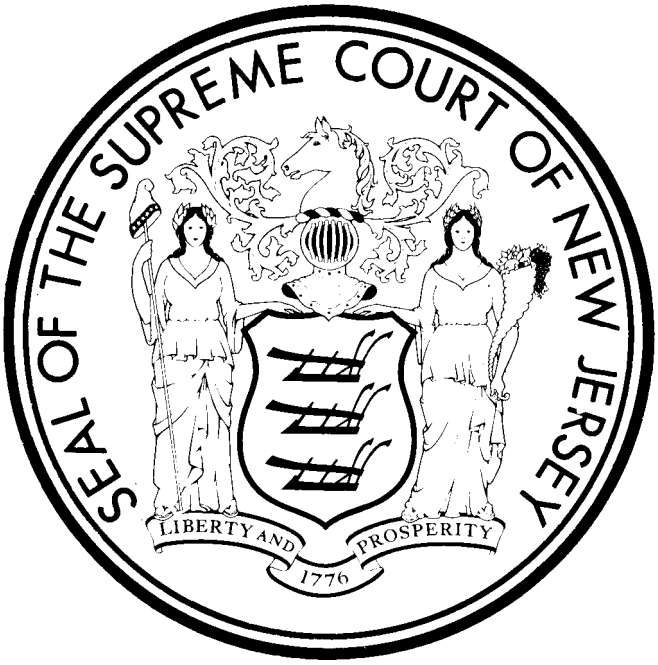
FAMILY PRACTICE COMMITTEE



2009-2011

FINAL REPORT

January 20, 2011

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I. Introduction

The Supreme Court Family Practice Committee ("Practice Committee") recommends that the Supreme Court adopt the proposed rule amendments contained in this report. Also in this report, the Practice Committee reviewed other issues, some requiring no rule changes and some where the Practice Committee makes non-rule recommendations.

Where rule changes are proposed, deleted text is bracketed [as such], and added text is underlined as such. No change to a paragraph of the rule is indicated by ". . . no change."

II. Proposed Rule Amendments for Adoption

A. Proposed Amendments to R. 1:1-2 (Construction and Relaxation; References to Marriage, Spouse and Related Terms), R. 5:1-4 (Differentiated Case Management in Civil Family Actions), R. 5:2-1 (Venue, Where Laid), R. 5:5-1 (Discovery), R. 5:5-2 (Family Case Information Statement), R. 5:5-6 (Participation in Mandatory Post-ESP Mediation or in a Mandatory Post-ESP Complementary Dispute Resolution Event), R. 5:5-9 (Procedures Concerning the Entry of Certain Final Judgments of Divorce, Dissolutions of Civil Unions, and Terminations of Domestic Partnerships), R. 5:6-7 (Separate maintenance), R. 5:7 (DIVORCE, DISSOLUTION OF CIVIL UNION, TERMINATION OF DOMESTIC PARTNERSHIP, NULLITY, SEPARATE MAINTENANCE), R. 5:7-1 (Venue), R. 5:7-3 (Corroboration), R. 5:7-7 (Delay in Prosecution: Order to Proceed), R. 5:7-8 (Bifurcation), R. 5:7-9 (Affidavit or Certification of Non-Military Service), R. 5:8B (Appointment Of Guardian Ad Litem), R. 5:9-1 (Venue) and R. 5:10-3 (Contents of Complaint)

- **Amendments to Part V Rules of Court pursuant to The Civil Union Statute and The Domestic Partnership Act, P.L.2006, c.103**

This issue and others relating to the enactment of The Civil Union Statute and The Domestic Partnership Act were referred to the Practice Committee for consideration. The Practice Committee reviewed Part V of the court rules in their entirety for purposes of determining what rule changes would be appropriate. The proposed amendments in this section of the report are technical changes.

R. 1:1-2

1:1-2. Construction and Relaxation; References to Marriage, Spouse and Related Terms

(a) … no change.

(b) As used in Part I through Part VIII of these rules and appendices, references to "marriage," "husband," "wife," "spouse," "family," "immediate family," "dependent," "next of kin," "widow," "widower," "widowed," or another word that in a specific context denotes a marital or spousal relationship shall include a civil union, as established by N.J.S.A. 37:1-28 to -36, and a [registered] domestic partnership, as established by N.J.S.A. 26:8A-1 to -13, and the persons in those relationships.

Note: Source -- R.R. 1:27A, 3:1-2, 3:11-9, 4:1-2, 4:121, 6:1-1 (second sentence), 6:1-2, 8:1-2. Amended June 20, 1979 to be effective July 1, 1979; amended July 5, 2000 to be effective September 5, 2000; caption amended, former text designated as paragraph (a), and new paragraph (b) adopted July 16, 2009 to be effective September 1, 2009; paragraph (b) amended _____ to be effective _____.

R. 5:1-4

5:1-4. Differentiated Case Management in Civil Family Actions

(a) Case Management Tracks; Standards for Assignment. Except for summary actions, every civil family action shall be assigned, subject to reassignment as provided by paragraph (c) of this rule, to one of the following tracks as follows:

(1) … no change.

(2) … no change.

(3) Expedited Track. The action shall be assigned to the expedited track if it appears that it can be promptly tried with minimal pretrial proceedings, including discovery. Subject to re-assignment as provided by paragraph (c) of this rule, a dissolution action shall be assigned to the expedited track if (A) there is no dispute as to either the income of the parties or the identifiable value of the marital assets and no issue of custody or parenting time has been raised; (B) the parties have [been married] a marital, domestic partnership or civil union relationship for less than five years and have no children; (C) the parties have entered into a property settlement agreement; or (D) the action is uncontested.

(4) … no change.

(b) . . . no change.

(c) . . . no change.

Note: Adopted January 21, 1999 to be effective April 5, 1999; paragraph (b) amended August 1, 2006 to be effective September 1, 2006; subparagraph (a)(3) amended _____ to be effective _____.

R. 5:2-1

5:2-1. Venue, Where Laid

Venue in family actions shall be laid in accordance with the applicable provisions of R. 3:14-1 and R. 4:3-2 except as follows:

(a)

(1) In actions primarily involving the support or parentage of a child (except actions in which the issue of support of a child is joined with claims for divorce, dissolution of civil union, termination of domestic partnership, or nullity) venue shall be laid, pursuant to the Uniform Interstate Family Support Act (UIFSA), in the county of New Jersey in which the child is domiciled, if New Jersey is determined to be the child's home state, as defined under N.J.S.A. 2A:4-30.65.

(2) … no change.

(3) … no change.

(4) … no change.

(5) … no change.

(b)

(1) In actions involving the welfare, custody, protection and status of a child (except actions in which the issues of welfare, custody, protection and status of a child are joined with claims for divorce, dissolution of civil union, termination of domestic partnership, or nullity), venue shall be laid, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), in the county of New Jersey in which the child was last domiciled

if New Jersey is determined to be the child's home state, as defined under N.J.S.A. 2A:34-54, and pursuant to N.J.S.A. 2A:34-65.

(2) … no change.

(c) In divorce, dissolution of civil union, termination of domestic partnership, and nullity actions, venue shall be laid in accordance with R. 5:7-1.

(d) … no change.

(e) … no change.

(f) … no change.

(g) … no change.

Note: Source-new. Adopted December 20, 1983, to be effective December 31, 1983; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; new paragraph (f) added June 15, 2007 to be effective September 1, 2007; paragraph (a) amended and text reallocated as paragraphs (a) and (b), paragraphs (b), (c), (d), (e), and (f) reallocated as paragraphs (c), (d), (e), (f), and (g) July 16, 2009 to be effective September 1, 2009; subparagraphs (a)(1), (b)(1) and paragraph (c) amended _____ to be effective _____.

R. 5:5-1

5:5-1. Discovery

Except for summary actions and except as otherwise provided by law or rule, discovery in civil family actions shall be permitted as follows:

(a) … no change.

(b) … no change.

(c) Depositions of any person, excluding family members under the age of 18, and including parties or experts, as of course may be taken pursuant to R. 4:11 et seq. and R. 4:10-2(d)(2) as to all matters except those relating to the elements that constitute grounds for divorce, dissolution of civil union, or termination of domestic partnership.

(d) … no change.

(e) … no change.

Note: Source-R. (1969) 4:79-5. Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b) amended January 10, 1984, to be effective April 1, 1984; paragraphs (c) and (d) amended November 1, 1985 to be effective January 2, 1986; paragraph (d) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (e) added January 21, 1999 to be effective April 5, 1999; paragraph (c) amended _____ to be effective _____.

R. 5:5-2

5:5-2. Family Case Information Statement

(a) … no change.

(b) … no change.

(c) … no change.

(d) … no change.

(e) Marital, Civil Union or Domestic Partnership Standard of Living Declaration. In any matter in which an agreement or settlement contains an award of alimony, (1) the parties shall include a declaration that the marital, Civil Union or Domestic Partnership standard of living is satisfied by the agreement or settlement; or (2) the parties shall by stipulation define the marital, Civil Union or Domestic Partnership standard of living; or (3) the parties shall preserve copies of their respective filed Family Case Information Statements until such time as alimony is terminated; or (4) any party who has not filed a Family Case Information Statement shall prepare Part D ("Monthly Expenses") of the Family Case Information Statement form serving a copy thereof on the other party and preserving that completed Part D until such time as alimony is terminated.

(f) … no change.

Note: Source -- R. (1969) 4:79-2. Adopted December 20, 1983, to be effective December 31, 1983; amended January 10, 1984, to be effective April 1, 1984; paragraphs (b) and (e) amended November 5, 1986 to be effective January 1, 1987; paragraphs (b) and (e) amended November 2, 1987 to be effective January 1, 1988; paragraphs (a) and (e) amended November 7, 1988 to be effective January 2, 1989; paragraph (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended January 21, 1999 to be effective April 5, 1999; paragraph (e) amended July 12, 2002 to be effective September 3, 2002; caption amended and new paragraph (f) adopted July 27, 2006 to be effective September 1, 2006; paragraph (c)

amended, former paragraph (e) deleted and redesignated as new Rule 5:5-10, and former paragraph (f) redesignated as paragraph (e) June 15, 2007 to be effective September 1, 2007; new paragraph (f) adopted July 16, 2009 to be effective September 1, 2009; paragraph (e) caption amended and paragraph (e) amended _____ to be effective _____.

R. 5:5-6

5:5-6. Participation in Mandatory Post-[M]ESP Mediation or in a Mandatory Post-[M]ESP Complementary Dispute Resolution Event

(a) Mandatory Post-[M]ESP Events. Each vicinage shall establish a program for the post-Early Settlement Program ("[Matrimonial] ESP") mediation of the economic aspects of a divorce, dissolution of a civil union or termination of a domestic partnership, consistent with the procedures set forth in these Rules. In any matter in which a settlement is not achieved at the time of the [M]ESP, an order for mediation or other post-[M]ESP Complementary Dispute Resolution ("CDR") event shall be entered. The order shall provide that the litigants may select a mediator from the statewide-approved list of mediators or select an individual to conduct a post-[M]ESP CDR event. Litigants shall be permitted to select another individual who will conduct a post-[M]ESP mediation event, provided such selection is made within seven days.

(b) Mandatory Two Hour Minimum Participation. Unless good cause is shown why a particular matter should not be referred to this post-[M]ESP program, litigants shall be required to participate in the program for no more than two hours, consisting of one hour of preparation time by the mediator or other individual conducting the alternate CDR event and one hour of time for the mediation or other CDR event. The litigants will not be charged a fee for the mandatory first two hours of mediation. Participation after the first two hours shall be voluntary.

(c) Allocation of Fees After Two Hour Minimum. If litigants consent to continue the mediation process, the Economic Mediation Referral Order will determine the distribution of costs for each party for the additional hours. If the litigants choose to participate in an alternate post-[M]ESP CDR event, the fee shall be set by the individual conducting the session. The

litigants shall share the cost equally unless otherwise determined by the court. The litigants are required to participate in at least one session of such alternate post-[M]ESP CDR event.

Note: Adopted July 27, 2006 to be effective September 1, 2006; former text amended and allocated into paragraphs (a) and (b), captions to paragraphs (a) and (b) adopted, and new paragraph (c) caption and text adopted July 16, 2009 to be effective September 1, 2009; caption amended, paragraph (a) caption amended and paragraphs (a), (b) and (c) amended _____ to be effective _____.

R. 5:5-9

5:5-9. Procedures Concerning the Entry of Certain Final Judgments of Divorce, Dissolutions of Civil Unions, and Terminations of Domestic Partnerships

When a settlement is placed on the record and a judgment [of divorce] is entered orally, a contemporaneous written final judgment shall be entered either in the form set forth in Appendix XXV of these rules or in a form as consented to by the parties. If the final judgment [of divorce] that is entered is in the form set forth in Appendix XXV, the parties within ten days of such entry may submit to the court a proposed amended form of final judgment [of divorce] setting forth the terms of the settlement or specifically incorporating the parties' written property settlement agreement. The court in its discretion may relax the ten-day limit.

Note: Adopted July 27, 2006 to be effective September 1, 2006; caption amended and text amended _____ to be effective _____.

R. 5:6-7

5:6-7. Separate maintenance

An action for separate maintenance pursuant to N.J.S.A. 2A:34-24 shall be brought as a summary action unless designated as non-summary in nature by the Family Part Presiding Judge. When the response to the original Complaint for Separate Maintenance contains a counterclaim for divorce, dissolution of civil union or termination of domestic partnership, the action shall immediately be transferred to the dissolution (FM) docket without the need for a formal motion.

Note: Adopted July 28, 2004 to be effective September 1, 2004; amended _____ to be effective _____.

RULE 5:7. Divorce, Dissolution of Civil Union, Termination of Domestic Partnership, Nullity, Separate Maintenance

Note: Caption amended _____ to be effective _____.

R. 5:7-1

5:7-1. Venue

Except as otherwise provided by law, venue in actions for divorce, dissolution of civil union or termination of domestic partnership, nullity and separate maintenance shall be laid in the county in which plaintiff was domiciled when the cause of action arose, or if plaintiff was not then domiciled in this State, then in the county in which defendant was domiciled when the cause of action arose; or if neither party was domiciled in this State when the cause of action arose, then in the county in which the plaintiff is domiciled when the action is commenced, or if plaintiff is not domiciled in this State, then in the county where defendant is domiciled when service of process is made. For purposes of this rule, in actions brought under N.J.S.A. 2A:34-2(c), the cause of action shall be deemed to have arisen three months after the last act of cruelty complained of in the Complaint. For the purposes of this rule, in actions brought under N.J.S.A. 26:8A-10 for termination of a domestic partnership in which both parties are non-residents, venue shall be laid the county in which the Certificate of Domestic Partnership is filed.

Note: Source-R. (1969) 4:76. Adopted December 20, 1983, to be effective December 31, 1983; amended January 10, 1984, to be effective immediately; amended July 14, 1992 to be effective September 1, 1992; amended July 13, 1994 to be effective September 1, 1994; amended _____ to be effective _____.

R. 5:7-3

5:7-3. Corroboration

All elements of a claim for divorce, dissolution of civil union, termination of domestic partnership or nullity may be proved without corroboration.

Note: Source-R. (1969) 4:79-7. Adopted December 20, 1983, to be effective December 31, 1983; amended _____ to be effective _____.

R. 5:7-7

5:7-7. Delay in prosecution: order to proceed

In divorce, dissolution of civil union, termination of domestic partnership, and nullity actions, a party either resisting an order of dismissal pursuant to R. 1:13-7 or seeking an order to proceed after such dismissal shall file an affidavit stating the reason for the delay, the relations of the parties toward each other since the commencement of the action, and any agreements or understandings between them.

Note: Source-R. (1969) 4:79-10. Adopted December 20, 1983, to be effective December 31, 1983; amended _____ to be effective _____.

R. 5:7-8

5:7-8. Bifurcation

Bifurcation of trial of the [marital dissolution] divorce, dissolution of civil union, termination of domestic partnership or custody dispute from trial of disputes over support and equitable distribution shall be permitted only with the approval of the Family Presiding Judge, which approval shall be granted only in extraordinary circumstances and for good cause shown.

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

R. 5:7-9

5:7-9. Affidavit or Certification of Non-Military Service

In every action and proceeding for divorce, dissolution of civil union, termination of domestic partnership, nullity, separate maintenance, or child support, no order shall be entered by default unless an affidavit or certification of non-military service is provided to the court, as provided in R. 1:5-7.

Note: Adopted June 15, 2007 to be effective September 1, 2007; amended _____ to be effective _____.

R. 5:8B

5:8B. Appointment of guardian ad litem

(a) … no change.

(b) … no change.

(c) Term. The term of the guardian ad litem shall be coextensive with the application pending before the court and shall end on the entry of a Judgment of Divorce, dissolution of a civil union or termination of a domestic partnership or an Order terminating the application for which the appointment was made, unless continued by the court. The guardian ad litem shall have no obligation to file a notice of appeal from a Judgment or Order nor to participate in an appeal filed by a party.

(d) … no change.

Note: Adopted November 6, 1989, to be effective January 2, 1990; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (c) amended _____ to be effective _____.

R. 5:9-1

5:9-1. Venue

An action by an approved agency for the termination of parental rights to a child shall be brought and venue shall be laid in the county in which the plaintiff has its principal office in New Jersey, except that if a parent of the child was granted a divorce, dissolution of a civil union or termination of a domestic partnership from the other parent by a judgment of the Superior Court or if there has been a prior proceeding or order in the Superior Court affecting the custody of the child and such court shall not previously have awarded custody of the child to an approved agency, the action shall be instituted in the Superior Court and the venue shall be laid in the same county in which the venue in such divorce, dissolution or termination action was laid.

Note: Source-R. (1969) 4:93-1(a). Adopted December 20, 1983, to be effective December 31, 1983; amended _____ to be effective _____.

R. 5:10-3

5:10-3. Contents of complaint

The complaint shall state:

(a) … no change.

(b) The name, age and citizenship of the spouse, civil union partner or domestic partner of the plaintiff (if such [spouse] person is not also a plaintiff), and the relationship, if any, of such [spouse] person to the child to be adopted.

(c) … no change.

(d) … no change.

(e) The name, age and birthplace of all natural and adopted children of the spouse of the plaintiff (if such spouse, civil union partner or domestic partner is not also a plaintiff).

(f) … no change.

(g) … no change.

(h) … no change.

(i) Whether or not either natural parent of the child to be adopted has been granted a divorce, dissolution of a civil union or termination of a domestic partnership from the other natural parent, unless such information is unknown to the plaintiff or plaintiffs. If unknown, the complaint shall so state.

(j) … no change.

(k) … no change.

(l) … no change.

(m) If the spouse, civil union partner or domestic partner of a plaintiff has consented to the proposed adoption, such consent shall be annexed to the complaint or appended thereto.

(n) … no change.

Note: Source-R. (1969) 4:94-2(c), (d), (e). Adopted December 20, 1983, to be effective December 31, 1983; paragraphs (b), (e), (i) and (m) amended _____ to be effective _____.

