514), which shall include criminal history record information and child abuse record information. If the approved agency discovers a pattern of arrests or domestic violence restraining orders against the plaintiffs or other household members over the age of 18 that may impact approval of the home, the form submitted to the court shall include this information. The agency shall certify that, considering all criminal, domestic violence or child abuse records known to the agency, it is in the best interest of the child that the adoption be finalized.

#### ***Order Upon Preliminary Hearing (R. 5:10-9)***

If upon completion of a preliminary hearing the court is satisfied to proceed with the adoption, an order shall be entered reciting the findings required by statute as a basis therefor, fixing a day for final hearing, appointing an approved agency as next friend, unless such appointment shall be dispensed with as provided by statute, and declaring that, from the date of such order:

- (a) The rights, duties, privileges and relations theretofore existing between the child and each biological or legal parent or other custodian or guardian theretofore appointed for such child shall be in all respects at an end;
- (b) The child may be known by the name proposed in the complaint, except that the birth record shall not be amended pending entry of judgment;
- (c) The plaintiff or the plaintiffs may act in their own names in providing for the health and education of the child; and
- (d) The plaintiff or plaintiffs shall not remove the child from this State, other than for vacations or temporary visits, except upon order of the court.

An order entered pursuant to this rule shall be deemed final for the purposes of appeal.

#### **1904. Final Hearing (R. 5:10-11)**

In each action in which no order is entered for a preliminary hearing, the clerk of the court shall cause at least 5 days notice of the time and place of the final hearing, together with a copy of the complaint, to be mailed to the approved agency which placed or approved the placement of the child in the home of the plaintiff and which consented to the adoption. Such agency shall file a written report at the final hearing as to all circumstances of the case which will enable the court to make a proper decision in the matter.

#### **1905. Judgment of Adoption and Closing FC Case (R. 5:10-12)**

A separate Judgment of Adoption shall be entered for each adoptee. An original and copy of the judgment shall be filed with the court.

#### ***Closing of Child Placement Case (FC docket)***

When an adoption case is sealed and there is a related child placement case (FC docket), the child placement case shall be closed to reflect the adoption, but only when the Division provides the court with a Notice of Change. See also Assignment Judge memorandum, "Family – (1) Protocol for Intercounty Transfer of CIC Cases; (2) Protocol for FACTS Entry of Information on Child Placement Matter Based on the Court's Order." dated June 1, 2011. If the adoption occurs out of state, the Division shall provide the court with both the judgment of adoption and the Notice of Change in order to close the child placement case. These documents shall be provided to the court presiding over the child placement case no later than 30 days after the adoption judgment is entered.

#### **1906. Indian Child Welfare Act (R. 5:10-6)**

Section 1101 of this manual and R. 5:10-6 set forth the procedures to determine whether the Indian Child Welfare Act (ICWA) is applicable to a child placed for adoption.

#### **1907. Judicial Surrender of Parental Rights (R. 5:10-7 and N.J.S.A. 9:3-3)**

(a) Procedure. A biological or legal parent may surrender his or her parental rights before the court. Upon filing of a written request for surrender by a biological or legal parent or the biological or legal parent's attorney, a hearing shall be scheduled on an expedited basis by the Surrogate in the county where the biological or legal parent or parents reside, if a resident of

New Jersey; or in the county where the child was born if born in New Jersey; or in the county where the adoptive parents reside; or where the complaint for adoption is filed.

(b) Contents of Request for Judicial Surrender. The written request shall contain:

(1) Certification of biological or legal parents consenting to adoption;

(2) Good faith representation that the child is not a member of or eligible to be a member of a federally recognized Indian tribe;

(3) Dates of availability to appear for a hearing within seven days of filing; and

(4) Proposed form of order.

