

(d) Custody/Parenting Disputes. Mental health experts who perform parenting/custody evaluations shall conduct strictly non-partisan evaluations to arrive at their view of the child's best interests, regardless of by whom they are engaged. They should consider and include reference to criteria set forth in N.J.S.A. 9:2-4, as well as any other information or factors they believe pertinent to each case. If the mental health professionals reach diverse views concerning the parenting/custody arrangement that is in the best interests of the children, the Court may direct them to confer in an attempt either to reach a resolution of all or a portion of the outstanding issues, or to make a common recommendation.

(e) ... (Redesignated)

(f) ... (Redesignated)

(g) ... (Redesignated)

(h) ... (Redesignated)

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

→ **NJSBA Position:** The NJSBA objects to the last sentence of paragraph (d) in the proposed rule amendment. We believe that the Rule change would be applied in a manner that would cause the Judiciary to transfer its decision making authority to experts against the wishes of the litigants or their attorneys. The application of the Rule would direct the experts to try to reach a common resolution of the issues or a common recommendation. Once that occurred, this information, under the Rule would be communicated to the Court as substantive evidence thereby additionally discrediting the expert reports submitted in anticipation of the trial. Thus, the attorney would be placed in an ethics bind by frustrating the attorney's duty to represent his or her client.

The NJSBA believes that in the absence of a rule change, the attorneys and the parties have ample opportunity to reach resolution of their case before trial. Before a custody trial commences, the parties are required to attend a parent education class. They are required to attend a custody mediation. The parents also have the opportunity to meet with their experts and their attorneys to discuss settlement and there is always a settlement conference with the Court. (For example, a settlement conference can take place during case management, after the Court interviews the child/children or as part of its own scheduling of the case). Moreover, the Court is not prevented from appointing its own expert at any time during the proceedings to try and reconcile the opinions of other experts.

PROPOSED RULES FOR PRACTICE 1993-04-09 TO DISCLOSE

Finally, we wish to point out that the parties always have the ability, with their consent, to have their experts confer to discuss settlement and/or reach common ground. A cold reading of this Rule change does not further any policy goals which further the interests of justice for the parties, or advance the best interests of the child.