B. Proposed Amendment to Appendix V - Family case information statement

- **Amendment to Family case information statement pursuant to The Civil Union Statute and The Domestic Partnership Act, P.L.2006, c.103**

The Practice Committee reserves for consideration in the 2011-2013 rules cycle other issues regarding the CIS described later in this report. Those issues include:

1. the general format of the CIS,

2. the separation between liabilities subject to equitable distribution and liabilities exempt from equitable distribution,

3. any other changes that may be needed to conform to the civil union and domestic partnership laws,

4. the question of whether the certification at the end of the CIS regarding the redaction of confidential personal identifiers should be signed by the litigant or counsel, which implicates *R.* 1:38-7,

5. the issue regarding the need to file a CIS for enforcement proceedings

6. the extent to which more details should be required within the statements of assets and liabilities

In considering the necessary changes to the court rules relating to the enactment of The Civil Union Statute and The Domestic Partnership Act, the Practice Committee recommends technical changes set out in the attached Family case information statement ("CIS") (Attachment A). At this time, the Practice Committee recommends only those minor changes to the CIS.

The Practice Committee recommends replacing the terms "Husband" and "Wife" with references to "Plaintiff" and "Defendant" in the CIS form. The Practice Committee also recommends changing the reference in the Part D-Monthly Expenses portion of the CIS form from "Joint Marital Lifestyle" to instead reference "Joint Lifestyle."

C. Proposed Amendment to R. 1:5-6 - Filing

- **Affidavit of verification and non-collusion**

The issue presented was whether failure to attach the certification of verification and non-collusion, which is customarily appended to all divorce complaints, renders the complaint filing to be "non-conforming," pursuant to *R.* 1:5-6 (c)(1)(C). That court rule states that failure to include an affidavit of insurance coverage as required by *R.* 5:4-2(f), the parents education program registration fee required by *N.J.S.A.* 2A:34-12.2, the confidential litigant information sheet required by *R.* 5:4-2(g), or the affidavit or certification and notification of complementary dispute resolution required by *R.* 5:4-2(h), renders the filing non-conforming. The question is whether the certification of verification and non-collusion should be granted a similar status.

The Practice Committee believes that the certification of verification and non-collusion is a required attachment to the complaint and failure to attach it renders the complaint non-conforming. Therefore, the Practice Committee makes the following rule recommendation to clarify the requirement to file the certification of verification and non-collusion with a complaint:

R. 1:5-6

1:5-6. Filing

(a) . . . no change

(b) . . . no change

(c) Nonconforming Papers. The clerk shall file all papers presented for filing and may notify the person filing if such papers do not conform to these rules, except that

(1) the paper shall be returned stamped "Received but not Filed (date)" if it is presented for filing unaccompanied by any of the following:

(A) . . . no change.

(B) . . . no change.

(C) in Family Part actions, the affidavit of insurance coverage required by R. 5:4-2(f), the Parents Education Program registration fee required by N.J.S.A. 2A:34-12.2, the Affidavit of Verification and Non-Collusion as required by R. 5:4-2(c), the Confidential Litigant Information Sheet as required by R. 5:4-2(g) in the form prescribed in Appendix XXIV, or the Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives as required by R. 5:4-2 (h) in the form prescribed in Appendix XXVII-A or XXVII-B of these rules; or

(D) . . . no change.

(E) . . . no change.

(2) . . . no change.

(3) . . . no change.

(4) . . . no change.

(d) . . . no change

(e) . . . no change

Note: Source – R. R.1:7-11, 1:12-3(b), 2:10, 3:11-4(d), 4:5-5(a), 4:5-6(a) (first and second sentence), 4:5-7 (first sentence), 5:5-1(a). Paragraphs (b) and (c) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended November 26, 1990 to be effective April 1, 1991; paragraphs (b) and (c) amended, new text substituted for paragraph (d) and former paragraph (d) redesignated paragraph (e) July 13, 1994 to be effective September 1, 1994; paragraph (b)(1) amended, new paragraph (b)(2) adopted, paragraphs (b)(2), (3), (4), (5) and (6) redesignated paragraphs (b)(3), (4), (5), (6) and (7), and newly designated paragraph (b)(4) amended July 13, 1994 to be effective January 1, 1995; paragraphs (b)(1),(3) and (4) amended June 28, 1996 to be effective September 1, 1996; paragraph (b)(4) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraphs (c)(1) and (c)(3) amended July 28, 2004 to be effective September 1, 2004; subparagraph (c)(1)(E) adopted, paragraphs (c)(2) and (c)(3) amended, and paragraph (c)(4) adopted July 27, 2006 to be effective September 1, 2006; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; subparagraph (c)(1)(C) amended July 16, 2009 to be effective September 1, 2009; subparagraph (c)(1)(E) amended December 20, 2010 to be effective immediately; subparagraph (c)(1)(C) amended _____ to be effective _____.

D. Proposed Amendment to R. 4:101-1(b) - Abstracts to be entered

- **Replacing references to ACSES with generic "child support enforcement system" in R. 4:101-1(b)**

The Practice Committee identified out-of-date references to ACSES, the former automated child support enforcement system, that appeared in Part IV and Part V of the court rules. The Practice Committee determined that the language in those rules would be more durable if the substituted language referred generically to an automated system for collection and enforcement of child support, rather than including the specific name of a system. Therefore, the Practice Committee recommends replacing "ACSES" with "automated child support enforcement system."

R. 4:101-1

4:101-1. Abstracts to be entered

(a) . . . no change

(b) Child Support Judgments and Orders. When a child support judgment or order issued pursuant to N.J.S.A. 2A:17-56.23a is entered in the Superior Court Child Support Judgment Index of the New Jersey [Automated Child Support Enforcement System (ACSES)] automated child support enforcement system, it shall have the same force and effect as entry of an abstract in the Civil Judgment and Order Docket pursuant to paragraph (a) of this rule.

Note: Source-R.R. 4:120-2 (first unnumbered paragraph). Paragraph (a) amended September 5, 1969 to be effective September 8, 1969; amended July 7, 1971 to be effective September 13, 1971; amended July 24, 1978 to be effective September 11, 1978; amended July 22, 1983 to be effective September 12, 1983; existing rule redesignated as paragraph (a) with new caption added and new paragraph (b) added July 14, 1992 to be effective September 1, 1992; paragraph (a) amended June 28, 1996 to be effective September 1, 1996; paragraph (b) amended _____ to be effective _____.

E. Proposed Amendment to R. 5:3-3 - Appointment of experts

- **Amending R. 5:3-3(b) to permit audio and video recording of expert evaluations**

The Practice Committee recommends amending *R.* 5:3-3(b) to provide for the right to record expert evaluations and to set forth the protocol to be followed in connection with the recording.

The recommendation was made to clarify that *B.D. v. Carley, et al.*, 307 *N.J. Super.* 259 (App. Div. 1997) is applicable to parenting time and custody evaluations. The Practice Committee concluded that *B.D. v. Carley* was not limited to civil litigation in the Law Division and that the rationale of the decision was equally applicable to parenting evaluations.

Moreover, the Practice Committee believes that Guideline 7 of the *Specialty Guideline Standards of the New Jersey Board of Psychological Examiners* and the Comment thereto states that the question of video and audio taping in parenting evaluations is within the specific discretion of the psychologist:

> Psychologists maintain detailed written records. In addition, psychologists may choose to use audio or video recording depending upon their understanding of the requirements of the specific case or situation.

The Practice Committee also notes that the Model Standards of Practice of Child Custody Evaluations adopted by the Association of Family and Conciliation Courts reference the use of audio and video taping in connection with evaluations. Standard 10.3(c) states:

> A detailed record of the observation session shall be created. If neither, audio or video taping is done and if, for any reason, contemporaneous note taking is difficult, notes must be entered as soon as possible after the session.

The Practice Committee believes, however, that mental health professionals should not be the only individuals who have a right to record an evaluation session. Evaluations should produce objectively accurate information on the people being evaluated. If the data and

observations presented are objective, such as through a recording, the court will be better able to assess the recommendations of the report and the observations made regarding the emotional traits of the individual.

The Practice Committee reviewed and evaluated two significant challenges raised to the proposal, which we briefly recap. Assessment is in the eyes of the assessor. Words repeated in a report stated by a witness in response to a question are not as rich in providing probative information as hearing the actual words of the question and answer and the actual tones that were used to convey them. *See B.D. v. Carley*, *supra*, 307 *N.J. Super.* at 262. Words repeated on paper are not reflective of the emotions or of the personality of the speaker, either the examiner expert or examinee litigant. The trier of fact and attorneys trying to assess comments or the quotation of them in a written report are deprived of directly observing the emotional affect and tones of the speaker.

A recording brings the court and the lawyers into the examination room. There can be no confusion about how something was said and how the person looked while saying it. The actual dialogue more accurately and realistically creates a record for assessment by a trier of fact and allows more effective evaluation of whether the observations and recommendation or conclusion reached by the expert are justified. What is perceived by each person may be different based upon who they are, their biases, their prejudices, and their own values. Therefore, if the trier of fact is provided with the raw, first hand unprocessed material upon which an expert's observations are made and conclusions are drawn, then the trier of fact will more likely make determinations free of the limitations that may be imposed by the perceptive capacity or limitations of the expert.

The Practice Committee recommends adding the following to *R.* 5:3-3(b):

> Custody and parenting time evaluations by mental health experts may be recorded at the request of either party or an expert. The recording may be undertaken by the mental health expert. and/or either party. Any party intending to record a parenting evaluation session shall notify all other parties and the expert 10 days in advance of the session and, if requested, copies of any recordings, tapes or DVDs made will be exchanged and/or provided to the parties and the expert within fifteen (15) days of the session recorded. Objections regarding authenticity or competence of the recordings shall be exchanged within 15 days of receipt of the recording at issue. Any unresolved objections may be presented to the court for resolution on motion, pursuant to the Rules of Court. The parties may provide a copy of any recording, tape or DVD made to their independent expert or the court's expert, and the recordings may be utilized in accordance with the Rules of Evidence. However, neither parent shall discuss or reveal the contents of the recordings, tapes or DVD to the children, or provide copies to the children, or to a third party, other than the independently retained or court expert, without permission of the court.

- **Timetable for Retention of Private Experts pursuant to R. 5:3-3(h)**

The Practice Committee recommends an amendment to *R.* 5:3-3(h) to define when notice must be provided of an intention to use a private expert. The Practice Committee believes that the right to use a private expert should not unreasonably delay the disposition of cases. The Practice Committee believes that notification of an intention to use such an expert within a certain time period after receipt of a joint or court-appointed expert's report is appropriate. This process promotes expeditious processing of cases and assists litigants in deciding whether they are going to exercise the right to hire a private expert pursuant to *R.* 5:3-3(h). The Practice Committee proposes the following amendment to *R.* 5:3-3(h):

> Use of Private Experts. Nothing in this rule shall be construed to preclude the parties from retaining their own experts, either before or after the appointment of an expert by the court or retention of a joint expert, on the same or similar issues. Upon receipt of the court appointed or joint expert's report, the court shall conduct a case management conference and fix a date for the additional experts to be retained.

R. 5:3-3

5:3-3. Appointment of experts

(a) . . . no change

(b) Custody/Parenting Disputes. Mental health experts who perform parenting/custody evaluations shall conduct strictly non-partisan evaluations to arrive at their view of the child's best interests, regardless of who engages them. They should consider and include reference to criteria set forth in N.J.S.A. 9:2-4, as well as any other information or factors they believe pertinent to each case. Custody and parenting time evaluations by mental health experts may be recorded at the request of either party or an expert. The recording may be undertaken by the mental health expert. and/or either party. Any party intending to record a parenting evaluation session shall notify all other parties and the expert 10 days in advance of the session and, if requested, copies of any recordings, tapes or DVDs made will be exchanged and/or provided to the parties and the expert within fifteen (15) days of the session recorded. Objections regarding authenticity or competence of the recordings shall be exchanged within 15 days of receipt of the recording at issue. Any unresolved objections may be presented to the court for resolution on motion, pursuant to the Rules of Court. The parties may provide a copy of any recording, tape or DVD made to their independent expert or the court's expert, and the recordings may be utilized in accordance with the Rules of Evidence. However, neither parent shall discuss or reveal the contents of the recordings, tapes or DVD to the children, or provide copies to the children, or to a third party, other than the independently retained or court expert, without permission of the court.

(c) . . . no change

(d) . . . no change

(e) . . . no change

(f) . . . no change

(g) . . . no change

(h) Use of Private Experts. Nothing in this rule shall be construed to preclude the parties from retaining their own experts, either before or after the appointment of an expert by the court or retention of a joint expert, on the same or similar issues. Upon receipt of the court appointed or joint expert's report, the court shall conduct a case management conference and fix a date for the additional experts to be retained.

(i) . . . no change

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

F. Proposed Amendment to R. 5:3-5 - Attorney Fees and Retainer Agreements in Civil Family Actions; Withdrawal

- **Amendments to Part V Rules of Court pursuant to The Civil Union Statute and The Domestic Partnership Act, P.L.2006, c.103**

This issue and others relating to the enactment of The Civil Union Statute and The Domestic Partnership Act were referred to the Practice Committee for consideration. The Practice Committee reviewed Part V of the court rules in their entirety for purposes of determining what rule changes would be appropriate. The proposed amendments to paragraphs (c), (d)(1) and (d)(2) are technical changes.

- **Attaching moving attorney's retainer agreement in motion for attorney's fees**

The Practice Committee recommends amending *R.* 5:3-5 to require the filing of a retainer agreement with a request for an award of attorney fees. To address a concern regarding attorneys who do not accept fees, the recommendation cites paragraph (a) of the rule. Therefore, the Practice Committee recommends the following amendment to *R.* 5:3-5(c):

> . . . In determining the amount of the fee award, the court [should] shall consider[,] the terms of the written retainer agreement pursuant to paragraph (a) herein, which shall be attached to the attorney's submission, in addition to the information required to be submitted pursuant to *R.* 4:42-9, the following factors:
> . . . .

R. 5:3-5

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

(a) … no change.

(b) … no change.

(c) Award of Attorney Fees. Subject to the provisions of R. 4:42-9(b), (c), and (d), the court in its discretion may make an allowance, both pendente lite and on final determination, to be paid by any party to the action, including, if deemed to be just, any party successful in the action, on any claim for divorce, dissolution of civil union, termination of domestic partnership, nullity, support, alimony, custody, parenting time, equitable distribution, separate maintenance, enforcement of [interspousal] agreements [relating to family type matters] between spouses, domestic partners, or civil union partners and claims relating to family type matters [in actions between unmarried persons]. A pendente lite allowance may include a fee based on an evaluation of prospective services likely to be performed and the respective financial circumstances of the parties. The court may also, on good cause shown, direct the parties to sell, mortgage, or otherwise encumber or pledge [marital] parties' assets to the extent the court deems necessary to permit both parties to fund the litigation. In determining the amount of the fee award, the court [should] shall consider[,] the terms of the written retainer agreement, which shall be attached to the attorney's submission, in addition to the information required to be submitted pursuant to R. 4:42-9, the following factors: (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of

fees previously paid to counsel by each party; (7) the results obtained: (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.

(d) Withdrawal from Representation.

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

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

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

G. Proposed Amendment to R. 5:3-7 - Additional Remedies on Violation of Orders Relating to Parenting Time, Alimony, Support or Domestic Violence Restraining Orders

- **Enforcement of Relief under Part II of a Final Restraining Order**

When entering a final restraining order under the Prevention of Domestic Violence Act, *N.J.S.A.* 2C:25-17 to -35, the court will often order a defendant to comply with certain services, such as batterers intervention programs, substance abuse evaluations or other social services. By memorandum dated March 10, 2009, Acting Administrative Director of the Courts, Glen A. Grant, J.A.D., issued a Protocol for Monitoring and Enforcing Defendant's Compliance with Orders to Attend Counseling and/or Batterers Intervention Programs. In the subsequent implementation of the protocol, concerns arose regarding the authority of the court to compel compliance on its own application, independent of an enforcement application brought by the victim pursuant to *R.* 1:10-3. On recommendation of the Conference of Family Presiding Judges, Administrative Director Grant referred to the Practice Committee, the advisability of a rule amendment authorizing an enforcement action on the court's own motion. The Practice Committee considered a court's authority to enforce its orders in the face of non-compliance.

Violations of Part I relief granted in a final restraining order, essentially involving contact with the victim, are addressed through criminal contempt charges against the offending party under *N.J.S.A.* 2C: 29-9(b). Non-compliance with court ordered social services, support or custody set out in the Part II Relief section of a final restraining order, is not subject to the criminal complaint process.

Section 6.1 of The Domestic Violence Procedures Manual ("DV Manual") sets forth the appropriate procedure for enforcement of the terms of a restraining order. Enforcement of Part II relief is governed by *N.J.S.A.* 2C:25-30 and 2C: 29-9(b), depending on the conduct and the

provision violated. The DV Manual states, "All relief contained in Part II [*N.J.S.A.* 2C:25-29(b)(3), (b)(4), (b)(5), (b)(8) and (b)(9)], must be enforced by civil remedies, i.e., by filing an application with the Superior Court, Family Part." Relief under this section includes, among other things, domestic violence counseling and evaluations, batterer's intervention, parenting time conditions, and financial payments. The DV Manual, section 6.1.3, provides that "[t]hese may be enforced in a civil action instituted by the plaintiff, generally under Rule 1:10-3 and Rule 5:3-7 by way of motion, affidavit, or in emergent circumstances, an order to show cause."

N.J.S.A. 2C:25-30 states that Part II violations "may be enforced in a civil or criminal action initiated by the plaintiff or by the court, on its own motion, pursuant to the applicable court rules." The DV Manual, as referenced above, states that the appropriate remedy is an enforcement action brought by the victim. While the DV Manual addresses the preferred practice, the court, by statute, maintains the right to compel enforcement. The issue is the scope and remedy of enforcement "pursuant to the applicable court rules."

The remedies available to the court for enforcement are provided under the contempt powers, *R.* 1:10-1 and -2, dealing with contempt authority, *R.* 1:10-3 enforcement of litigant's rights, as well as *R.* 5:3-7, which details enforcement authority for custody or support violations.

Rule 1:10-1 addresses contempt occurring in the face of the court, and is not applicable. Rule 1:10-2, while applicable to contempt of an order of the court, requires a separate contempt complaint to be sworn and prosecuted by the Attorney General or county prosecutor's office. This is certainly not the preferred enforcement mechanism due to its complexity. Rule 1:10-3 provides authority for a litigant to commence enforcement: "Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action, may seek relief by application in the action."

Independent of litigant enforcement motions under *R.* 1:10-3, there are circumstances where the Family Part enforces orders on its own, or the Probation Division's initiative. The most obvious example is child support enforcement. Rule 5:3-7 provides for such enforcement by the court, in addition to *R.* 1:10-3. The rule provides various enforcement options including incarceration. Rule 5:3-7 in its current form, however, is limited to enforcing custody or parenting time orders, and alimony or child support orders.

The Practice Committee determines that the most appropriate way to enforce compliance of Part II relief on the court's motion is to add paragraph (c) to *R.* 5:3-7 to address this specific enforcement issue, as follows:

> Enforcement of Relief under Provisions of Domestic Violence Restraining Orders Not Subject to Criminal Contempt Complaints. On finding that a party has failed to comply with the provisions of a restraining order issued pursuant to the Prevention of Domestic Violence Act, not subject to criminal contempt (part II relief excluded under *N.J.S.A.* 2C:25-30), the court may, in addition to the relief provided by *R.* 1:10-3, grant any of the following remedies, either singly or in combination: (1) economic sanctions, (2) incarceration with or without work release, (3) issuance of a warrant to be executed upon further violation or non-compliance with the order, (4) any appropriate remedy under paragraph (a) or (b) above, applicable to custody or parenting time issues or alimony or child support issues, (5) any other appropriate equitable remedy.

Furthermore, the Practice Committee believes that issues concerning procedural implementation of this new rule should be referred to the Conference of Family Presiding Judges for recommendation.