(c) Hearing. The court shall conduct a closed hearing on the record within seven days of filing to determine if the surrender is voluntary. Surrendering parent or parents shall be advised that (1) the hearing is to surrender parental rights; (2) the hearing is to permanently end the relationship and all contact between parent and child; (3) the action is a relinquishment and termination of parental rights and consent on the part of the biological or legal parent to adoption; and (4) no further notice of adoption proceedings shall be provided to the biological or legal parent if the surrender is accepted by the court.

(d) Surrenders Pursuant to N.J.S.A. 9:3-41. This rule shall not prohibit approved adoption agencies or the Division of Child Protection and Permanency from accepting surrenders of parental rights pursuant to N.J.S.A. 9:3-41.



## 2000 MEDIATION

Administrative Directive #15-17 sets forth the policies and procedures to implement child welfare mediation.

### *SCOPE*

Child Welfare Mediation is an alternative approach to the court process used to resolve identified issues in child welfare cases. After making its fact-finding determinations, the court decides whether this non-adversarial approach will more effectively dispose of the case or will remove obstacles to the achievement of statutory goals and requirements. Attendance is court-ordered and mandatory, but agreements entered into by the participants are voluntary.

A trained, neutral mediator structures and guides the discussion. The mediator helps the participants clarify issues and generate possible solutions. Mediation provides an opportunity for participants to be heard and to understand the roles of the other participants in the child welfare process. Participants must make a good faith effort to discuss and resolve issues in mediation.

#### *1. CASE SELECTION*

##### *a. Case Screening*

Any interested party involved in an FN (Abuse and Neglect), FG (Guardianship), FC (Child Placement Review) or FL (Kinship Legal Guardianship) case may request mediation. The following cases **will not be considered appropriate for mediation and will be screened out**:

- Cases with an active domestic violence (DV) court order (See c. below for policy on dismissed/not active DV cases.)
- Cases in which a party is incompetent (e.g., person is intoxicated or has severe psychological/mental impairment)

The mediator may subsequently decide that a case is not appropriate for mediation if: (1) domestic violence issues become known; or (2) a party is suspected of being under the influence of alcohol or drugs at the time of the session; or (3) some other concern becomes known. For procedures on the mediator's role under these circumstances, see *The Session and Problems Arising During the Mediation* subsection of THE MEDIATION SESSION section below.

##### *b. Screening For Domestic Violence Cases*

If a case is being considered for mediation, court staff will screen parties to the case on FACTS for any active domestic violence orders. If one party has an active temporary restraining order (TRO) or an active final restraining order (FRO) as to another party, **the case is not appropriate for mediation.**

### ***c. Policy on Domestic Violence Cases***

If there is no active restraining order, but the parties have a DV history, court staff should advise the judge. Based on the history, the judge may decide that the case is inappropriate for mediation. If the case is being recommended for mediation during a Child Placement Review (CPR) board hearing, the CPR Coordinator should bring the DV history to the board's attention. The board may then decide not to make the recommendation.

If there is a prior DV history (but no active restraining order) and the case is referred to mediation, the mediator should review the DV history on FACTS, as well as the DV file (if available), prior to the initial mediation session. If there has been a previous DV filing between the parties, and the court file is unavailable, the mediator shall caucus with the appropriate participants and their attorneys prior to the start of the mediation session to determine whether it is suitable to proceed with mediation.

The mediator may conference any questionable cases with the judge. The judge should decide whether mediation is appropriate. If the judge decides to cancel mediation prior to the scheduled mediation date, court staff or the mediator (depending on county) will notify the participants, complete a Child Welfare Mediation Notice regarding the cancellation, and mail it to all participants.