- **Technical amendment to R. 5:3-7(a)**

The Practice Committee identified a typographical error in *R.* 5:3-7(a), a duplicate subparagraph "(9)" should be corrected to subparagraph "(8)."

R. 5:3-7

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

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

(b) . . . no change

(c) Enforcement of Relief under Provisions of Domestic Violence Restraining Orders Not Subject to Criminal Contempt Complaints. On finding that a party has failed to comply with the provisions of a restraining order issued pursuant to the Prevention of Domestic Violence Act, not subject to criminal contempt (part II relief excluded under N.J.S.A. 2C:25-30), the court may, in addition to the relief provided by R. 1:10-3, grant any of the following remedies, either singly or in combination: (1) economic sanctions, (2) incarceration with or without work release, (3)

issuance of a warrant to be executed upon further violation or non-compliance with the order, (4) any appropriate remedy under paragraph (a) or (b) above, applicable to custody or parenting time issues or alimony or child support issues, (5) any other appropriate equitable remedy.

Note: Note: Adopted January 21, 1999 to be effective April 5, 1999; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; caption amended and paragraphs (a) and (c) amended _____ to be effective _____.

H. Proposed Amendment to R. 5:4-2 - Complaint

- **Amendments to Part V Rules of Court pursuant to The Civil Union Statute and The Domestic Partnership Act, P.L.2006, c.103**

This issue and others relating to the enactment of The Civil Union Statute and The Domestic Partnership Act were referred to the Practice Committee for consideration. The Practice Committee reviewed Part V of the court rules in their entirety for purposes of determining what rule changes would be appropriate. The proposed amendments in this section of the report are technical changes.

- **Deletion of certain forms from the Appendix of the Rules of Court so that they may be promulgated by the Administrative Director of the Courts**

On May 4, 2010, Administrative Director Grant referred to the Practice Committee the issue of standardizing the case practice of non-dissolution matters in the Family Part as recommended by the Conference of Family Presiding Judges. The Conference also recommended that forms related to non-dissolution case practice would be more efficiently promulgated by the Administrative Director of the Courts.

The Practice Committee endorses the more efficient process recommended by the Conference of Family Presiding Judges and recommends the deletion of certain forms from the Rules' Appendix so that they may be promulgated by the Administrative Director.

Therefore, the Practice Committee recommends deleting Appendix XXIV, the Confidential Litigant Information Sheet, and removing any reference to Appendix XXIV in *R.* 5:4-2. The Practice Committee believes that this change to the rules is consistent with the current practice of promulgating other forms of order.

R. 5:4-2

5:4-2. Complaint

(a) … no change.

(b) … no change.

(c) Affidavit of Verification and Non-collusion. There shall be annexed to every complaint or counterclaim for divorce, dissolution of civil union, termination of domestic partnership, or nullity [of marriage] an oath or affirmation by the plaintiff or counterclaimant that the allegations of the complaint or counterclaim are true to the best of the party's knowledge, information and belief, and that the pleading is made in truth and good faith and without collusion for the causes set forth therein.

(d) Counterclaim. A counterclaim may state any family cause of action, and any other cause or causes of action which exist at the time of service of the counterclaim. A counterclaim not stated in an answer may be filed by leave of the court at any time prior to final judgment. Failure to counterclaim for divorce, dissolution of civil union, termination of domestic partnership, or nullity [of marriage] shall not bar such cause of action. In any action involving the welfare or status of a child the counterclaim shall include the child's name, address, date of birth and a statement of where and with whom the child resides.

(e) Amended or Supplemental Complaint or Counterclaim. In any action for divorce, dissolution of civil union, termination of domestic partnership, nullity, [of marriage] or separate maintenance, a supplemental complaint or counterclaim may be allowed to set forth a cause of action which has arisen or become known since the filing of the original complaint, and an amended complaint or counterclaim may be allowed to change the action from [separate

maintenance, absolute divorce or divorce from bed and board to any other one of said actions] the originally pleaded cause to any other cognizable family or family type action .

(f) Affidavit or Certification of Insurance Coverage. The first pleading of each party shall have annexed thereto an affidavit listing all known insurance coverage of the parties and their minor children, including but not limited to life, health, automobile, and homeowner's insurance. The affidavit shall specify the name of the insurance company, the policy number, the named insured and, if applicable, other persons covered by the policy; a description of the coverage including the policy term, if applicable; and in the case of life insurance, an identification of the named beneficiaries. The affidavit shall also specify whether any insurance coverage was canceled or modified within the ninety days preceding its date and, if so, a description of the canceled insurance coverage. Insurance coverage identified in the affidavit shall be maintained pending further order of the court. If, however, the only relief sought is dissolution of the marriage or civil union, or a termination of a domestic partnership, or if a [property] settlement agreement addressing insurance coverage has already been reached, the parties shall annex to their pleadings, in lieu of the required insurance affidavit, an affidavit so stating. Nevertheless, if a responding party seeks financial relief, the responding party shall annex an insurance-coverage affidavit to the responsive pleading and the adverse party shall serve and file an insurance-coverage affidavit within 20 days after service of the responsive pleading. A certification in lieu of affidavit may be filed.

(g) Confidential Litigant Information Sheet. The first pleading of each party to any proceeding involving alimony, maintenance or child support shall be accompanied by a completed Confidential Litigant Information Sheet in the form prescribed [in Appendix XXIV] by the Administrative Director of the Courts. The form shall be provided at the time of the filing

of the first pleading but shall not be affixed to the pleadings. The information contained in the Confidential Litigant Information Sheet shall be maintained as confidential and shall be used for the sole purposes of establishing, modifying, and enforcing support orders. The Administrative Office of the Courts shall develop and implement procedures to maintain the Confidential Litigant Information Sheet as a confidential document rather than a public record. The Confidential Litigant Information Sheet shall contain a certification consistent with R. 1:4-4(b). No copy thereof shall be served on any opposing party.

(h) … no change.

Note: Source-R. (1969) 4:77-1(a)(b)(c)(d), 4:77-2, 4:77-3, 4:77-4, 4:78-3, 5:4-1(a) (first two sentences). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b)(2) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a)(2) and (d) amended November 2, 1987 to be effective January 1, 1988; paragraphs (b)(2) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a)(2) amended July 10, 1998 to be effective September 1, 1998; new paragraph (f) adopted January 21, 1999 to be effective April 5, 1999; paragraph (f) caption and text amendment July 12, 2002 to be effective September 3, 2002; new paragraph (g) adopted July 28, 2004 to be effective September 1, 2004; new paragraph (h) adopted July 27, 2006 to be effective September 1, 2006; paragraph (h) amended October 10, 2006 to be effective immediately; paragraph (g) amended June 15, 2007 to be effective September 1, 2007; paragraphs (g) and (h) amended July 16, 2009 to be effective September 1, 2009; paragraphs (c), (d), (e), (f) and (g) amended _____ to be effective _____.

Appendix XXIV - Confidential Litigant Information Sheet

[Appendix XXIV Confidential Litigant Information Sheet]

Appendix XXIV deleted _____ to be effective _____.

I. Proposed Amendment to R. 5:4-4 - Service of process in Family Part summary actions; Initial complaints and applications for post-dispositional relief

- **Recommendation to standardize non-dissolution practice and post-disposition practice in all Family Part summary actions**

Administrative Director Grant referred a recommendation from the Conference of Presiding Judges to the Practice Committee, which relates to the modification of procedures and service of process rules for summary actions in the Family Part. In 2005, then Chief Justice Poritz created a ten member Statewide Bench-Bar Liaison Committee to review Family Division Standards and Best Practices. As a result, an ad hoc Judiciary committee was established to study the need for standardization of procedures for Family Part non-dissolution matters (FD docket). This review was extended to include domestic violence and kinship legal guardianship post-dispositional matters. The Conference of Family Presiding Judges endorsed and forwarded the recommendations of the ad hoc committee to Administrative Director Grant for consideration, and those recommendations have been referred to the Practice Committee.

Differentiating the practice between the dissolution case type (FM docket) and the other case types mentioned above was a concern, but due to the summary nature of non-dissolution matters, the Practice Committee concluded that Family Part summary actions should all be adjudicated in a consistent and efficient manner.

To that end, the Practice Committee was charged with the task of amending *R.* 5:4-4 to meet the following goals:

- Service by mail for initial complaints, currently authorized by *R.* 5:4-4, used for paternity and support cases, should also be used in all other non-dissolution matters and in domestic violence (FV docket) post judgment applications not involving active

domestic violence restraints. The court rules should be revised to specify the application of *R.* 5:4-4 to all pre and post-dispositional non-dissolution matters and domestic violence post-dispositional matters not involving restraints, such as child support or parenting time.

- The Practice Committee should consider recommending a court rule requiring litigants to perform a "Diligent Search" under certain circumstances. The process set forth in proposed *R.* 5:4-4(c), which provides for diligent inquiry search procedures for child support enforcement actions should be replicated for initial custody matters when the custodial parent is unable to provide the court with the location of the non-custodial parent. A diligent search certification may be used in applications for modification of a prior order based upon the proposed amendment to *R.* 5:4-4(b) that deems service to an FD litigant's last known address as effective service of process.
- The Judiciary should adopt the proposed process for diligent searches promulgated by the Administrative Director of the Courts. A rule recommendation regarding the requirement of a diligent search certification should include a publication requirement under certain circumstances.
- When a child support obligee fails to notify the Probation Division of a change in address and a notice to appear has been served, a hold should be placed on the account until the obligee notifies the court of the address change. So as not to have disparate treatment of litigants, an entry of default should be allowed when either the obligor or the obligee has failed to comply with the requirement to notice the Probation Division of a change in address set forth in *R.* 5:7-4(f).

- The application of the court rules should be expanded to provide that in matters where a child support order has been entered (regardless of whether a Probation Division support account has been established), all FD litigants' last known addresses of record can be utilized to effectuate service.

The Practice Committee recommends amending *R.* 5:4-4. This recommendation seeks consistency of process for summary actions. The Practice Committee inserted "post-dispositional" application for FD and FV actions where appropriate to distinguish such applications from initial complaints. The Practice Committee also inserted the citation to *R.* 5:9A-2 in paragraph (a) to indicate that this rule applies to kinship legal guardianship matters, but not other matters involving the Division of Youth and Family Services (DYFS). The Practice Committee also clarified in subparagraph (b)(4) that an affidavit of non-military service is only required for initial complaints. The Practice Committee also inserted new paragraph (c), which sets forth diligent inquiry requirements for summary actions to ensure that diligent efforts are made to locate the other party if that party cannot be located. Subparagraph (c)(2) also requires the party to inquire with the United States Department of Defense, with respect to the affidavit of non-military service requirement. The Practice Committee, by its use of "post-dispositional application," distinguishes these applications from formal motions. The Practice Committee's intent was to ensure that the process for Family Part summary matters must be by post-dispositional application, and not formal motion. The procedure that must be followed for these summary actions is the same for all, whether it is filed by an attorney or a self-represented party. A formal motion is not necessary. Rule 5:8, Custody of Children, however, remains applicable. The Practice Committee believes that it is not necessary to create a separate process

for post-dispositional domestic violence (FV docket) applications and therefore has included them in this recommendation.

Furthermore, the Practice Committee inserted in paragraph (a) a description of summary actions to clarify the application of this service rule to include those enumerated cases.

The Practice Committee reviewed the rule as it relates to Probation-supervised matters and concluded that no additional drafting is required to address these cases.

The Practice Committee also relabeled "plaintiff" and "defendant" to "adverse party" where appropriate because either party may file an application under this rule.

Therefore, the Practice Committee recommends the following amendments to *R.* 5:4-4 to improve and standardize non-dissolution applications:

R. 5:4-4

5:4-4. Service of Process in [Paternity and Support Proceedings; Kinship Legal Guardianship] Family Part Summary Actions; Initial Complaints and Applications for Post-Dispositional Relief

(a) Manner of Service. Service of process within this State for [paternity and support] Family Part summary actions, including initial complaints and applications for post-dispositional relief, shall be made in accordance with [Rule] R. 4:4-4, R. 5:9A-2, or paragraph (b) of this rule. [Substituted] For initial complaints, substituted or constructive service of process outside this State may be made pursuant to the applicable provisions in [Rule] R. 4:4-4 or [Rule] R. 4:4-5. Family Part summary actions shall include all non-dissolution initial complaints as well as applications for post-dispositional relief, and applications for post-dispositional relief under the Prevention of Domestic Violence Act. Applications for post-dispositional relief shall replace motion practice in Family Part summary actions. The court in its discretion, or upon application of either party, may expand discovery, enter an appropriate case management order, or conduct a plenary hearing on any matter.

(b) [Establishment of a Paternity or Support Order and Proceedings for Kinship Legal Guardianship –] Service by Mail Program. Service of process for [initial paternity and support complaints and in proceedings for kinship legal guardianship] Family Part summary actions may be effected as follows:

(1) [Initial] Service by Mail. The Family Part shall mail process simultaneously by both certified and ordinary mail to the mailing address of the [defendant] adverse party provided by the party filing the complaint or application for post-dispositional relief.

(2) Effective Service. Consistent with due process of law, service by mail pursuant to this rule shall have the same effect as personal service, and the simultaneous mailing

shall constitute effective service unless there is no proof that the certified mail was received, or either the certified or the regular mail is returned by the postal service marked "moved, unable to forward," "addressee not known," "no such number/street," "insufficient address," "forwarding order expired," or the court has other reason to believe that service was not effected. Process served by mail may be addressed to a post office box. Where process is addressed to the [defendant] adverse party at that person's place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the [defendant] adverse party to whom process was mailed.

(3) Ineffective Service. If service cannot be effected by mail or by other means permitted by court rules, the court shall dismiss the complaint or application for post-dispositional relief without prejudice, subject to reinstatement retroactive to the original filing date if service is subsequently effected.

(4) Affidavit or Certification of Non-Military Service. [No] For initial complaints, no order shall be entered by default until an affidavit or certification of non-military service, as prescribed in R. 1:5-7, is provided to the court. The forms and procedures to implement this rule shall be prescribed by the Administrative Director of the Courts.

(5) Vacating Defaults. If process is returned to the court by the postal service subsequent to entry of default and the certified mail receipt displays any of the notations listed in the paragraph (b)(2) of this Rule, or another reason exists to believe that service was not effected, the court shall vacate the order entered by default, immediately notify [plaintiff] the filing party or the attorney of the action taken, and reinstitute efforts to serve [defendant] the adverse party either by mail or personally. [A defendant] The adverse party may, at any time after an order has

been entered by default based on mailed service, file a motion or an application for post-dispositional relief, requesting that [a paternity or support] an order be vacated or modified based on the fact that [defendant] the adverse party was not served with process prior to entry of the order. A party alleging that process was not received must show that the address to which process was directed was not that person's address at the time that the order was entered. Upon such a showing, the court may conduct a hearing [or order paternity testing] to determine whether the order should be modified or vacated.

(c) Diligent Inquiry in Family Part Summary Actions

(1) For purposes of initial complaints or upon the filing of any application for post-dispositional relief in a Family Part summary action, where the adverse party cannot be located, the filing party must provide the last known home address and demonstrate, through diligent inquiry, that no current address is known for the adverse party. Where it appears to the court by affidavit or certification of diligent inquiry filed by the filing party that the adverse party cannot be located, the court may proceed to hear the matter. For initial complaints, nothing in this rule shall prohibit the court from ordering substituted service by publication in accordance with R 4:4-5(c).

(2) Such diligent inquiry efforts by the filing party should include, as appropriate, inquiries to the relatives and last known employers of the person, the U.S. Postal Service, the NJ Motor Vehicle Commission or the motor vehicle agency of the State where the person was last known to be living, and the United States Department of Defense. The affidavit or certification of diligent inquiry must be in the form as determined by the Administrative Director of the Courts.

(3) Vacating Default Orders. Vacating default orders shall be in accordance with paragraph (b)(5) of this rule. This request can be made by the filing of a motion or application for post-dispositional relief by a party or, by the court, on its own motion, during any enforcement proceeding. The party alleging that process was not received must demonstrate proof that the home address at the time the notice was sent was not that party's correct home address. The court may conduct a hearing, as it deems necessary, to determine if the order should be modified or vacated.

(d) Enforcement of a Support Order. For purposes of enforcing a support provision in an order or judgment, the court may deem due process requirements for notice and service of process to have been met with respect to the obligor on delivery of written notice to the most recent residential or employer address. If the obligor fails to respond to the notice and no proof is available that the obligor received the notice, the party bringing the enforcement action must show that diligent efforts have been made to locate the obligor by making inquiries to the U.S. Postal Service, the Motor Vehicle Commission, the Department of Labor, and the Department of Corrections. A certification documenting unsuccessful efforts to locate the obligor shall be provided to the court before any action adverse to the obligor is taken based on failure of the obligor to respond to a notice.

[(d)](e) General Appearance; Acknowledgment of Service. [A] For initial complaints, a general appearance or an acceptance of the service of a summons, signed or acknowledged on the record by [defendant's] the adverse party's attorney, or signed and acknowledged by [defendant] the adverse party or by a competent adult in [defendant's] the adverse party's household, or as otherwise provided in R. 4:4-4, shall have the same effect as if [defendant] the adverse party had been properly served.

Note: Adopted July 10, 1998 to be effective September 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004; new paragraph (b)(4) adopted, former paragraph (b)(4) redesignated as paragraph (b)(5), and paragraph (c) amended June 15, 2007 to be effective September 1, 2007; caption amended, paragraph (a) amended, paragraph (b) caption and introductory text amended, subparagraph (b)(1) caption and text amended, subparagraph (b)(2), (b)(3), (b)(4) and (b)(5) text amended, new paragraph (c) caption and text adopted, former paragraph (c) redesignated as paragraph (d), former paragraph (d) redesignated as paragraph (e), new paragraph (e) text amended _____ to be effective _____.

J. Proposed Amendment to R. 5:5-3 - Financial statement in summary support actions

- **Amendments to Part V Rules of Court pursuant to The Civil Union Statute and The Domestic Partnership Act, P.L.2006, c.103**

This issue and others relating to the enactment of The Civil Union Statute and The Domestic Partnership Act were referred to the Practice Committee for consideration. The Practice Committee reviewed Part V of the court rules in their entirety for purposes of determining what rule changes would be appropriate. The proposed amendments in this section of the report that relate to civil unions and domestic partnerships are technical changes.

- **Deletion of forms to be promulgated by the Administrative Director of the Courts**

On May 4, 2010, Administrative Director Grant referred to the Practice Committee the issue of standardizing the case practice of non-dissolution matters in the Family Part as recommended by the Conference of Family Presiding Judges. The Conference also recommended that forms related to non-dissolution case practice would be more efficiently promulgated by the Administrative Director of the Courts.

The Practice Committee endorses the more efficient process recommended by the Conference of Family Presiding Judges and recommends the deletion of certain forms from the Rules' Appendix so that they may be promulgated by the Administrative Director.

Therefore, the Practice Committee recommends deleting Appendix XIV, the Financial Statement for Summary Support Actions, and removing any reference to Appendix XIV in *R.* 5:5-3. The Practice Committee believes that this change to the rules is consistent with the current practice of promulgating other forms of order.