## **2. PARTICIPANTS**

### ***a. Court-ordered Participants***

**Parties:** Parents, parents' attorneys, Law Guardian, Division of Child Protection and Permanency (Division) caseworker and/or supervisor and Deputy Attorney General (DAG). Participants must have thorough knowledge of the case and the authority to consent to mediation agreement. *No court-ordered participant will be excused from attending mediation.*

**Others if ordered by the court:** For example Court Appointed Special Advocate (CASA) volunteer, resource family, therapist, teacher, clergy, or support person (e.g., friend or family member). Children may participate if ordered by the judge or at the mediator's discretion unless otherwise prohibited by the court. Resource family members' attendance is mandatory if ordered by the court to attend the mediation session. The mediator has discretion to conduct part of the session in the absence of the resource family to address issues not relevant to the resource family. *No court-ordered participant will be excused from attending mediation.*

### ***b. Discretionary Participants***

Any other person who wishes to participate in mediation may do so with the unanimous agreement of all court-ordered participants.

### 3. ***REFERRALS/SCHEDULING***

Cases can be referred as follows: at a court hearing, by the CPR board, or by an out-of-court request (writing to the judge who is hearing the case or contacting the Children in Court (CIC) team). In child abuse or neglect matters (FN docket), the fact-finding or stipulation must be completed before mediation can be scheduled. Attorneys must be appointed to represent the parties. The court decides whether a case is appropriate for mediation and determines who must attend the mediation session.

#### ***a. Cases Ordered to Mediation at a Court Hearing***

If the judge orders mediation while the participants are in court, court staff will look on the mediator's calendar and will choose the date and time of the mediation in consultation with the participants. Court staff shall notify the mediator of the selected date immediately to avoid conflicts in scheduling. The FN/FG/FC/FL Order shall specify the date, time and location of the mediation session and the individuals ordered to attend.

Once mediation has been ordered, court staff or the mediator (depending on county) shall:

- 1) Complete the Child Welfare Mediation Referral Form while all participants are in the courtroom. Court staff must obtain name, address and telephone number information of all court-ordered participants. This information is essential for proper notice to participants. Precaution must be taken to ensure that the resource parents' information is not viewed by anyone other than the Division, the DAG and the Law Guardian.
- 2) Distribute a copy of the Child Welfare Mediation Brochure to parents.
- 3) Distribute a copy of the Child Welfare Mediation Brochure to resources families (if ordered to participate in the session).
- 4) Prepare a Writ/Notice to Produce (if applicable), Request for Security letter (if applicable) and Interpreter Request Form (if applicable). If a party is incarcerated, appropriate staff should work with the County Sheriff's Department to arrange for transportation and onsite security.
- 5) Prepare and send a copy of the Child Welfare Mediation Notice to all individuals ordered to mediation. **\*\*\*Do Not Use Resource Families' names on the Notice\*\*\***. Include a copy of the *Child Welfare Mediation* brochure to parents and resource families.
- 6) Prepare the mediation packet using the Child Welfare Mediation Checklist. Copies of the following documents shall be provided to the mediator at least one week prior to the scheduled session: Child Welfare Mediation Checklist, FN/FG/FC/FL Order referring matter to mediation, last substantive order (if different from order referring to mediation), Child Welfare Mediation Referral

Form, Child Welfare Mediation Notice, FN Complaint (and FG Complaint or FL Petition), Writ/Notice to Produce (if applicable), Request for Security letter (if applicable), and Interpreter Request form (if applicable).

***b. Cases Referred to Mediation by Out-of-Court Request***

If a request for mediation is made out of court (including CPRB recommendations), court staff or the mediator (depending on county) shall:

- 1) Contact the judge for approval to mediate the case.
- 2) If the judge approves, schedule the mediation session. The person responsible for scheduling the mediation shall contact the attorneys to select a date. If scheduled by court staff, court staff shall notify the mediator of the selected date immediately to avoid scheduling conflicts. Since Mediated Consent Orders are to be reviewed by the court at the conclusion of the mediation session, court staff or the mediator should ensure that a CIC judge is available on the day of mediation.
- 3) Complete the Child Welfare Mediation Referral Order for the judge's signature.
- 4) Complete the Child Welfare Mediation Referral Form. The Child Welfare Mediation Referral Form must include name, address and telephone number information of all court-ordered participants. This information is essential for proper notice to participants.
- 5) Prepare and send a copy of the Child Welfare Mediation Notice and the Child Welfare Mediation Referral Order to all individuals ordered to mediation. **\*\*\*Do Not Use Resource Families' names on the Notice\*\*\***. Include a copy of the Child Welfare Mediation Brochure to parents and resource families.
- 6) Prepare a Writ/Notice to Produce (if applicable), Request for Security letter (if applicable) and Interpreter Request Form (if applicable). If a party is incarcerated, appropriate staff should work with the County Sheriff's Department to arrange for transportation and onsite security.
- 7) Prepare the mediation packet using the Child Welfare Mediation Checklist. Copies of the following documents shall be provided to the mediator at least one week prior to the scheduled session: Child Welfare Mediation Checklist, Child Welfare Mediation Referral Order, last substantive order, Child Welfare Mediation Referral Form, Child Welfare Mediation Notice, FN Complaint (and FG Complaint or FL Petition), Writ/Notice to Produce (if applicable), Request for Security letter (if applicable), and Interpreter Request form (if applicable).

**c. *Failure of a Party to be Notified***

If a Child Welfare Mediation Notice is returned to the court, court staff or the mediator (depending on county) shall contact the parents' attorneys or the Division's case worker and/or supervisor to obtain a current address and resend the notice immediately. If any notice problems exist, the mediator should be notified immediately.

**d. *Mediator's Calendar***

The mediator will prepare a monthly calendar, which will indicate the dates and times available for mediation. Upon identifying a potential date for a mediation session, court staff shall inform the mediator as soon as possible so that the calendar may be updated to reflect the newly scheduled mediation. Ongoing communication between the mediator and staff is important so that the mediator's calendar is kept updated and accurate.

**e. *Interpreter Needed for Mediation***

If the mediation will require an interpreter, the appropriate staff will be responsible for completing the interpreter request procedures immediately. A copy of the Interpreter Request Form should be placed in the file and a copy should be provided to the mediator in the mediation packet. The request form should specify that the length of time during which the interpreter is needed may be up to 4 hours.

**4. *ADJOURNMENTS***

Court staff or the mediator (depending on county) shall handle requests for adjournments. The judge or his/her designee shall make the final decision regarding adjournment requests.

**5. *THE MEDIATION SESSION***

**a. *Priority***

Mediation sessions must be given the same priority as other court-ordered appearances. Judges cannot call attorneys out of mediation sessions to appear in court and attorneys will not be permitted to leave the session to attend other court appearances.

All participants ordered to mediation must attend the session and be authorized to make decisions in the case. The Division's representative who attends the session must have the authority to make decisions on behalf of the agency, enter into an agreement, and sign a Mediated Consent Order.

**b. *Location***

Security for the mediation participants should be provided as warranted. A telephone

with speaker should be in the mediation room.

**c. *Length of Mediation***

Sessions may last up to three to four hours. All participants should be available for no less than three hours.

**d. *Participants***

**1. Participants who fail to appear**

If a participant fails to appear, the mediator will discuss possible options with the individuals present to decide how to proceed. The length of time to wait for participants to appear will depend on county policy.

**2. Other individuals who wish to participate in mediation**

Any other person who wishes to participate in mediation may do so with the unanimous agreement of all court-ordered participants.

**3. Participation of Attorneys and the Division**

The attorneys and Division representatives are expected to arrive for the mediation session on time and be prepared to participate in the process. There **must** be a Division representative present who has the authority to make decisions on behalf of the Division and the authority to enter into and sign any agreement. If a caseworker does not have this authority, the supervisor (or someone with authority) **must** accompany the caseworker to the mediation.

**4. Children**

Children participate if ordered by the judge or at the mediator's discretion, unless otherwise prohibited by the court.

**e. *Initial Discussion***

The mediator describes the session, its ground rules, and explains the purpose of mediation and possible results.

**f. *Confidentiality Agreement***

Child welfare mediation is considered a private and confidential process. To ensure the confidentiality of the mediation process, each participant will be required to sign a Confidentiality Agreement (CN10743). At the beginning of the session, the mediator will read and explain the Confidentiality Agreement to the participants, and ask each participant to sign it. All participants must sign the Confidentiality Agreement before the mediation process can begin. The Confidentiality Agreement signed by the participants will be retained in the court's file.

If a participant refuses to sign the Confidentiality Agreement after discussion with the mediator and/or the participant's attorney, the mediator may terminate the mediation session or proceed with the mediation without the individual.

A copy of the Confidentiality Agreement may be provided upon request with the resource parents' names redacted if necessary.

***g. Caucusing***

A caucus is defined as a smaller meeting made up of selected participants in the mediation. A caucus is called when the mediator decides that it would be beneficial to meet alone with one or more of the participants. The mediator may call a caucus at any time during the mediation session or any party in the mediation may request a caucus. If a party requests a caucus, the mediator reserves the right to decide whether it is an appropriate time to break off into a caucus. Anything said in a caucus will be kept confidential unless otherwise requested by the participants in the caucus.

***h. The Session and Problems Arising During the Mediation***

The mediator asks the participants to identify the issues to be addressed and the procedural status of the case (e.g., trial date, permanency hearing date). The issues are set forth, clarified and discussed.

As previously indicated, cases with an active DV Restraining Order and cases in which a party is incompetent (e.g., person is intoxicated or has severe psychological/mental impairment) are not appropriate for mediation. In addition, it is possible that issues may arise during the mediation session that would make it inappropriate or dangerous to continue with the mediation.

The mediator should assess these circumstances on a case-by-case basis. The mediator may:

1. Caucus to determine the nature and extent of the problem; and/or
2. Terminate the mediation session; or
3. Excuse inappropriate participant(s) and proceed with the mediation without them.

Some examples of problems include: domestic violence; psychological problems/inability to comprehend; a new allegation of abuse or neglect; alcohol/drug use (participant is suspected of being under the influence during the mediation). Note: Evidence of domestic violence includes a participant's inability to participate effectively in the mediation as a result of another participant's power and control. The mediator may call a caucus to discuss these issues and assess the situation.

***i. Outcome of the Session***

**Agreement:** A Mediated Consent Order (CN 10744) is signed.

If the participants agree on all or some of the issues, a Mediated Consent Order is drafted and the participants review and sign the Mediated Consent Order. The Mediated Consent Order memorializes the agreement made by the participants during the mediation session. The mediator will prepare the agreement. All participants must sign the Consent Agreement at the conclusion of the session, thereby consenting to the form of order. The mediator will complete a proceeding status report after every mediation session.

Immediately following the mediation session, the participants must appear before the court to enter the Consent Agreement on the record. When the judge reviews the Consent Agreement, he/she may either approve or reject it. If the Consent Agreement is approved, all participants shall be provided with a copy of the Mediated Consent Order before they leave the courthouse. When the court approves and signs the Consent Agreement, it is a binding order of the court and is subject to court enforcement.

**Surrender of Parental Rights:** If a parent decides to surrender his/her parental rights, a Mediated Consent Order is not prepared. Instead, immediately following the mediation session, the participants must appear before the court. The mediator will indicate the surrender on the Child Welfare Mediation Case Status Report for the file and forward a copy to the judge.

**No Agreement:** If no agreement is reached, the mediator will complete the Child Welfare Mediation - Proceeding Status Result Report, retain a copy for his/her records, forward a copy to the judge, and forward the original to the file. An appearance before the court is not required unless previously ordered by the court.