R. 5:5-3

5:5-3. Financial statement in summary support actions

In any summary action in which support of a child is in issue, each party shall, prior to the commencement of any hearing, serve upon the other party and furnish the court with an affidavit or certification in [the] a form [set forth in Appendix XIV of these Rules] prescribed by the Administrative Director of the Courts. The court shall use the information provided on the affidavit or certification and any other relevant facts to set an adequate level of child support in accordance with R. 5:6A. In summary actions to determine the support of spouse, civil union partner or domestic partner, each party shall, prior to the commencement of any hearing, provide the opposing party and the court with an affidavit or certification of income, assets, needs, expenses, liabilities, and other relevant facts to assist the court in determining the issue of support. Such affidavit or certification shall be preserved for appellate review but shall not be filed. Pursuant to R. 5:4-2(g) complaints filed in the Family Part that contain requests for alimony, maintenance, or child support must include a completed Confidential Litigant Information Sheet in the form set forth in Appendix XXIV of these Rules.

Note: Source -- R. (1969) 5:5-3(a). Adopted December 20, 1983, to be effective December 31, 1983; amended January 10, 1984, to be effective immediately; amended July 14, 1992 to be effective September 1, 1992; amended July 28, 2004 to be effective September 1, 2004; amended _____ to be effective _____.

Appendix XIV - Financial Statement for Summary Support Actions

[Appendix XIV Financial Statement for Summary Support Actions]

Appendix XIV deleted _____ to be effective _____.

K. Proposed Amendment to R. 5:6-6 - Modification of Title IV-D child support orders

- **Probation initiated status reviews of support orders**

The Practice Committee has identified that *R.* 5:6-6, in its current form, has created confusion and raised expectations in the minds of some members of the public that the Probation Division initiates the modification of support orders. Pursuant to policies established by the Administrative Office of the Courts (AOC), the Probation Division does not initiate or present modifications to the court, even though *R.* 5:6-6 does permit such action to be taken. In appropriate circumstances, however, the Probation Division is authorized, pursuant to policy approved by the Judicial Council, to initiate status reviews before the court. The Probation Division may take such action under certain circumstances where the parties cannot, or do not, file for court action, and as a result, Probation is unable to properly manage the case. The Practice Committee recommends reconciling the court rule and the practice to reflect Probation's role as the agency enforcing child support orders. Accordingly, the Practice Committee recommends an amendment to *R.* 5:6-6, as follows:

R. 5:6-6

5:6-6. [Modification] Probation initiated status review of [Title IV-D child] support orders

The Probation Division may present to the court for status review any appropriate case being enforced by Probation [under Title IV, Part D of the Social Security Act (42 U.S.C. §§ 601 to 669)], subject to appropriate procedural due process requirements [where for adjustment of the child support award or the addition of a health insurance provision in accordance with N.J.S.A. 2A:17-56.9a]. The court shall consider such cases and may modify [orders in accordance with the child support guidelines], suspend or terminate a support order, close a Probation-supervised case, or take such action as the court may deem appropriate and just. Status review hearings shall not substitute for motions or applications for post-dispositional relief initiated by parties to the case and may only be used by Probation as a vehicle to manage cases being enforced by Probation [or other relevant factors. If the proposed modification is contested, the moving party or that person's attorney shall be responsible for preparing and filing all motions and supporting documentation required under these Rules. The moving party shall be responsible for paying all applicable filing fees. If the moving party states under oath in the application that he or she is indigent and unable to pay the required filing fees, the court, if satisfied of the fact of indigency, may waive the payment of such fees in accordance with Rule 1:13-2]. The forms and procedures to implement the provisions of this rule shall be prescribed by the Administrative Director of the Courts.

Note: Adopted October 5, 1993 to be effective October 13, 1993; caption and text amended _____ to be effective _____.

L. Proposed Amendment to R. 5:7-2 - Application pendente lite

- **Practice regarding *pendente lite* applications**

The Practice Committee has identified an issue with *R.* 5:7-2(b), which relates to whether the rule should be amended to remove reference to making an application on "petition" since it is no longer the practice for an attorney to make an application on "petition." The Practice Committee recommends amending *R.* 5:7-2(b) to be consistent with current practice.

Furthermore, the Practice Committee also recommends amending *R.* 5:7-2 to be consistent with contempt rules that appear under Rules 1:10-1, -2 and -3.

R. 5:7-2

5:7-2. Application *Pendente Lite*

(a) . . . no change

(b) Restraints; Contempt; Enforcement. If pendente lite relief is sought, by way of preliminary restraint, [or] to hold a party in contempt or to enforce litigant's rights, the application shall be [on petition] by motion or order to show cause.

Note: Source-R. (1969) 4:79-3(a), (b). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (a) amended January 10, 1984, to be effective April 1, 1984; paragraph (b) caption and text amended _____ to be effective _____.

M. Proposed Amendment to R. 5:7-4 - Alimony and child support payments

- **Permitting electronic signatures for orders and complaints in new paragraph (g) of R. 5:7-4**

On December 2, 2008, the Supreme Court entered a rules relaxation order pertaining to electronic signatures for judges, court staff and litigants, to address the implementation of the then new automated child support enforcement system, known as NJKiDS (New Jersey Kids Deserve Support), to replace the current system, known as ACSES (Automated Child Support Enforcement System). In reviewing this issue, the Practice Committee has determined that the current rules for electronic signatures only address signatures of judges, and do not address the signature of litigants. Litigant signatures are electronically captured on the Uniform Summary Support Order (USSO) during family support hearings, and on non-dissolution or domestic violence pleadings prepared with the assistance of the Family Division intake units. Therefore, the Practice Committee recommends amending *R.* 5:7-4 for the collection of electronic signatures on the USSO.

The Practice Committee also recognizes a need for an omnibus rule that would validate all electronic signatures on court documents, which would best be accomplished by the adoption of a Part I rule. Accordingly, the Practice Committee recommends that the issue of an omnibus rule permitting electronic signatures in all child support related matters be referred to the appropriate Supreme Court Committee for further review.

- **Replacing references to ACSES with generic "child support enforcement system" in R. 5:7-4(b)**

The Practice Committee identified out-of-date references to ACSES, the former automated child support enforcement system, that appeared in Part IV and Part V of the court

rules. The Practice Committee determined that the language in those rules would be more durable if the substituted language referred generically to an automated system for collection and enforcement of child support, rather than including the specific name of a system. Therefore, the Practice Committee recommends replacing "ACSES" with "automated child support enforcement system."

- **Amendment to R. 5:7-4(b) to ensure that enforcement of child support cases follows county of venue**

AOC Directive #03-05, dated January 31, 2005, established uniform case management standards regarding transfer of child support cases among the vicinages. The standards provide that upon establishment of a child support order in the Family Division, the case would presumptively be assigned to the Probation Child Support Enforcement (PCSE) unit in the county of venue, regardless of the residence of the obligor. If at some point the obligor moves to another county, the case will not ordinarily be transferred to the new county of residence. Except in limited circumstances, monitoring and enforcement of the support obligation must remain in the county of venue. The intent of the Directive was to ensure that venue and enforcement of support cases routinely remain in the same county, unless the court orders otherwise under limited circumstances. Thus, when the county of venue changes, the county of enforcement also should change. This results in more efficient management of cases and improved delivery of service. The Practice Committee identified that venue changes did not uniformly result in changes in the county of enforcement. To clarify the procedure, the Practice Committee recommends an amendment to *R.* 5:7-4(b) to ensure that enforcement of child support cases are to be in the county of venue, unless the court specifically otherwise orders. Accordingly, the Subcommittee recommends adding the following provision to *R.* 5:7-4(b):

> Enforcement of child support orders shall presumptively be in the county in which the child support order is first established (county of venue), unless the court orders the case transferred for cause. In cases where venue of a support case is transferred, Probation supervision shall concurrently be transferred to the county of venue, unless the court otherwise orders for cause.

- **Deletion of forms to be promulgated by the Administrative Director of the Courts**

On May 4, 2010, Administrative Director Grant referred to the Practice Committee the issue of standardizing the case practice of non-dissolution matters in the Family Part as recommended by the Conference of Family Presiding Judges. The Conference also recommended that forms related to non-dissolution case practice would be more efficiently promulgated by the Administrative Director of the Courts.

The Practice Committee endorses the more efficient process recommended by the Conference of Family Presiding Judges and recommends the deletion of certain forms from the Rules' Appendix so that they may be promulgated by the Administrative Director.

Therefore, the Practice Committee recommends deleting Appendix XVI, the Uniform Summary Support Order and Appendix XVII, the Temporary Support Order, and removing any references to Appendix XVI, XVII and XXIV in *R.* 5:7-4. The recommendation to delete Appendix XXIV, the Confidential Litigant Information Sheet, has been made in the *R.* 5:4-2 recommendation. The Practice Committee believes that this change to the rules is consistent with the current practice of promulgating other forms of order.

- **Technical amendment to Uniform Summary Support Order (USSO) - Add "Civil Action" to caption to conform to R. 1:4-1(a)**

Although the Practice Committee, in this report, has recommended deletion of the USSO from the Rules' Appendix, it recognizes that the order must conform to the requirements of *R.* 1:4-1. Therefore, the Practice Committee recommends a technical amendment to the USSO, which adds "Civil Action" to its caption. The Practice Committee further recommends that the

AOC review this order and the Temporary Support Order for any other technical amendments that may be required to ensure conformance with *R.* 1:4-1(a).

R. 5:7-4

5:7-4. Alimony and Child Support Payments

(a) . . . no change

(b) Payments Administered by the Probation Division. Enforcement of child support orders shall presumptively be in the county in which the child support order is first established (county of venue), unless the court orders the case transferred for cause. In cases where venue of a support case is transferred, Probation supervision shall concurrently be transferred to the county of venue, unless the court otherwise orders for cause. The responsibility for the administration and enforcement of the judgment or order, including the transfer of responsibility, shall be governed by the policies established by the Administrative Director of the Courts. Alimony, maintenance, or child support payments not presently administered by the Probation Division shall be so made on application of either party to the court unless the other party, on application to the court, shows good cause to the contrary. In non-dissolution support proceedings, the court shall record its decision using the Uniform Order for Summary Support [shown in Appendix XVI of these Rules] promulgated by the Administrative Director of the Courts. On the signing of any order that includes alimony, maintenance, child support, or medical support provisions to be administered by the Probation Division, the court shall, immediately after the hearing, send to the appropriate judicial staff one copy of the order which shall include a Confidential Litigant Information Sheet in the form prescribed [in Appendix XXIV] by the Administrative Director of the Courts prepared by the parties or their attorneys providing the names, dates of birth, Social Security Numbers, and mailing addresses of the parents and the children; the occupation and driver's license number of the parent who is ordered to pay support; the policy number and name of the health insurance provider of the parent who is ordered to insure the children; and, if income withholding is ordered, the name and address of the

obligor's employer. When a party or attorney must prepare a formal written judgment or order pursuant to a judicial decision that includes alimony, maintenance or child support or medical support provisions to be administered by the Probation Division, the court shall, on the date of the hearing, record the support and health insurance provisions on a Temporary Support Order using the form prescribed [in Appendix XVII of these Rules] by the Administrative Director of the Courts and shall immediately have such order and a Confidential Litigant Information Sheet in the form prescribed [in Appendix XXIV] by the Administrative Director of the Courts (if it has not yet been provided by the parties or counsel) delivered to the appropriate judicial staff so that a support account can be established on the [Automated Child Support Enforcement System (ACSES)] New Jersey automated child support enforcement system. A probation account shall be established on [ACSES] the automated child support enforcement system within eight business days of the date the court order was signed. Demographic information provided on the Confidential Litigant Information Sheet shall be required to establish a probation account and send case initiation documents to the parties and the obligor's employer. The Temporary Support Order shall remain in effect until a copy of the final judgment or order is received by the Probation Division. Judgments or orders amending the amounts to be paid through the Probation Division shall be treated in the same manner.

(c) . . . no change

(d) . . . no change

(e) . . . no change

(f) . . . no change

(g) Electronic Signatures on Child Support Orders.

(1) An electronic signature is one gathered through the use of a computer input device. An electronic signature is an acceptable alternative to a signature collected through an ink pen on paper, and constitutes an original signature.

(2) The automated child support system provides a mechanism for collecting electronic signatures of the parties, child support hearing officer, and judge of the Superior Court on a computerized or digital version of the Uniform Summary Support Order ("USSO").

(3) When an electronic signature of a party or other non-judiciary personnel is collected through the automated child support system, the signing individual must be given notice at the time the signature is collected, preferably in writing, of the significance of the requested signature.

Note: Source – R. (1969) 4:79-9(a). Adopted December 20, 1983, to be effective December 31, 1983; amended November 2, 1987 to be effective January 1, 1988; amended January 5, 1988 to be effective February 1, 1988; amended June 29, 1990 to be effective September 4, 1990; caption and text amended October 5, 1993 to be effective October 13, 1993; caption amended, text amended and redesignated as paragraphs (a), (b), and (d), captions of paragraph (a) through (e) and text of paragraphs (c) and (e) adopted July 13, 1994 to be effective September 1, 1994; paragraph (d) amended March 15, 1996 to be effective immediately; paragraph (b) amended June 28, 1996 to be effective immediately; caption of paragraph (d) and text of paragraphs (d) and (e) amended May 25, 1999 to be effective July 1, 1999; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) caption and text amended, new paragraph (c) adopted, former paragraph (c) redesignated as paragraph (d), former paragraph (d) amended (including incorporation of some text of former paragraph (e)) and redesignated as paragraph (e), and former paragraph (e) deleted July 28, 2004 to be effective September 1, 2004; new paragraph (c) adopted, and former paragraphs (c), (d), and (e) redesignated as paragraphs (d), (e), and (f) July 27, 2006 to be effective September 1, 2006; paragraph (f) amended June 15, 2007 to be effective September 1, 2007; paragraph (b) amended and new paragraph (g) caption and text adopted _____ to be effective _____.

Appendix XVI - Uniform Summary Support Order

[Appendix XVI - Uniform Summary Support Order]

Appendix XVI deleted _____ to be effective _____.

Appendix XVII - Temporary Support Order

[Appendix XVII - Temporary Support Order]

Appendix XVII deleted _____ to be effective _____.

N. Proposed Amendment to R. 5:7A - Domestic violence: Restraining orders

- **Determine whether confirming paper order for e-TROs are required since the implementation of the netbooks for municipal court judges**

Rule 5:7A(b) sets forth the procedure for a judge to issue a domestic violence temporary restraining order (TRO) from home or other remote location without requiring the physical presence of the police officer and plaintiff/victim. The court rule authorizes the police officer to enter a conforming signature for the judge and requires the judge to enter a contemporaneous hard copy confirming order. The Practice Committee recognizes that since this Rule has been in effect, there have been changes to the way a TRO is issued, most importantly, that many municipalities and vicinages have begun issuing the orders electronically, also known as "e-TROs." The Practice Committee felt that when an e-TRO is entered remotely by the municipal court judge on a notebook computer, or other type of computer, there would be no need for a confirming order. The recommendation does not change the requirement for a confirming order in those situations where the municipal judge enters the order by phone through the local police officer. If the municipal court judge enters the e-TRO directly on the computer, that e-TRO is in fact the actual order. The Practice Committee recommends amending *R.* 5:7A(b) to reflect that no confirming order need be generated when the approved e-TRO process is utilized, and the judge actually enters the order electronically. The form of the proposed rule change follows:

R. 5:7A

5:7A. Domestic Violence: Restraining Orders

(a) . . . no change

(b) Issuance of Temporary Restraining Order by Electronic Communication. A judge may issue a temporary restraining order upon sworn oral testimony of an applicant who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio or other means of electronic communication. The judge or law enforcement officer assisting the applicant shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine if such are available; otherwise, adequate long hand notes summarizing what is said shall be made by the judge. Subsequent to taking the oath, the applicant must identify himself or herself, specify the purpose of the request and disclose the basis of the application. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a temporary restraining order. A temporary restraining order may issue if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown. Upon issuance of the temporary restraining order, the judge shall memorialize the specific terms of the order and shall direct the law enforcement officer assisting the applicant to enter the judge's authorization verbatim on a form, or other appropriate paper, designated the duplicate original temporary restraining order. This order shall be deemed a temporary restraining order for the purpose of N.J.S.A. 2C:25-28. The judge shall direct the law enforcement officer assisting the applicant to print the judge's name on the temporary restraining order. The judge shall also contemporaneously record factual determinations. Contemporaneously the judge shall issue a written confirmatory order and shall enter thereon the

exact time of issuance of the duplicate order. In vicinages where an approved form of electronic temporary restraining order is utilized and prepared electronically by the municipal court judge on a notebook computer or other device, then the temporary restraining order may be transmitted electronically without need for a duplicate written order. In all other respects, the method of issuance and contents of the order shall be that required by [sub-section] paragraph (a) of this rule.

(c) . . . no change

(d) . . . no change

(e) . . . no change

(f) . . . no change

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended, paragraph (b) caption and text amended and new paragraphs (c) and (d) adopted November 2, 1987 to be effective January 1, 1988; caption amended, former paragraph (c) redesignated paragraph (e), former paragraph (d) redesignated paragraph (f) and new paragraphs (c) and (d) adopted November 18, 1993 to be effective immediately; paragraphs (a), (b), and (e) amended July 12, 2002 to be effective September 3, 2002; paragraph (f) amended July 7, 2005 to be effective immediately; paragraph (b) amended _____ to be effective _____.

O. Proposed Amendments to R. 5:8-2 (Direction for Periodic Reports) and -4 (Filing of Report)

- **Delete References to Chief Probation Officer and Probation Office in Rules 5:8-2 and -4**

The Practice Committee recommends that Rules 5:8-2 and -4 should be amended to delete references to "probation office" and "chief probation officer" and to substitute instead the words "Family Division." The second paragraph of *R.* 5:8-2 should be amended to conform to the Supreme Court's approved procedure for the filing of out-of-state custody orders pursuant to AOC Directive #9-07. The proposed amended Rules are set forth below:

R. 5:8-2

5:8-2. Direction for Periodic Reports

If an award of custody of minor children has been made, the court may in its discretion file a certified copy of its order or judgment with the [probation office] Family Division of the county or counties in which the child or children reside with a direction therein to such [probation office] Family Division to make periodic reports to the court as to the status of the custody. It shall be the duty of counsel to file 2 copies of the order or judgment with the [probation office] Family Division within 2 days, together with information concerning the exact place of residence of the child or children. Upon the filing of such report, the court may on its own motion and where it deems it necessary, reopen the case and schedule a formal hearing on proper notice to all parties.

A certified copy of a custody decree of another state [filed with the Clerk of the Superior Court of this State] shall be [sent] filed pursuant to the [probation office of the county or counties in which the child or children reside] procedures promulgated by the Administrative Office of the Court.

Note: Source-R. (1969) 4:79-8(b). Adopted December 20, 1983, to be effective December 31, 1983; amended November 7, 1988 to be effective January 2, 1989; amended _____ to be effective _____.

R. 5:8-4

5:8-4 Filing of Report

The written report of an investigation made pursuant to this rule shall be filed with the court, shall be furnished to the parties, and shall thereafter be filed in the office of the [Chief Probation Officer] Family Division. The report shall be regarded as confidential, except as otherwise provided by rule or by court order. The report shall be received as direct evidence of the facts contained therein which are within the personal knowledge of the [probation officer who] Family Division which made the investigation and report, subject to cross-examination.

Note: Source-R. (1969) 4:79-8(d). Adopted December 20, 1983, to be effective December 31, 1983; amended July 13, 1994 to be effective September 1, 1994; amended _____ to be effective _____.

III. Issues Considered Without Recommendation

A. Impact on the administration Family Part cases as a result of a change in mail delivery

The Practice Committee was directed to consider whether a change in U.S. Postal Service mail delivery, from six days per week to five, would have any material impact on the administration of Family Part cases. The Practice Committee believes there would be no material impact on the scheduling of cases if the Postal Service discontinues Saturday delivery of mail.

B. Venue for Family arbitrations

The Practice Committee considered whether a rule change was necessary to state that arbitrations relating to Family Part cases should be overseen by the Family Part. The Practice Committee believes that arbitrations related to issues encompassed within Part V of the Rules of Court should be conducted pursuant to the jurisdiction of the Family Part. This conclusion seems intuitively obvious because any agreement between the parties to arbitrate matrimonial or family law issues would be in connection with a dispute initiated in the Family Part. As such, consent orders or agreements to arbitrate must be submitted and incorporated in Family Part order or judgments. The Practice Committee believes that a rule amendment is not necessary to accomplish this objective.

C. Agreements and scripts for use when the court appoints a parenting coordinator

The Practice Committee considered whether agreements or scripts for the appointment of parenting coordinators should be adopted. The Practice Committee does not believe such scripts or agreements are appropriate beyond the model order of appointment referenced in another section of this report, *infra*.

D. Unavailability of the child support guidelines software to private litigants

The Practice Committee was advised that the software used by the courts to calculate child support guidelines was not available to the general public. This issue was addressed in the Practice Committee's 2007-2009 Final Report. At the conclusion of that rules cycle, the Supreme Court adopted the Practice Committee's recommendation of no rule amendments to address these issues. *See* 2007-2009 Final Report at 79 and 86.

This issue has been resolved. The same child support guidelines calculator used by the courts will be available on the Internet. The Department of Human Services has contracted with a vendor to provide this web-based application, which is now in beta testing.

E. Filing a child support judgment and credit report immediately upon establishment of a support case

The Practice Committee was advised that there was a concern regarding "aggressive" child support enforcement. This issue was addressed in the Practice Committee's 2007-2009 Final Report. At the conclusion of that rules cycle, the Supreme Court adopted the Practice Committee's recommendation of no rule amendments to address these issues. *See* 2007-2009 Final Report at 79 and 86.

The Practice Committee recognizes that the New Jersey State Bar Association, in its comments to the Supreme Court, agreed with the Practice Committee's recommendation contained in the 2007-2009 Final Report, but sought an opportunity to make recommendations on this issue. Accordingly, the Supreme Court allowed this issue to remain on the Family Practice Committee's 2009-2011 agenda.

Since these issues have been resolved and reported in the past rules cycle, the Practice Committee recommends no rule change for the reasons expressed in the final report from the 2007-2009 rules cycle.

F. Permitting the Probation Division to continue administrative enforcement of child support when a judicial order suspends enforcement

The Practice Committee considered a request to rescind *R.* 5:7-10, which sets forth the procedure for the suspension of child support orders. It has been suggested that the court rule authorizes the Probation Division to continue child support enforcement after the court grants a stay, and that such authority effectively overrules a judge. The Practice Committee concludes that the language of the rule is unambiguous and does not confer upon the Probation Division the authority to override a court order.

The rule permits the court to exercise its discretion as to the extent of enforcement after the support order has been suspended. The Practice Committee notes that the comments to this rule in the Gann publication may be misleading in its statement that "[t]he focus of the rule is to make clear that while enforcement proceedings are suspended, the underlying obligation is not." The plain language of the rule, however, provides the courts with an array of options that include the contemporaneous suspension of certain enforcement remedies and the enforcement of the underlying obligation.

The Practice Committee determines that no rule amendment is warranted, and recommends no amendment to *R.* 5:7-10.

G. Other Issues relating to civil unions

- **Procedures relating to parentage, other states and federal actions**

The Practice Committee considered certain other issues related to the Parentage Act and how other states and the federal government address civil unions. The Practice Committee concluded that these are statutory issues that were not within the scope of the Practice Committee's function and therefore could not be addressed through rule making.

- **Irreconcilable differences cause of action in dissolution of civil unions**

This issue focused upon the fact that the civil union statute does not include the irreconcilable differences cause of action. The Practice Committee believes that this is a statutory issue that is not within the scope of the Practice Committee's function to make rule recommendations. In an assignment judge memorandum dated January 22, 2007, however, it states, "[The] Governor notes in the signing statement to S-1467 that it is his clear understanding that the new cause of action for divorce based on irreconcilable differences is applicable to civil unions as well as marriages."

- **Personal jurisdiction to dissolve a civil union**

This issue focused upon the jurisdiction of the court to dissolve a civil union that was entered into in New Jersey, but then both parties no longer reside in New Jersey when seeking the dissolution. The Practice Committee believes that this is a statutory jurisdictional issue that is not within the scope of the Practice Committee's function to make rule recommendations.

- **Whether R. 5:14 (Proceedings to determine parent-child rlationship) should be gender-neutral**

This issue focused upon whether *R.* 5:14 should be amended to be gender neutral in recognition of civil unions. After careful consideration, the Practice Committee recommends no change to *R.* 5:14, which relates to parentage and the Parentage Act. This is a statutory issue that is not within the scope of the Practice Committee's function to make rule recommendations.

- **Reverting to a prior name when a civil union is dissolved**

This issue focused upon the context of a civil union dissolution and the procedure surrounding a name change of a party who wishes to revert to a prior name. Pursuant to *N.J.S.A.* 2A:34-21, the court, upon or after granting a dissolution of a civil union, may allow the partner to resume any name used by the partner before the civil union or to assume any name. The Practice Committee believes that, if the court did not order the name change when the judgment dissolving the civil union was entered, then the party must file a name change petition with the Civil Division, and that such an application will be heard in the Civil Part.

- **Name change of person when entering into a civil union**

This issue focused upon the name change of a civil union partner upon entering into a civil union. The Practice Committee believes that this issue is governed by statute when individuals enter into a civil union and it is not within the scope of the Practice Committee's function to make rule recommendations. *See N.J.S.A.* 37:1-32.

H. Motion timeframes

- **Impact of motion timeframes on filing an update Family case information statement**

This issue focused upon whether the 2009 amendment to the motion filing timeframes set forth in *R.* 5:5-4(c) had an impact on filing an updated Family case information statement pursuant to *R.* 5:7-2. Because the last changes to *R.* 5:5-4 were so recent, the Practice Committee declines to recommend a further rule change at this time.

- **Motion time frames and page limits**

The Practice Committee also considered issues regarding the motion timeframes and page limits. The first issue focused upon whether eight days is sufficient time for a moving party to reply to a cross motion in accordance with *R.* 5:5-4(c). The second issue focused upon whether a ten page limit provided sufficient opportunity for a moving party to reply to a cross motion as currently required by *R.* 5:5-4(b). In both instances, the Practice Committee recommends no rule change.

I. Default Judgment

This issue relates to a request that the court require certain certifications regarding a defendant before the court enters a default judgment, specifically that: (1) the defendant is not a minor and the defendant is not mentally incapacitated. The Practice Committee recommends no rule change with regard to this issue.

J. Venue for irreconcilable differences cause of action

This issue focused upon whether *R.* 5:7-1 should be amended because same sets forth a process for determination of venue for extreme cruelty causes of action, but not for irreconcilable differences causes of action. The Practice Committee recommends no rule change with regard to this issue.

K. Procedures for mediators to obtain compensation

This issue, held over from a previous rules cycle, focused upon the procedures for mediators to obtain payment for services rendered. The Practice Committee recommends referring this issue to the Complementary Dispute Resolution Committee, which is in the process of reviewing the Mediator Compensation Guidelines (Rules of Court, Appendix XXVI).

L. Family case information statement - Requirement for more detail in the Statement of Assets and Liabilities

This issue focused upon whether *R.* 5:5-2 should be amended to require more detail in the CIS form's Statement of Assets and Liabilities. The Practice Committee recommends no rule change regarding this issue.

M. Counsel fees for appellate practice

This issue relates to the determination of fees in cases where the Appellate Division remands to the Family Part an appellate-level counsel fee application. The Practice Committee believes that this issue is or will be addressed within the Appellate Division and, accordingly, the Practice Committee declines to recommend a rule change.

IV. Other Recommendations

A. Parenting Coordinator Pilot Program evaluation

Discussion

- **Background**

In its 2004-2007 Final Report, the Practice Committee recommended rules for parenting coordination. Although the Supreme Court rejected that recommendation, in May 2007, it authorized a parenting coordinator pilot program. Program guidelines were developed and the pilot was established in four counties. The Conference of Family Presiding Judges believed that the guidelines developed for the pilot were too restrictive and limited the program's effectiveness. The Conference noted that the appointment of a parenting coordinator should be based on the circumstances of the individual families and therefore it did not fit into strict statewide guidelines. This belief is based on the success reported by judges from non-pilot counties.

In 2009, the Conference recommended not to implement a statewide program. The Conference believed, however, that the guidelines improved the process by establishing a uniform parenting coordinator appointment order. Anecdotal reports suggest that non-pilot counties have used this order successfully. Therefore, the Conference recommended the promulgation of a standard order appointing a parenting coordinator.

This issue has now returned to the Practice Committee for its consideration. The Practice Committee reviewed the Conference's recommendation and concludes that the adoption of a uniform order appointing a parenting coordinator would be beneficial to the process. The Practice Committee further believes that parenting coordination should be ordered only with consent of the parties. Although the Practice Committee recommends that parenting

coordinators should be appointed by consent only, it understands that the Conference of Family Presiding Judges or the Supreme Court may conclude that parenting coordinators should remain available to the courts regardless of the consent of the parties. Therefore, the Practice Committee has prepared two model orders of appointment, one to be used when the parties consent to the appointment (the Practice Committee's recommendation) (Attachment B) and an alternative order to be used when the court appoints a parenting coordinator on its own motion or on application by one party, even if the other party objects (Attachment C).

- **Parenting Coordination in New Jersey and Around the Country**

The Practice Committee conducted research with respect to parenting coordination around the country and identified the states, as of 2008, that enacted specific statutes or adopted rules with respect to parenting coordination. Those jurisdictions are identified later in this report. The proposed model orders of appointment take into consideration the issues pertaining to access to privileged information and the Practice Committee recommends a procedure for resolving that issue if there is a dispute. The proposed orders also state that parent coordinators' retainer agreements do not provide any authority beyond that set forth in the order of appointment, and further define that coordinators shall serve for specific terms and deal only with defined issues.

- **New Jersey History**

Mediation and parenting coordination are alternative dispute resolution techniques. Court rules were adopted to govern mediation after a long public dialogue and debate in the 1980's and early 1990's. The parameters and protocol for mediation are prescribed by both court rule and more recently the mediation privilege statute.

Parenting coordination has been studied and discussed since the 2002-2004 term of the Practice Committee. Since that time, the Practice Committee has made two recommendations

for adoption of court rules defining and regulating the procedures, standards and guidelines for parenting coordination. The Supreme Court adopted neither rule recommendation. It initially remanded for further review and then authorized a pilot, which defined parenting coordination. The pilot program provided guidelines for the qualifications of parenting coordinators, created an approved parenting coordinator roster, limited the appointment of coordinators to those cases in which an order or an agreement established child custody or parenting time, developed a model order of appointment, defined general procedures regarding communications with the parenting coordinator, described the parenting coordinator's right to access third party information and procedures for grieving and/or terminating the parenting coordinator's services and set forth guidelines for compensation of the parenting coordinator.

The pilot acknowledged that one primary goal of the parenting coordinator was to "empower parents to develop and utilize effective parenting skills so that they can resume the parenting and decision making role without the need for outside intervention." Only if the parents failed were parenting coordinators empowered to make recommendations, the use of which were carefully prescribed. In other words, the primary goal was to educate people sufficiently so that the service was no longer necessary.

About two years after implementation of the pilot, the Conference of Family Presiding Judges recommended that the "procedures, standards and guidelines in the parenting coordinator Pilot Project, not be implemented statewide." It proposed no formal rule amendment regarding use of parenting coordinators. Instead, the Conference concluded that assignments of parenting coordinators could continue to be made by judges "according to the practices that have continued in the non-pilot counties, with the provision that the standard Order of Initial Appointment be promulgated for mandatory use when assignments are made."

- **Elsewhere**

As of 2008, there were sixteen states that had statutes or local court rules governing parenting coordinator activities. Those states were: Arizona, California, Colorado, Florida, Georgia, Hawaii, Idaho, Kansas, Minnesota, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Texas and Vermont. *See* Connie J.A., Putterman, Merredith, D., Sabrarra, David A., and Mehl, Matthias, R. (2008), "Parenting coordinator roles, program goals and services provided: insights from the Pema County, Arizona Program," Journal of Child Custody, 5:1, 122-139. The process is used more informally without court rule or statutory authorization in many other jurisdictions, including New York, New Hampshire, Massachusetts, Missouri, Indiana, New Jersey, and Canada. *See* Fidler, Barbara Joe and Epstein, Phillip, "Parenting coordination in Canada: An Overview of Legal and Practices issues," Journal of Child Custody, 5:1, 53-87 (June 2008).

A survey of online literature pertaining to parenting coordination makes clear that parenting coordinator use appears to have evolved into three broad purposes: (1) to teach parents conflict resolution strategies that help them shift their energy from fighting to focusing on children; (2) to help mediate or adjust implementation of parenting agreements and to resolve disagreements over parenting plans and necessary flexibility in connection with implementation of parenting plans; and (3) if consensus is not obtainable, to arbitrate a decision, which is not final unless approved by a court.

One commentator from Massachusetts, Robin Deutch, a psychologist at Massachusetts General Hospital, and a leading authority in the field, has been quoted as saying that a parenting coordinator's job ultimately is ". . . to get rid of yourself. After a period of time you might hear from [the parents] twice a year to develop a new schedule and then you don't hear from them at all." *See* Reischel, Julia, "Parent Coordinators", Lawyers Weekly, June 1, 2009, page 2. Deutsch

has been quoted in another online publication as concluding that parenting coordination should be used most frequently, immediately following a high conflict divorce in a limited post divorce period to help parents bridge the gap between angry, emotional conflict prone interactions, to more respectful and business like communication. Deutsch also has been quoted as saying, "[F]or most families, the parenting coordinator job is pretty much done after a year or two". *See* www.nepsy.com, July 2007, Schnitzler, Nan, "NH legislation seeks to put children first," page 2.

Concerns, Conclusions and Recommendations

Practically, the anecdotal experience of members of the Practice Committee is that parenting coordinators mostly fulfilled the role of interacting with dysfunctional litigants so that they would not need to burden the court with their disputes. Although delegation was not permitted, parenting coordinators practically assumed control over mundane implementation and minor adjustments of parenting plans that became emotionally charged issues in a high conflict family dynamic. Rarely did litigants challenge a recommendation of a parenting coordinator once it was formerly made, probably because they believed the court likely would adopt it.

In the current landscape in New Jersey, litigants are free to agree and judges are free to order the appointment of anyone as a parenting coordinator, without regard to their qualifications, training or licenses, either before or after an order or agreement for custody is in place. Unlike mediation, there are no court rules regulating any issue pertaining to parenting coordinators, as the Supreme Court has determined the adoption of a rule pertaining to parenting coordinators is not appropriate. The only formal controls on parenting coordinators pursuant to the recommendations of the Conference of Family Presiding Judges are the parameters of the currently approved model order of appointment, which references sources of information the

parenting coordinator may access, communication with the parenting coordinator by litigants and counsel, provisions for termination, grievance, compensation, and allocation of fees.

The Practice Committee is concerned by the unregulated nature of parenting coordination. Pursuant to the Conference of Family Presiding Judges' recommendations, there is no limitation on who may serve as a parenting coordinator. There are no prescribed qualifications for parenting coordinators by way of education, training or experience. There is no limitation on the topics they may consider. As originally conceived, parenting coordinators were to take pressure off of courts by assisting high conflict families to resolve implementation issues with respect to parenting plans. They were not to determine custody or make recommendations concerning same, but to facilitate people to negotiate simple issues dealing with implementation of a plan already agreed upon and monitoring potential small changes to accommodate special situations and emergencies. Those limitations no longer formally exist.

The Practice Committee also is concerned about the scope of authority that parenting coordinators have co-opted for themselves in the engagement letters that are presented to litigants who use them. It is not unusual for engagement letters to authorize and require litigants to accept services of new professionals that the parenting coordinator believes should be introduced into their lives whether they want it or not. Parenting coordinators also are a financial burden for many because they create another expense pertaining to the divorce process, which continues even after the divorce is completed. There are other concerns as well and we suggest the following additions to the model order of appointment, which have been incorporated into the proposed model orders.

1. The time period for the parenting coordinator's appointment should be clearly defined and circumscribed. At the end of a fixed time period, during which the coordinators

either will have been successful educating family members to deal with conflicts themselves or failed in that role, the service term should end. Parenting coordinator should not become third party members of families for the duration of a child's unemancipated status.

2. There should be a limitation on the ability of a parenting coordinator to require parties to sign releases and obtain information that would otherwise be privileged to each parent. If there is an objection, the court should resolve it. The parents' privileges and rights should be distinguished from the parenting coordinator's ability to access otherwise private information pertaining to the children.

3. The order must make clear that parenting coordinators, absent consent of the parties to the contrary, cannot revise custody agreements or parenting plans, or conduct parenting or custody evaluations or make recommendations regarding those issues.

4. The issue of termination of a parenting coordinator's services or grievance procedure and protocol should remain, but those provisions should be applicable to the role of a parenting coordinator during the term of the appointment. At the conclusion of the term of the appointment, the parenting coordinator's services are over, unless the parties agree that the parenting coordinator should be reappointed. Parenting coordination either will have been successful in accomplishing what was the primary goal to begin with (to assist parties and to teach the parties how to function and co-parent without the need for services of third parties), or not. If it has not been successful, unless the parties agree to the contrary, then the Practice Committee believes that disputes about what should happen to children should be determined by a court on proper presentation of evidence. Courts make decisions according to law and an aggrieved party has a right to review by that tribunal.

5. Engagement letters of parenting coordinators should extend authority no further than the terms of the order of appointment that the parties agree upon.

6. Most importantly, parenting coordinators who work with litigants will be more successful if parents are confident in them. The selection of a parenting coordinator should occur after each litigant has had an opportunity to meet the proposed coordinator. If one of the coordinator's responsibilities is to teach and to foster communication and make recommendations based upon disputes that exist, then the litigants must at least start the process, before the coordinator deals with any specific issue, of trusting the parent coordinator. A relationship where there is bad chemistry from the beginning because of personality conflicts between the coordinator and one litigant is doomed to failure and is doomed to cause one litigant to feel the coordinator does not like him or her.

Traditionally, in New Jersey, parenting coordinators are selected by the lawyers who try to learn as much as they can about the proposed coordinator from their contacts and network before agreeing to a specific person. They try to match their perception of the personality of a client they represent with the coordinator being considered. The goal, however, is not to match the lawyers' personality with the coordinator's; it is to match the litigant with the coordinator. Therefore, the Practice Committee recommends that coordinators not be appointed or engaged unless there is an opportunity for each litigant to meet with the coordinator, and that the litigant must pay for this introductory time. The Practice Committee makes no recommendation as to whether that meeting should be a joint meeting or an individual meeting. If a meeting is not practical, then at least a telephone consultation should occur.

The Practice Committee believes people who desire to use parenting coordination as a form of alternative dispute resolution should be able to do so. They should be able to select

whomever they trust and agree to whatever terms they determine appropriate in connection with the utilization of the parenting coordinator's services. They should be able to refer to the parenting coordinator any issue pertaining to their family that they voluntarily agree to do.