***j. Scheduling Subsequent Mediations***

The court may order a subsequent mediation session or the parties may agree to attend another session. If the parties agree to another session, it shall be written into the Mediated Consent Order and scheduled by court staff or the mediator (depending on county). The mediator shall advise participants that the court process will move forward to ensure adherence to ASFA time lines.



## **2100 INTERSTATE PROCEDURES (Reserved)**

## 2200 APPELLATE PROCESS

*Note: This protocol was issued by the New Jersey Judiciary Appellate Division and has been reprinted here in its entirety.*

### ADMINISTRATIVE PROTOCOL FOR TERMINATION OF PARENTAL RIGHTS APPEALS

#### A. Docketing

The termination of parental rights (TPR) appeals are identifiable by the trial court docket number (FG docket) and are immediately earmarked for expedition.

#### B. Appellate Division Clerk's Office

1. **Transcript.** The notice of appeal must be accompanied, as in all appeals, with a Transcript Request Form. The Chief of Reporting Services has advised and will continue to remind transcribers that the transcript must be filed within 30 days of the request so the transcript may be distributed to the parties and the Clerk of the Appellate Court. The Deputy Clerk of Administrative Services is also the person monitoring compliance.

2. **Consolidation.** In the event of separate appeals by each parent, the appeals will be immediately consolidated by the Clerk's Office so that only one set of transcripts, one Attorney General's brief, and one Law Guardian's brief is necessary.

3. **Scheduling.** Immediately upon receipt of the transcripts, the Clerk's Office will issue a Scheduling Order providing for the following:

- Appellant's brief and appendix shall be filed within 45 days from receipt of transcripts;
- The respondent's answering brief shall be filed within 30 days from the date of filing and service of appellant's brief;
- If the Law Guardian is not the appellant, its brief shall be due when the respondent's brief is due. If the Law Guardian does not take the same position as the co-respondent, the co-respondent shall have seven days in which to reply to the Law Guardian's brief.
- The Scheduling Order will include a pre-calendared date six weeks from the date the last brief is due. The calendar assignments will be made by the calendaring unit of the Clerk's Office based on its customary criteria. These cases will be pre-calendared for summer calendars as well.

The Scheduling Order will encourage the parties to file a joint appendix.

4. **Electronic Communication.** The Presiding Judge for Administration has approved of certain electronic communications for filing in the Appellate Division Clerk's Office:

- Attorney assignment letters
- Brief deficiency letters from OPR
- Late notice of service letters
- Oral Argument Requests

The electronic communication shall be sent to the appropriate parties in the Office of Parental Representation, Office of the Law Guardian and Office of the Attorney General. The body of the email must include the Appellate Division docket number, trial court docket number and vicinage.

The subject of the email must include the Appellate Division docket number and initials of the assigned case manager. The Appellate Division Children in Court email address is:

AppellateCIC.mailbox@judiciary.state.nj.us

#### **C. Disposition**

Each panel is aware the disposition of these cases must be given priority and that in the normal course, the opinion will be transmitted to the Clerk's Office for filing within thirty days after the calendar date.

#### **D. Supervising Judge**

A judge of the Appellate Division will be assigned to monitor compliance by the attorneys of all of the foregoing time provisions. The Clerk's Office will provide regular reports to the supervising judge respecting non-compliance with the time requirements for filing briefs and appendices.

#### **E. Motions**

1. Motions for extensions will be submitted to the Supervising Judge forthwith upon filing and without answers. If necessary, the Supervising Judge can reach out to the adverse party. Absent extraordinary circumstances, extensions by motion will not be granted.

2. Motions not related to the merits of the appeal will not affect the briefing schedule.

#### **F. Sanctions**

The Supreme Court approved the use of sanctions against appellate counsel and their supervisors for failure to comply with court rules, court orders or Judicial policies. Imposition of sanctions

would be used, for example, if a party, without good cause, repeatedly fails to meet deadlines or to adhere to the Appellate Division's administrative protocol.