The Practice Committee has doubts about whether litigants should be compelled to use parenting coordination if they do not wish to use it. Many members of the Practice Committee do not believe parties should be compelled to use parenting coordinators unless they agree. A minority are less certain of this limitation.

The Conference of Family Presiding Judges has determined that parenting coordination should continue to be a tool available to the court. The Practice Committee recommends that, when a court appoints a parenting coordinator, it should be pursuant to the revised model order to address the concerns the Practice Committee has identified in this report. If parenting coordination is to be implemented only through consent, then the model order of appointment with the consent provision (Attachment B) should be used, unless the parties agree to modify it to suit their requirements. If the Supreme Court determines that parenting coordinators can be designated by the court without a litigant's consent, then the Practice Committee recommends using the alternative model order of appointment (Attachment C). The Practice Committee recommends that all future parenting coordinator appointments by the court should be made by consent using the attached model order of appointment pursuant to a directive issued by the AOC.

B. Form agreements and scripts for use when parties seek to arbitrate family law matters

Discussion

- **Arbitration Consent Orders**

The Practice Committee was charged with preparing and recommending a consent order form when parties seek to arbitrate parenting issues and other issues. The Practice Committee recommends two form agreements, best described as the "short form" and the "long form." The "short form" encompasses an agreement to arbitrate pursuant to the Arbitration Act (*N.J.S.A.* 2A:23B-1 to -32) and the "long form" memorializes an agreement to arbitrate pursuant to the New Jersey Alternative Procedure for Dispute Resolution Act (APDRA) (*N.J.S.A.* 2A:23A-1 to -30). The "short form" is annexed as Attachment D and the "long form" is annexed as Attachment E.

The Practice Committee does not mean to say that a consent Order form under *N.J.S.A.* 2A:23B-1 to -32 should be "short," while a Consent Order form pursuant to *N.J.S.A.* 2A:23A-1 to -30 should be "long." The Practice Committee simply offers both versions for consideration. Either form could be tailored for use with either statute. In fact, the Practice Committee concluded that there is no one single form that must govern all consent orders. In both *Fawzy v. Fawzy*, 199 *N.J.* 456 (2009) and *Johnson v. Johnson*, A-91-09 (N.J. Dec. 10, 2010), the Supreme Court concluded that the parties could adjust and agree upon the standards of review and protocol except those that cannot be waived by statute. It is the Practice Committee's recommendation that both of these model order forms may be promulgated by Administrative Directive and used by the litigants, as may be appropriate to their circumstances, subject to any revisions they wish to make that are consistent with the statute selected and any provisions that

cannot be waived pursuant to the statutes. *See*, e.g., *N.J.S.A.* 2A:23B-4.b. and -4.c. In *Johnson v. Johnson*, the Supreme Court generally and briefly compares the differences between *N.J.S.A.* 2A:23B-1 to -32 and *N.J.S.A.* 2A:23A-1 to -30. Slip op. at 22.

- **Script used when parties seek to arbitrate pursuant to Fawzy v. Fawzy**

The Practice Committee also has developed a questionnaire, which contains questions to be reviewed by attorneys and pro se litigants in connection with their execution of a consent order or agreement to arbitrate. The questions in the form address the arbitration of financial and parenting issues. The Practice Committee believes that these questions were important based upon the explicit terms of the *Fawzy* decision. The proposed questionnaire is annexed as Attachment F and totals about 20 questions.

The Practice Committee considered including questions regarding the right to rescind the agreement to arbitrate, but rejected those questions as unnecessary because rescission could be addressed in other ways, such as a motion for relief from judgment pursuant to *R.* 4:50-1.

The questionnaire proposes the addition of a litigant certification. The Practice Committee believes that the certification addresses both represented and self-represented litigants. When a litigant appears in court to enter the arbitration consent order, which would normally conclude the Family Part case, the questionnaire could be marked and retained in the court's file. The court may ask the same general questions about the questionnaire as it normally asks about a Property Settlement Agreement, which include, but are not limited to the following issues: whether consent order was executed voluntarily, knowingly and whether the litigant had a right to consult with counsel or waived that right. Therefore, following such a procedure obviates the need to review each and every question in open court.

The Practice Committee is mindful that the form should be translated in connection with pro se litigants who do not speak or understand English.

The Practice Committee notes that any forms or scripts must conform to the mandates contained in *Fawzy* and other applicable case law. *See*, e.g., Justice Long's citation reference to the following in *Fawzy*:

> "In the absence of a consensual understanding, neither party is entitled to force the other to arbitrate their dispute. Subsumed in this principle is the proposition that only those issues may be arbitrated which the parties have agreed shall be." *In re Arbitration Between Grover & Universal Underwriters Ins. Co.*, 80 *N.J.* 221, 228-29, 403 *A.*2d 448 (1979). As we stated in *Garfinkel v. Morristown Obstetrics & Gynecology Associates, P.A.*, 168 *N.J.* 124, 132, 773 *A.*2d 665 (2001):
>
> > In respect of specific contractual language, "[a] clause depriving a citizen of access to the courts should clearly state its purpose. The point is to assure that the parties know that in electing arbitration as the exclusive remedy, they are waiving their time-honored right to sue." *Marchak [v. Claridge Commons, Inc.*, 134 *N.J.* 275, 282, 633 *A.*2d 531 (1993)]. As we have stressed in other contexts, a party's waiver of statutory rights "must be clearly and unmistakably established, and contractual language alleged to constitute a waiver will not be read expansively." *Red Bank Reg'l Educ. Ass'n [v. Red Bank Reg'l High Sch. Bd. of Educ.*, 78 *N.J.* 122, 140, 393 *A.*2d 267 (1978)]. In the same vein, a "court may not rewrite a contract to broaden the scope of arbitration[.]" *Yale Materials Handling Corp. v. White Storage & Retrieval Sys., Inc.*, 240 *N.J. Super.* 370, 374, 573 *A.*2d 484 (App.Div.1990). [(First and fourth alterations in original).]

Recommendation

(1) The Practice Committee submits two form agreements that address arbitration pursuant to the Arbitration Act (*N.J.S.A.* 2A:23B-1 to -32) and the New Jersey Alternative Procedure for Dispute Resolution Act (APDRA) (*N.J.S.A.* 2A:23A-1 to -30). Such agreements may be promulgated by the AOC.

(2) The Practice Committee submits a questionnaire, which contains questions to be reviewed by attorneys and pro se litigants in connection with their execution of a consent order

or agreement to arbitrate. Such a questionnaire may be promulgated by the AOC.

C. Unintended enforcement of support orders against third parties

Discussion

This issue has been on the Practice Committee's agenda in past rules cycles. The Practice Committee was asked to consider a potential rule change to deal with issues which may arise from the enforcement of Family Part orders to outside parties not otherwise intended.

The Family Practice Committee's Final Report of the 2002-04 rules cycle stated:

> The issue arose as a result of an inquiry forwarded to then Administrative Director Williams. The person asked that when an order is entered to attach an individual's pension funds some identifying information should be provided in order to avoid personal identification problems. The person wrote:
>
> > The problem is the absence of appropriate personal identification, e.g., social security number, full name with middle initial and a home address, led Citicorp to flag the wrong pension account.
> >
> > . . .
> >
> > It would appear to me the court system bears a higher level of responsibility to have processes and procedures in place that requires lawyers to provide sufficient and irrefutable information necessary to establish the correct target of a legal action.
> >
> > As we all know from the news headlines, identity theft is a major issue in today's society. But an issue of equal concern is the incorrect information that may be disseminated from source to source (including credit agencies) where someone is wrongly labeled by the actions of government or by the Court.
>
> The General Procedures and Rules Subcommittee of this Practice Committee recommended the adoption of a rule that would require orders directed to third-party agencies to contain the last four digits of a social security number as well as the individual's date of birth. This Practice Committee, however, believes that this issue is properly before the Supreme Court Committee on Public Access to Court Records and therefore will hold this matter until that Committee has issued its report.

The issue was carried into the 2007-09 rules cycle because the Committee on Public Access to Court Records (Public Access Committee) had not yet issued its report. In January 2008, the Supreme Court published for comment the Public Access Committee's report, which set out specific rule recommendations. After the Supreme Court considered all comments, including a submission from the Family Practice Committee, it adopted court rules addressing public access to court records. Although the Public Access Committee and the resulting court rules addressed a myriad of issues, they did not address the recommendation to adopt a rule that would require orders directed to third-party agencies to contain the last four digits of a social security number and the individual's date of birth.

Recommendation

Therefore, the Practice Committee recommends:

- referring this issue to the Advisory Committee on Public Access to Court Records for consideration, and
- carrying this issue to the 2011-2013 rules cycle so a rule may be drafted to address the original issue presented in the 2002-04 rules cycle; such a rule should ensure accurate identification of individuals who are the subject of enforcement proceedings in Family Part matters.

D. Tentative Decisions

Discussion

The Practice Committee encourages the use of tentative decisions pursuant to *R.* 5:5-4(e). Both judges and attorneys find that judicial tentative decisions are fairer to litigants, save costs and are a good tool for judges to resolve cases.

The Practice Committee discussed the procedure to use tentative decision, and although it did not reach a conclusion regarding same, the Practice Committee believes that a cover sheet, which may be developed by the Conference of Family Presiding Judges, would be helpful.

Recommendation

The Practice Committee recommends referring this issue to the Conference of Family Presiding Judges to develop the protocols and instructions for a tentative decision cover sheet.

V. Matters Held for Consideration

A. Signature of litigant on Uniform Summary Support Order (USSO) and Notice regarding immediate appeal of a child support hearing officer recommendation

The Practice Committee discussed, at length, the issue of providing notice to litigants of the significance of the electronic signature, and the corollary issue of notice regarding immediate appeal of a recommendation entered by a Child Support Hearing Officer (CSHO). This issue is significant since the document upon which the signature will appear generally is not printed in advance of the request for the litigant's signature. The Practice Committee also reviewed *R.* 5:25-3(d), which sets forth the right of an aggrieved party to seek an immediate appeal of a CSHO's child support recommendation to the court.

Since a rule amendment addressing this issue could have considerable impact on hearings conducted by CSHOs, who enter recommendations in a large percentage of child support cases, the Practice Committee determined that it would be beneficial to seek additional input from the AOC Family Practice Division before proposing any further amendments to the rules on this issue. In exploring this issue, the Practice Committee also determined that the USSO may require further revision to clarify the significance of the parties' signatures on the order. Accordingly, further discussion of this issue was tabled pending input from AOC Family Practice Division.

For the reasons set forth above, the Practice Committee recommends carrying this issue to the 2011-2013 rules cycle for further consideration.

B. Child Support federal quadrennial review -- issues requiring expert opinion

- **Quadrennial review: Preliminary Report**

The New Jersey Department of Human Services, Division of Family Development (DHS/DFD) is the state's Title IV-D agency and the lead agency possessing the necessary resources to procure the extensive review of New Jersey's child support guidelines required by the federal government. As the New Jersey child support enforcement program has become larger, more complicated and more sophisticated over its more than thirty years of existence, the Practice Committee concluded that it would be necessary to engage experts to review the income shares model to ensure that it still remains viable.

In preparation for the upcoming Quadrennial Review of New Jersey's child support guidelines, in 2009, DHS/DFD contracted with the New Jersey Child Support Institute of Rutgers University (Rutgers) to conduct a Child Support Guidelines Working Forum to discuss policy issues related to the quadrennial review. That forum was attended by members of the Practice Committee, judges, attorneys, Judiciary staff and DHS/DFD staff. The forum began with experts' presentations on the history of child support guidelines and their implementation nationally, the role that economists can and should play in the creation of child support guidelines, the current economic crisis in New Jersey and its impact on child support, and policy considerations in structuring child support guidelines.

A compendium developed from the forum was issued in October 2009, which served as a starting point for the Practice Committee's review. With the experience of the working forum and the child support issues that have been discussed by the Practice Committee over the past

few years (in anticipation of the quadrennial review), the Practice Committee discussed at length the issues that must be addressed within the quadrennial review.

The Practice Committee was principally concerned with ensuring that the child support guidelines are in compliance with the mandates of the federal Family Support Act, which requires that the quadrennial review investigate both the rate of compliance with the child support guidelines and the potential need for adjustments to the guidelines to reflect the economic realities of families in New Jersey. The Practice Committee recognizes that there are a number of issues requiring expert economic research before it can comprehensively address any potential modifications to the formula for calculating child support.

Following the forum, Rutgers entered into a contract with DHS/DFD to provide the research on those issues related to the quadrennial review that require expert economic advice, so as to assist the Practice Committee in addressing any potential modifications to the formula for calculating child support.

Rutgers was asked to address the Practice Committee's concerns regarding whether the New Jersey Child Support Guidelines accurately capture the cost of raising children in New Jersey, and specifically to review and make recommendations in the following areas:

- Whether the current model employed to extract data from the Consumer Expenditure Survey (CEX) should be modified to include expenditures by households for mortgage principal and car payments which the previous model excluded as "savings."
- Whether the spending categories included in the award amounts can be better defined, such as a clearer definition of what is included in, and what is excluded from, each of the categories of expenses covered by the child support awards currently defined as 38% Fixed Costs (Shelter), 37% Variable Costs (Transportation and Food) and 25% Controlled Costs

(Clothing, Personal Care, Entertainment and Misc.). An example would be to recommend whether extraordinary expenses, such as private schooling, a child's automobile, or other special items, should be excluded from Controlled Costs.

- Whether the percentages for the spending categories used to make adjustments for parenting time (38%, 37%, and 25%) are still valid, or whether they must be adjusted, or even realigned in conjunction with a new model or a new definition structure for the categories.
- Whether the minimum and maximum income standards for the child support guidelines should be adjusted up or down.
- Whether the six child limit of the tables should be adjusted or expanded.
- Whether the poverty level (self support threshold) should be adjusted in light of research done by Dr. Rodgers (a Rutgers economist who presented at the Child Support Working Forum).
- Whether the Betson-Rothbarth Marginal Cost Estimator should still be employed, or whether an alternative estimator of marginal cost, such as the Engel estimator or some new estimator (e.g., the "Rutgers Estimator") should be created and employed.
- Whether the guidelines should be based upon intact family spending, or whether single parent household spending should be used.
- Whether the adjustment for children age 12 or older is still viable.

Rutgers drafted a white paper entitled *Quadrennial Review: Preliminary Report*, dated October 29, 2010 to address these questions posed by the Practice Committee. The Practice Committee reviewed the report and has identified a number of issues which require further analysis. The Practice Committee's Subcommittee on Child Support reviewed the Rutgers *Preliminary Report*, providing comments on several areas that required additional examination

or discussion. The comments were shared with Rutgers and the Practice Committee. The Practice Committee designated the Subcommittee co-chairs to continue the dialogue with Rutgers over the ensuing months to resolve these concerns. The Subcommittee co-chairs plan to meet with Rutgers to discuss these concerns prior to finalizing this *Preliminary Report*. Thereafter, DHS/DFD has advised that it intends to enter into a new contract with Rutgers to undertake the quadrennial review and issue a final report, which will not be completed before the end of the current rules cycle. Thus, the Practice Committee recommends that it be permitted to continue to work on this issue beyond the end of the current rules cycle.

- **Social security disability derivative child benefits**

The Practice Committee identified accounting for Social Security Disability derivative child benefits as an additional issue requiring Rutgers' review. Specifically, the current method of calculating an adjustment to child support for a disability payment on behalf of the child based upon the work history of one of the parents creates a greater reduction in child support than simply adding that payment to the income of the custodial parent. The history of the rule suggests that this method was selected specifically to amplify the child support reduction when a non-custodial parent becomes disabled and the children are receiving social security benefits based on the disabled non-custodial parent's work history.

In practice, this exaggerated reduction works well when the non-custodial parent becomes disabled. When the custodial parent becomes disabled, however, the child's household income is usually significantly reduced by the custodial parent's loss of earning capacity. To further this family's financial hardship by applying the exaggerated child support reduction contradicts basic principles of child support public policy. The non-custodial parent, whose

circumstances have not changed, should not benefit from a financial windfall at the expense of the child.

The temporary solution to this concern was to explain the concern in the line instructions for child income and indicate that where a child's household income is reduced due to the disability, fundamental fairness may require deviation from the guidelines to avoid further financial hardship.

An assessment of the methods used around the country to adjust child support to account for Social Security derivative dependent child benefits would greatly assist the Practice Committee in recommending a method of adjustment that is applied equally and fairly, regardless of which parent is disabled.

- **Calculation of overnight adjustments and joint custody**

The Practice Committee, as part of the quadrennial review, also will review the calculation of overnight adjustments and the calculation of true 50% joint custody.

- **Health care insurance cost for parents with means tested income**

The Practice Committee also will review the calculation involving a reduction of child support for health care insurance cost when the custodial parent has no countable income (e.g., Supplemental Security Income (SSI) or General Assistance (GA)).

Conclusion and Recommendation

All issues identified in this section of the report should be resolved within context of quadrennial review. As they all relate to the formula for calculating child support, the Practice Committee recommends that these items be added to the list of items to be included in the expert's scope of work for the quadrennial review of New Jersey's Child Support Guidelines.

Furthermore, the Practice Committee recommends that its Subcommittee on Child Support be permitted to continue its review of these issues beyond the end of the current rules cycle to ensure continuity of the monitoring of the quadrennial review.

The Practice Committee further recommends that all issues related to the child support guidelines should be consolidated and carried to the next rules cycle. Therefore, the Practice Committee reserves its recommendations of these issues for the next rules cycle.

C. ***Requirement to file an application for Title IV-D services when child support is sought and payable through the Probation Division***

The Practice Committee identified an issue relating to child support cases supervised by the Probation Division, but no application for Title IV-D services has been executed. The Practice Committee believes it is beneficial to families, users of the court system, and court staff for a completed Title IV-D application to be submitted when child support is being sought and administered by the Probation Division.

Pursuant to 42 *U.S.C.* § 669, *et seq.*, states are required to collect and report accurately child support enforcement data to the federal government. In part, this information is used by the federal government to determine the amount of incentive payments to the states based on their success in meeting certain performance goals. Child support incentive funding is based on performance ratios for various federal performance measures. The federal Office of Child Support Enforcement (OCSE) conducts Data Reliability Audits (DRA) to ensure that the performance ratios reported to the federal government are supported by accurate and reliable data. If the DRA indicates that the NJKIDS data is not accurate and reliable, the federal government can withhold funding on one or more performance measures. If program requirements are not met, the federal government can impose performance penalties. States must have a well documented audit trail that consists of the case information used to compile the line items that will be used to calculate incentives. If audit results determine that data needed to compute current incentive measures is incomplete or unreliable, the state will not be eligible for an incentive payment for measures reliant on this data and the amounts otherwise payable to the state may be reduced.

One critical element of the DRA that the states must meet is the existence of completed Title IV-D applications in each child support case file. Failure to maintain copies of the application in Title IV-D child support case records could result in the loss federal child support incentive funding. The benefits of requiring the filing of a Title IV-D application in every child support case and payment of support through the New Jersey Family Support Payment Center (NJFSPC) include:

- Clarity to bench, bar, litigants and court staff, resulting in more efficient and faster delivery of support to families;
- Reduction in the number of cases on the automated system where no Title IV-D applications have been filed and increased eligibility for federal funding; and
- Enhancement of audit compliance, resulting in increased federal reimbursements and incentive payments, and reduced penalties for noncompliance.

The Practice Committee acknowledges that rule amendments pertaining to these issues would impact DHS/DFD, Probation Division and Family Division practices and policies. For that reason, the Practice Committee recommends seeking input from these stakeholders before advancing any recommendations.

The Practice Committee recognizes that the Judiciary and DHS/DFD are continuing their joint review of these issues and recommends that this issue be deferred to the next rules cycle, after completion of stakeholder review.

D. Clarification of R. 5:7-5(b) regarding whether child support is presumed to be paid through the Probation Division or Family Support Payment Center (NJFSPC)

Rule 5:7-5 provides that all orders that include child support shall be paid through immediate income withholding; however, the rule does not specify that the support must be paid through Probation or the NJFSPC. The Practice Committee believes that rule should be read *in pari materia* with *N.J.S.A.* 2A:17-56.13, which mandates that until such time as the state establishes a state disbursement unit, every award of alimony, maintenance or child support must be made through the Probation Division, unless the court, for good cause shown, otherwise orders.

The current rule is unclear as to the requirement for the order to be paid through Probation, if not specified in the order. In some vicinages, the local Probation Division establishes and administers the child support case. In other vicinages, however, the support order is considered to be directly paid between the parties with no Probation supervision. Child support orders and property settlement agreements containing child support provisions incorporated into dissolution orders frequently lack specificity as to which form of collection is intended, causing confusion and delays in the payment of support to families. The Practice Committee believes that the court rule must be clear as to the collection options to be selected in court orders and agreements.

The Practice Committee reviewed this issue and determined that it would be in the best interests of families, court staff, and child support program administration for continued review of this issue to clarify that *R.* 5:7-5 requires that support shall be payable through the NJFSPC, unless the court, for good cause, otherwise orders. This would be consistent with *N.J.S.A.* 2A:17-56.13 and 42 *U.S.C.* § 654B. The Practice Committee also believes that the Part V rules

regarding the payment of support and enforcement require significant redrafting as explained in subsection E below. Therefore, the Practice Committee makes no recommendation for a rule amendment in this cycle, but recommends carrying this issue to the next rules cycle.

E. Restructuring of the Part V Rules

The Part V rules, particularly *R.* 5:7-4 and *R.* 5:7-5, are difficult to use in their current form. Provisions relating to child support are disjointed and not logically structured.

The Practice Committee recommends a complete review and restructuring of the Part V rules as to child support in the next cycle to make them more cohesive and user-friendly. Restructuring would eliminate redundancies and inconsistencies, and clarify the Probation Division's responsibilities in support matters. Therefore, the Practice Committee reserves its recommendations of this issue for the next rules cycle.

F. Family case information statement

- **Clarification on when to file the CIS and when to apply for counsel fees**

This issue focused upon seeking clarification as to the necessity of filing a CIS in applications seeking modification and in applications seeking enforcement of prior orders. The issue also focused upon seeking clarification as to when to submit an application for an award of counsel fees. The Practice Committee believes that this issue requires further review and therefore recommends carrying it to the next rules cycle.

- **Certification as to redaction of confidential personal identifiers**

This issue focused upon the question of who is being asked to certify in the CIS as to the redaction of Confidential Personal Identifiers in documents filed with the court. The Practice Committee believes that this issue requires further review and therefore recommends carrying it to the next rules cycle.

Committee Members and Staff

Hon. Marie E. Lihotz, J.A.D., **Chair**
Hon. Julio L. Mendez, P.J.F.P., **Vice-Chair**
Lesley Renee Adams, Esq.
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Hon. John L. Call, P.J.F.P.
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Carolyn V. Chang, Esq.
Laurence J. Cutler, Esq.
Hon. William R. DeLorenzo, Jr., J.S.C.
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Charles F. Vuotto, Jr., Esq.
Marybeth Wood, Esq.
Harry T. Cassidy, Asst. Director, AOC Staff
David Tang, Esq., AOC Staff

Respectfully submitted,

Hon. Marie E. Lihotz, J.A.D., Chair

Date: January 20, 2011

List of Attachments

A. Family Case Information Statement

B. Order Appointing Parenting Coordinator (Consent)

C. Order Appointing Parenting Coordinator (Without Consent)

D. Consent Order for Arbitration (pursuant to *N.J.S.A.* 2A:23B-1 to -32)

E. Consent Order for Arbitration (pursuant to *N.J.S.A.* 2A:23A-1 to -30)

F. Questions Regarding Agreement to Arbitrate Family Matter

[Appendix V]

FAMILY PART CASE INFORMATION STATEMENT

This form and attachments are confidential pursuant to Rules 1:38-3(d)(1) and 5:5-2(f)

Attorney(s):
Office Address
Tel. No./Fax No.
Attorney(s) for:

Plaintiff, vs. Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, FAMILY PART COUNTY DOCKET NO. CASE INFORMATION STATEMENT OF _____

NOTICE: This statement must be fully completed, filed and served, with all required attachments, in accordance with Court Rule 5:5-2 based upon the information available. In those cases where the Case Information Statement is required, it shall be filed within 20 days after the filing of the Answer or Appearance. Failure to file a Case Information Statement may result in the dismissal of a party's pleadings.

PART A - CASE INFORMATION:

Date of Statement_____
Date of Divorce, Dissolution of Civil Union or Termination of Domestic Partnership (post-Judgment matters)_____
_____
Date(s) of Prior Statement(s)_____
_____
Your Birthdate_____
Birthdate of Other Party_____
Date of Marriage, or entry into Civil Union or Domestic Partnership_____
Date of Separation_____
Date of Complaint_____

ISSUES IN DISPUTE:

Cause of Action_____
Custody_____

Parenting Time_____
Alimony_____
Child Support_____
Equitable Distribution_____
Counsel Fees_____

Other issues (be specific)_____
_____

Does an agreement exist between parties relative to any issue? [ ] Yes [ ] No. If Yes, ATTACH a copy (if written) or a summary (if oral).

1. Name and Addresses of Parties:

Your Name _____
Street Address _____ City_____ State/Zip_____
Other Party's Name _____
Street Address _____ City_____ State/Zip_____

2. Name, Address, Birthdate and Person with whom children reside:

a. Child(ren) From This Relationship

Child's Full Name	Address	Birthdate	Person's Name

b. Child(ren) From Other Relationships

Child's Full Name	Address	Birthdate	Person's Name

PART B - MISCELLANEOUS INFORMATION:

1. Information about Employment (Provide Name & Address of Business, if Self-employed)
Name of Employer/Business _____ Address _____
_____
Name of Employer/Business _____ Address _____
_____

2. Do you have Insurance obtained through Employment/Business? ☐ Yes ☐ No. Type of Insurance:
Medical ☐Yes ☐No; Dental ☐Yes ☐No; Prescription Drug ☐Yes ☐No; Life ☐Yes ☐No; Disability ☐Yes ☐No
Other (explain) _____
Is Insurance available through Employment/Business? ☐Yes ☐No Explain:_____
_____

3. ATTACH Affidavit of Insurance Coverage as required by Court Rule *5:4-2* (f) (See Part G)

4. Additional Identification:
Confidential Litigant Information Sheet: Filed ☐Yes ☐No

5. ATTACH a list of all prior/pending family actions involving support, custody or Domestic Violence, with the Docket Number, County, State and the disposition reached. Attach copies of all existing Orders in effect.

PART C. - INCOME INFORMATION:

Complete this section for self and (if known) for [spouse] other party.

1. LAST YEAR'S INCOME

	Yours	Joint	[Spouse or Former Spouse] Other Party
1. Gross earned income last calendar (year)	$_____	$_____	$_____
2. Unearned income (same year)	$_____	$_____	$_____
3. Total Income Taxes paid on income (Fed., State, F.I.C.A., and S.U.I.). If Joint Return, use middle column.	$_____	$_____	$_____
4. Net income (1 + 2 - 3)	$_____	$_____	$_____

ATTACH to this form a corporate benefits statement as well as a statement of all fringe benefits of employment. (See Part G)

ATTACH a full and complete copy of last year's Federal and State Income Tax Returns. ATTACH W-2 statements, 1099's, Schedule C's, etc., to show total income plus a copy of the most recently filed Tax Returns. (See Part G)
Check if attached: ☐Federal Tax Return ☐State Tax Return ☐W-2 ☐ Other

2. PRESENT EARNED INCOME AND EXPENSES

	Yours	Other Party (if known)
1. Average gross weekly income (based on last 3 pay periods – ATTACH pay stubs) Commissions and bonuses, etc., are: ☐included ☐not included* ☐not paid to you.	$_____	$_____
2. Deductions per week (check all types of withholdings): ☐Federal ☐State ☐F.I.C.A. ☐S.U.I. ☐Other	$_____	$_____
3. Net average weekly income (1 - 2)	$_____	$_____

*ATTACH details of basis thereof, including, but not limited to, percentage overrides, timing of payments, etc.
ATTACH copies of last three statements of such bonuses, commissions, etc.

3. YOUR CURRENT YEAR-TO-DATE EARNED INCOME

Provide Dates: From _____ To _____

1. GROSS EARNED INCOME: $ Number of Weeks_____
2. TAX DEDUCTIONS: (Number of Dependents:)

a. Federal Income Taxes	a.	$_____
b. N.J. Income Taxes	b.	$_____
c. Other State Income Taxes	c.	$_____
d. FICA	d.	$_____
e. Medicare	e.	$_____
f. S.U.I. / S.D.I.	f.	$_____
g. Estimated tax payments in excess of withholding	g.	$_____
h.	h.	$_____
i.	i.	$_____
TOTAL		$_____

3. GROSS INCOME NET OF TAXES $ $_____

4. OTHER DEDUCTIONS

			If mandatory, check box
a. Hospitalization/Medical Insurance	a.	$_____	[ ]
b. Life Insurance	b.	$_____	[ ]
c. Union Dues	c.	$_____	[ ]
d. 401(k) Plans	d.	$_____	[ ]
e. Pension/Retirement Plans	e.	$_____	[ ]
f. Other Plans—specify	f.	$_____	[ ]
g. Charity	g.	$_____	[ ]
h. Wage Execution	h.	$_____	[ ]
i. Medical Reimbursement (flex fund)	i.	$_____	[ ]
j. Other:	j.	$_____	[ ]
TOTAL		$_____	

5. NET YEAR-TO-DATE EARNED INCOME: $_____

NET AVERAGE EARNED INCOME PER MONTH: $_____

NET AVERAGE EARNED INCOME PER WEEK $_____

4. YOUR YEAR-TO-DATE GROSS UNEARNED INCOME FROM ALL SOURCES (including, but not limited to, income from unemployment, disability and/or social security payments, interest, dividends, rental income and any other miscellaneous unearned income)

Source	How often paid	Year to date amount
_____	_____	$_____
_____	_____	$_____
_____	_____	$_____
_____	_____	$_____
_____	_____	$_____
_____	_____	$_____
_____	_____	$_____
_____	_____	$_____
_____	_____	$_____

TOTAL GROSS UNEARNED INCOME YEAR TO DATE $_____

5. ADDITIONAL INFORMATION:

1. How often are you paid? _____

2. What is your annual salary? $ _____

3. Have you received any raises in the current year? ☐Yes ☐No. If yes, provide the date and the gross/net amount.
_____

4. Do you receive bonuses, commissions, or other compensation, including distributions, taxable or non-taxable, in addition to your regular salary? ☐Yes ☐No. If yes, explain:
_____

5. Did you receive a bonuses, commissions, or other compensation, including distributions, taxable or non-taxable, in addition to your regular salary during the current or immediate past calendar year? ☐Yes ☐No If yes, explain and state the date(s) of receipt and set forth the gross and net amounts received:
_____

6. Do you receive cash or distributions not otherwise listed? ☐Yes ☐No If yes, explain. _____
_____

7. Have you received income from overtime work during either the current or immediate past calendar year? ☐Yes ☐No If yes, explain. _____

8. Have you been awarded or granted stock options, restricted stock or any other non-cash compensation or entitlement during the current or immediate past calendar year? ☐Yes ☐No If yes, explain. _____
_____

9. Have you received any other supplemental compensation during either the current or immediate past calendar year? ☐Yes ☐No. If yes, state the date(s) of receipt and set forth the gross and net amounts received. Also describe the nature of any supplemental compensation received._____
_____

10. Have you received income from unemployment, disability and/or social security during either the current or immediate past calendar year? ☐Yes ☐No. If yes, state the date(s) of receipt and set forth the gross and net amounts received._____

11. List the names of the dependents you claim:_____

12. Are you paying or receiving any alimony? ☐Yes ☐No. If yes, how much and from or to whom?_____
_____

13. Are you paying or receiving any child support? ☐Yes ☐No. If yes, list names of the children, the amount paid or received for each child and to whom paid or from whom received. _____
_____

14. Is there a wage execution in connection with support? ☐Yes ☐No If yes explain._____
_____

15. Has a dependent child of yours received income from social security, SSI or other government program during either the current or immediate past calendar year? ☐Yes ☐No. If yes, explain the basis and state the date(s) of receipt and set forth the gross and net amounts received _____
_____

16. Explanation of Income or Other Information:
_____
_____
_____
_____
_____
_____
_____

PART D - MONTHLY EXPENSES (computed at 4.3 wks/mo.)

Joint Marital or Civil Union Life Style should reflect standard of living established during marriage or civil union. Current expenses should reflect the current life style. Do not repeat those income deductions listed in Part C – 3.

	Joint [Marital] Life Style Family, including _____ children	Current Life Style Yours and _____ children
SCHEDULE A: SHELTER		
If Tenant:…….		
Rent…….	$_____	$_____
Heat (if not furnished)…….	$_____	$_____
Electric & Gas (if not furnished)…….	$_____	$_____
Renter's Insurance……...	$_____	$_____
Parking (at Apartment)……	$_____	$_____
Other charges (Itemize)……...	$_____	$_____
If Homeowner:		
Mortgage ……	$_____	$_____
Real Estate Taxes (if not included w/mortgage payment)…	$_____	$_____
Homeowners Ins. (if not included w/mortgage payment)…	$_____	$_____
Other Mortgages or Home Equity Loans ……	$_____	$_____
Heat (unless Electric or Gas)……	$_____	$_____
Electric & Gas……...	$_____	$_____
Water & Sewer…….	$_____	$_____
Garbage Removal…….	$_____	$_____
Snow Removal…….	$_____	$_____
Lawn Care……	$_____	$_____
Maintenance…….	$_____	$_____
Repairs……..	$_____	$_____
Other Charges (Itemize)……...	$_____	$_____
Tenant or Homeowner:		
Telephone……...	$_____	$_____
Mobile/Cellular Telephone……...	$_____	$_____
Service Contracts on Equipment……..	$_____	$_____
Cable TV……..	$_____	$_____
Plumber/Electrician……..	$_____	$_____
Equipment & Furnishings……	$_____	$_____
Internet Charges……...	$_____	$_____
Other (itemize)…….	$_____	$_____
TOTAL	$_____	$_____

SCHEDULE B: TRANSPORTATION		
Auto Payment……..	$_____	$_____
Auto Insurance (number of vehicles:)……...	$_____	$_____
Registration, License……...	$_____	$_____
Maintenance……..	$_____	$_____
Fuel and Oil…….	$_____	$_____
Commuting Expenses…….	$_____	$_____
Other Charges (Itemize)……..	$_____	$_____
TOTAL	$_____	$_____

SCHEDULE C: PERSONAL……..	Joint [Marital] Life Style Family, including _____children	Current Life Style Yours and _____ children
Food at Home & household supplies	$_____	$_____
Prescription Drugs	$_____	$_____
Non-prescription drugs, cosmetics, toiletries & sundries.....	$_____	$_____
School Lunch.....	$_____	$_____
Restaurants	$_____	$_____
Clothing	$_____	$_____
Dry Cleaning, Commercial Laundry.....	$_____	$_____
Hair Care	$_____	$_____
Domestic Help	$_____	$_____
Medical (exclusive of psychiatric)*	$_____	$_____
Eye Care*	$_____	$_____
Psychiatric/psychological/counseling*	$_____	$_____
Dental (exclusive of Orthodontic*	$_____	$_____
Orthodontic*.....	$_____	$_____
Medical Insurance (hospital, etc.)*	$_____	$_____
Club Dues and Memberships.....	$_____	$_____
Sports and Hobbies.....	$_____	$_____
Camps.....	$_____	$_____
Vacations.....	$_____	$_____
Children's Private School Costs	$_____	$_____
Parent's Educational Costs	$_____	$_____
Children's Lessons (dancing, music, sports, etc.).....	$_____	$_____
Babysitting.....	$_____	$_____
Day-Care Expenses.....	$_____	$_____
Entertainment	$_____	$_____
Alcohol and Tobacco.....	$_____	$_____
Newspapers and Periodicals	$_____	$_____
Gifts.....	$_____	$_____
Contributions	$_____	$_____
Payments to Non-Child Dependents.....	$_____	$_____
Prior Existing Support Obligations this family/other families (specify)	$_____	$_____
Tax Reserve (not listed elsewhere)	$_____	$_____
Life Insurance.....	$_____	$_____
Savings/Investment.....	$_____	$_____
Debt Service (from page 7) (not listed elsewhere)	$_____	$_____
Parenting Time Expenses	$_____	$_____
Professional Expenses (other than this proceeding)	$_____	$_____
Other (specify)	$_____	$_____
*<u>unreimbursed only</u>……...		
TOTAL	$_____	$_____

Please Note: If you are paying expenses for a spouse <u>or civil union partner</u> and/or children not reflected in this budget, attach a schedule of such payments.

Schedule A: Shelter……	$_____	$_____
Schedule B: Transportation……	$_____	$_____
Schedule C: Personal…….……	$_____	$_____
Grand Totals……..	$_____	$_____

PART E - BALANCE SHEET OF ALL FAMILY ASSETS AND LIABILITIES

STATEMENT OF ASSETS

Description	Title to Property ([H, W] P, D, J)[1]	Date of purchase/acquisition. If claim that asset is exempt, state reason and value of what is claimed to be exempt	Value $ Put * after exempt	Date of Evaluation Mo./Day/ Yr.
1. Real Property				
2. Bank Accounts, CD's				
3. Vehicles				
4. Tangible Personal Property				
5. Stocks and Bonds				
6. Pension, Profit Sharing, Retirement Plan(s), 40l(k)s, etc. [list each employer]				
7. IRAs				
8. Businesses, Partnerships, Professional Practices				
9. Life Insurance (cash surrender value)				
10. Loans Receivable				
11. Other (specify)				

TOTAL GROSS ASSETS: $ _____

TOTAL SUBJECT TO EQUITABLE DISTRIBUTION: $ _____

TOTAL NOT SUBJECT TO EQUITABLE DISTRIBUTION: $ _____

[1] P = Plaintiff; D = Defendant; J = Joint

STATEMENT OF LIABILITIES

Description	Name of Responsible Party ([H, W] P, D, J)	If you contend liability should not be considered in equitable distribution, state reason	Monthly Payment	Total Owed	Date
1. Real Estate Mortgages					
2. Other Long Term Debts					
3. Revolving Charges					
4. Other Short Term Debts					
5. Contingent Liabilities					

TOTAL GROSS LIABILITIES: $ _____
(excluding contingent liabilities)

NET WORTH: $ _____
(subject to equitable distribution)

PART F - STATEMENT OF SPECIAL PROBLEMS

Provide a Brief Narrative Statement of Any Special Problems Involving This Case: As example, state if the matter involves complex valuation problems (such as for a closely held business) or special medical problems of any family member, etc.

I certify that, other than in this form and its attachments, confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I certify that the foregoing information contained herein is true. I am aware that if any of the foregoing information contained therein is willfully false, I am subject to punishment.

DATED: _____ SIGNED: _____

PART G - REQUIRED ATTACHMENTS

CHECK IF YOU HAVE ATTACHED THE FOLLOWING REQUIRED DOCUMENTS

1. A full and complete copy of your last federal and state income tax returns with all schedules and attachments. (Part C-1) _____
2. Your last calendar year's W-2 statements, 1099's, K-1 statements. _____
3. Your three most recent pay stubs. _____
4. Bonus information including, but not limited to, percentage overrides, timing of payments, etc.; the last three statements of such bonuses, commissions, etc. (Part C) _____
5. Your most recent corporate benefit statement or a summary thereof showing the nature, amount and status of retirement plans, savings plans, income deferral plans, insurance benefits, etc. (Part C) _____
6. Affidavit of Insurance Coverage as required by Court Rule 5:4-2(f) (Part B-3) _____
7. List of all prior/pending family actions involving support, custody or Domestic Violence, with the Docket Number, County, State and the disposition reached. Attach copies of all existing Orders in effect. (Part B-5) _____
8. Attach details of each wage execution (Part C-5)
9. Schedule of payments made for a spouse or civil union partner and/or children not reflected in Part D. _____
10. Any agreements between the parties. _____
11. An Appendix IX Child Support Guideline Worksheet, as applicable, based upon available information. _____

Attorney(s) for _____

_____
Plaintiff,

v.

_____
Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - FAMILY PART
COUNTY OF _____
DOCKET NO.: _____

Civil Action

ORDER APPOINTING PARENTING COORDINATOR (CONSENT)

THIS MATTER having been opened to the Court by _____, Esq., attorneys for the Plaintiff, and _____, Esq., attorneys for the Defendant, and the parties having agreed that it is in the best interests of the child(ren) that a Parenting Coordinator be appointed to assist the parties in resolving their conflicts as here defined, and the parties having approved the coordinator designated; for good cause having been shown;

IT IS ON THIS _____ DAY OF _____, 20__, ORDERED AS FOLLOWS:

1. APPOINTMENT: _____, located at _____is appointed as Parenting Coordinator for the term of _____ to _____.

2. ROLE OF PARENTING COORDINATOR: The Parenting Coordinator shall serve to attempt to assist the parties to resolve conflicts related to the following issues:

_____

_____

_____.

The Parenting Coordinator also shall seek to assist the parties to learn strategies to avoid conflict regarding their child(ren). The Parenting Coordinator shall not have the authority to change existing Orders of the Court unless the parties consent and enter into a Consent

Order. The Parenting Coordinator shall not have authority to conduct parenting time or custody evaluations or to make recommendations concerning said issues.

3. NO CONFIDENTIALITY: All communications from the parties and/or their lawyers to the Parenting Coordinator and/or from the Parenting Coordinator to the parties and/or their lawyers shall not be deemed confidential, but rather shall be admissible in evidence, under New Jersey Rules of Evidence and Rules of Court.

4. RECOMMENDATIONS: If the Parenting Coordinator can not foster agreement regarding the issues assigned to him/her, then he/she will make recommendations to the parties (and their respective attorneys) directly. If either party objects to the recommendation, and refuses to be bound by the same, either party may apply to the court pursuant to the Rules for determination of the issues. In connection with any such application, either party may submit the Parenting Coordinator's recommendation and any additional relevant evidence, in accordance with the Rules of Court. The court may assess counsel fees pursuant to the Rules in connection with said application. The parties shall provide notice to the Parenting Coordinator of any application to the court related to recommendations the Coordinator has made.

5. SOURCES OF INFORMATION: Except as set forth herein, each party is ordered to provide the Parenting Coordinator with all requested information including the signing of all releases requested for non privileged collateral contacts. The Parenting Coordinator may have contact with any professional for the children. If the parties agree, the Parenting Coordinator may have access to any other individual the parenting coordinator deems necessary to perform the coordinator’s duties. If the parties disagree as to whether the Coordinator should have access to any specific person or whether a parent has to sign an authorization pertaining to him or herself, then the Court shall determine the issue on application.

6. SCOPE: The Parenting Coordinator may make recommendations to the parties about

issues identified in the Order of Appointment.

7. PROTOCOL: Consistent with this Rule, the Parenting Coordinator may determine the protocol of all communications, interviews, and sessions including who shall or may attend the meetings.

8. COMMUNICATION: The parties and their attorneys shall have the right to initiate or receive oral one-sided communication with the Parenting Coordinator but the fact of such communication shall be made known to the other party contemporaneously with its occurring through confirmatory written memorialization. Any party or counsel may communicate in writing with the Parenting Coordinator provided that copies are provided to the other party and counsel simultaneously. Copies of any documents, tape recordings or other electronic material that one party gives to the Parenting Coordinator must also be given contemporaneously to the other party or his/her attorney.

9. ALLOCATION OF FEES: The Parenting Coordinator's reasonable and customary fees shall be paid by the parties as follows: plaintiff _____% and defendant _____%. In the event of a request for reallocation of fees and costs, the Parenting Coordinator may submit recommendations concerning this issue.

10. PARENTING COORDINATOR'S RETAINER AGREEMENT: The parenting coordinator's retainer agreement shall mirror the terms of this Order of Appointment. The parenting coordinator's retainer agreement shall not provide any authority beyond that set forth in this Order of Appointment.

11. RETAINER: The parties will pay to the Parenting Coordinator a joint retainer in the percentages referred to above, or as may be modified by the Court.

12. TESTIMONY: All testimony by the Parenting Coordinator in connection with these proceedings or other proceedings involving any or all of the participants in this proceeding shall be deemed expert testimony if qualified and shall be paid accordingly.

13. COOPERATION OF THE PARTIES: In the event the Parenting Coordinator believes

either party has been recalcitrant and/or non-cooperative and thereby has interfered with the parenting coordinating process, that view shall be communicated in writing to the parties and their attorneys, who may then petition the court for appropriate relief, including, but not limited to, sanctions, counsel fees, and the remedies set forth in *Rule* 5:3-7.

14. TERMINATION/GRIEVANCE: During the term of the Parenting Coordinator's appointment, the Coordinator may withdraw from service at any time, on ten days notice to the parties and the court, if she/he determines resignation to be in the best interests of the children or she/he is unable to serve out the term set forth in this order. A party having a complaint or grievance shall discuss the matter with the Parenting Coordinator in person in an attempt to resolve it before pursuing it in any other manner. If the issue remains unresolved, the aggrieved party shall submit a written letter detailing the complaint or grievance to the Parenting Coordinator with a copy to the other party, both attorneys (if any), and to the attorney for the child(ren) or Guardian ad Litem if one is in place. The Parenting Coordinator shall within ten (10) days provide a written response to both parties and the attorneys. The Parenting Coordinator at his/her discretion may schedule a meeting or conference call with the attorneys or with the attorneys and the parties in an effort to resolve the complaint. In situations where the grievance or complaint is not resolved by this process, the dissatisfied party may request a court hearing to address and resolve the issues that have been raised.

_____

J.S.C.

Attorney(s) for _____

_____
Plaintiff,

v.

_____
Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - FAMILY PART
COUNTY OF _____
DOCKET NO.: _____

Civil Action

ORDER APPOINTING PARENTING COORDINATOR (WITHOUT CONSENT)

THIS MATTER having been opened by the Court on its own motion, or on the application of _____, Esq., attorneys for the ☐ Plaintiff ☐ Defendant, on notice to _____, Esq. the attorneys for the ☐ Plaintiff ☐ Defendant, and the Court having determined that it is in the best interests of the child(ren) that a Parenting Coordinator be appointed to assist the parties in resolving their conflicts as here defined; and good cause having been shown; and

IT IS ON THIS _____ DAY OF _____, 20__, ORDERED AS FOLLOWS:

1. APPOINTMENT: _____, located at _____is appointed as Parenting Coordinator for the term of _____ to _____.

2. ROLE OF PARENTING COORDINATOR: The Parenting Coordinator shall serve to attempt to assist the parties to resolve conflicts related to the following issues:

_____

_____

_____.

The Parenting Coordinator also shall seek to assist the parties to learn strategies to avoid conflict regarding their child(ren). The Parenting Coordinator shall not have the authority

to change existing Orders of the Court unless the parties consent and enter into a Consent Order. The Parenting Coordinator shall not have authority to conduct parenting time or custody evaluations or to make recommendations concerning said issues.

3. NO CONFIDENTIALITY: All communications from the parties and/or their lawyers to the Parenting Coordinator and/or from the Parenting Coordinator to the parties and/or their lawyers shall not be deemed confidential, but rather shall be admissible in evidence, under New Jersey Rules of Evidence and Rules of Court.

4. RECOMMENDATIONS: If the Parenting Coordinator can not foster agreement regarding the issues assigned to him/her, then he/she will make recommendations to the parties (and their respective attorneys) directly. If either party objects to the recommendation, and refuses to be bound by the same, either party may apply to the court pursuant to the Rules for determination of the issues. In connection with any such application, either party may submit the Parenting Coordinator's recommendation and any additional relevant evidence, in accordance with the Rules of Court. The court may assess counsel fees pursuant to the Rules in connection with said application. The parties shall provide notice to the Parenting Coordinator of any application to the court related to recommendations the Coordinator has made.

5. SOURCES OF INFORMATION: Except as set forth herein, each party is ordered to provide the Parenting Coordinator with all requested information including the signing of all releases requested for non privileged collateral contacts. The Parenting Coordinator may have contact with any professional for the children. If the parties agree, the Parenting Coordinator may have access to any other individual the parenting coordinator deems necessary to perform the coordinator’s duties. If the parties disagree as to whether the Coordinator should have access to any specific person or whether a parent has to sign an authorization pertaining to him or herself, then the Court shall determine the issue on application.

6. SCOPE: The Parenting Coordinator may make recommendations to the parties about issues identified in the Order of Appointment.

7. PROTOCOL: Consistent with this Rule, the Parenting Coordinator may determine the protocol of all communications, interviews, and sessions including who shall or may attend the meetings.

8. COMMUNICATION: The parties and their attorneys shall have the right to initiate or receive oral one-sided communication with the Parenting Coordinator but the fact of such communication shall be made known to the other party contemporaneously with its occurring through confirmatory written memorialization. Any party or counsel may communicate in writing with the Parenting Coordinator provided that copies are provided to the other party and counsel simultaneously. Copies of any documents, tape recordings or other electronic material that one party gives to the Parenting Coordinator must also be given contemporaneously to the other party or his/her attorney.

9. ALLOCATION OF FEES: The Parenting Coordinator's reasonable and customary fees shall be paid by the parties as follows: plaintiff _____% and defendant _____%. In the event of a request for reallocation of fees and costs, the Parenting Coordinator may submit recommendations concerning this issue.

10. PARENTING COORDINATOR'S RETAINER AGREEMENT: The parenting coordinator's retainer agreement shall mirror the terms of this Order of Appointment. The parenting coordinator's retainer agreement shall not provide any authority beyond that set forth in this Order of Appointment.

11. RETAINER: The parties will pay to the Parenting Coordinator a joint retainer in the percentages referred to above, or as may be modified by the Court.

12. TESTIMONY: All testimony by the Parenting Coordinator in connection with these proceedings or other proceedings involving any or all of the participants in this proceeding shall be deemed expert testimony if qualified and shall be paid accordingly.

13. COOPERATION OF THE PARTIES: In the event the Parenting Coordinator believes either party has been recalcitrant and/or non-cooperative and thereby has interfered with the parenting coordinating process, that view shall be communicated in writing to the parties and their attorneys, who may then petition the court for appropriate relief, including, but not limited to, sanctions, counsel fees, and the remedies set forth in *Rule* 5:3-7.

14. TERMINATION/GRIEVANCE: During the term of the Parenting Coordinator's appointment, the Coordinator may withdraw from service at any time, on ten days notice to the parties and the court, if she/he determines resignation to be in the best interests of the children or she/he is unable to serve out the term set forth in this order. A party having a complaint or grievance shall discuss the matter with the Parenting Coordinator in person in an attempt to resolve it before pursuing it in any other manner. If the issue remains unresolved, the aggrieved party shall submit a written letter detailing the complaint or grievance to the Parenting Coordinator with a copy to the other party, both attorneys (if any), and to the attorney for the child(ren) or Guardian ad Litem if one is in place. The Parenting Coordinator shall within ten (10) days provide a written response to both parties and the attorneys. The Parenting Coordinator at his/her discretion may schedule a meeting or conference call with the attorneys or with the attorneys and the parties in an effort to resolve the complaint. In situations where the grievance or complaint is not resolved by this process, the dissatisfied party may request a court hearing to address and resolve the issues that have been raised.

_____

J.S.C.

Attorney(s) for _____

_____ Plaintiff, v. _____ Defendant.	**SUPERIOR COURT OF NEW JERSEY** **CHANCERY DIVISION - FAMILY PART** **COUNTY OF** _____ **DOCKET NO.:** _____ **Civil Action** **CONSENT ORDER/AGREEMENT FOR ARBITRATION**

WHEREAS, the parties have been made fully aware of their rights not to enter into arbitration and to have all or portions of their case heard to completion by the Superior Court of New Jersey, Chancery Division, Family Part;

WHEREAS instead, the parties, after full and complete discussions with their counsel, have elected to arbitrate any and all issues that could be raised in the Superior Court of New Jersey, Chancery Division, Family Part pursuant to the procedures set forth herein;

WHEREAS, by executing this Consent Order/Agreement, the parties also acknowledge having received a copy of this Order/Agreement, that they have read same before executing it, that they have discussed all terms with counsel, and that they have given independent reflection and judgment to the terms and provisions of this Order/Agreement before executing it and agree to be bound by same.

WHEREAS, the parties agree to the terms hereof voluntarily of their own free will, without coercion or duress and free of the influence of intoxicants or narcotics.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter contained, the parties agree as follows:

Consent to Arbitrate, Scope of Arbitration, Law Applicable

1. The Whereas clauses of this Order/Agreement are incorporated herein as essential terms.

2. All issues that could have been raised and adjudicated by the Court in the New Jersey Superior Court, Family Part – both *pendente lite* and final – shall be subject to the jurisdiction of and determination by the arbitrator pursuant to the terms and procedures of this Order/Agreement. The arbitrator shall determine whether an issues or dispute is within the scope of his/her jurisdiction.

3. To the extent that the provisions of *N.J.S.A.* 2A:23B, et seq. may be waived the parties acknowledge that they intend the provisions of this Consent Order to govern the Arbitration proceeding if there is a conflict between the statute and this Order/Agreement.

4. This Consent Order/Agreement shall constitute a waiver by the parties of the right to trial, appeal or review by the court, except as specifically provided herein of *N.J.S.A.* 2A:23B, et seq. or by the terms. This waiver is given freely, voluntarily and is done without coercion or duress.

5. Neither party shall have the right or power to revoke this Consent Order/Agreement without the consent in writing of the other party hereto.

6. The parties specifically exclude the following issues from the Arbitration process: _____.

7. Whenever a party to this Consent Order/Agreement has the right to apply to the Superior Court (under the provisions of this Consent Order/Agreement), the proceedings shall be heard in the Chancery Division – Family Part (hereinafter "Court").

8. The Arbitrator shall determine whether a party is aggrieved by the failure, neglect, or refusal of another to perform under this Consent Order/Agreement.

Stay of Court Action

9. Except for judicial review of a claim of harm to a child by virtue of the Arbitrator's *pendente lite* or final decision pertaining to custody or parenting time, an application to compel compliance with any interim rulings of the Arbitrators, or issues regarding the Arbitrator's fees as set forth in paragraph 10 infra in an action brought in any court upon an issue subject to the jurisdiction of the Arbitrator, the Court, shall stay judicial resolution of the issues being arbitrated until the arbitration proceeding has been conducted in accordance with the terms of this Consent Order/Agreement. No further court proceedings shall be initiated by the court.

Selection of Arbitrator

10. The parties agree to appoint _____ as the Arbitrator. *(Multiple arbitrators may also be appointed)*, and each party has executed the Arbitrator's retainer agreement, a copy of which is attached hereto, and incorporated herein. Both parties agree to be bound by and comply with the provisions of that retainer agreement with respect to their financial and other obligations to the Arbitrator. By executing this Order/Agreement, the Arbitrator acknowledges that he/she has disclosed to all parties to this Consent Order/Agreement any known facts that a reasonable person would consider likely to affect his impartiality of the Arbitrator in the arbitration proceeding. A dispute as to the reasonableness of the Arbitrator's fees shall be determined in the Superior Court of New Jersey Family Part, in a summary fashion pursuant to the Rules and shall be completed expeditiously so the arbitration proceeding is not delayed.

11. If the Arbitrator shall refuse or be unable to serve, then the parties shall agree, in writing, upon a substitute Arbitrator. If the parties are unable to agree in writing to a substitute Arbitrator within 14 days of notice of the previously agreed-upon Arbitrator's refusal or inability to serve, then they shall each submit three names to the court and the court shall select the Arbitrator. Any Arbitrator so appointed by the court shall serve with the same powers pursuant to this Consent Order/Agreement as if the Arbitrator were specifically designated by the parties.

12. The parties confirm that the Arbitrator has a continuing obligation to disclose to all parties to this Consent Order/Agreement any facts that the Arbitrator learns after appointment that a reasonable person would consider likely to affect that person's impartiality as the Arbitrator.

13. In the event the Arbitrator makes full disclosure as required by this Consent Order/Agreement and a party fails to object within a reasonable time, the party receiving such information shall be held to have waived any right to the designation of the Arbitrator on the grounds so revealed. By consenting to be bound by this Consent Order/Agreement, all parties to this Consent Order/Agreement hereby waive any right to object to the designation of the Arbitrator based on any disclosures made by the Arbitrator as of the date of this Consent Order/Agreement.

14. The parties confirm that the Arbitrator has not served, and shall not serve, in another capacity in the matter being arbitrated.

15. By executing this Consent Order/Agreement prior to its submission to a judge of the Superior Court, Family Part, the Arbitrator accepts all provisions of this Order/Agreement and agrees to be bound thereby.

Immunity of Arbitrator and Fees and Costs of Arbitration

16. The Arbitrator shall be immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity. If any party commences a civil action against the Arbitrator arising from the services of the Arbitrator in this arbitration, the court may award to the Arbitrator reasonable attorney's fees and other reasonable expenses of litigation.

Discovery

17. Each party shall be entitled to initiate and to complete discovery which shall be conducted in accordance with the New Jersey Rules of Court. Any and all disputes concerning discovery shall be submitted by letter to the Arbitrator for resolution. The other party shall have the right to reply and there may be oral argument on dates to be set by the Arbitrator. The parties reserve their respective rights to conduct further discovery which may include, but is not limited to, completion of expert reports, depositions, interrogatories and responses to document requests. During the pendency of the Arbitration, the Arbitrator shall determine all disputes regarding discovery and may at his/her discretion, conduct Case Management Conferences regarding the scope and timing of discovery, the payment of fees and costs, the scheduling of the arbitration proceeding and submission of required documents, the manner of recordation, if any, and any other issues the parties or Arbitrator deem appropriate.

18. With respect to issues of child custody and parenting time, a record of all documentary evidence shall be made and testimony as to these issues shall be taken in accordance with *Fawzy v. Fawzy*, 199 *N.J.* 456 (2009) and *Johnson v. Johnson*, A-91-09 (N.J. Dec. 10, 2010). As to all other issues, no record need be made of the arbitration proceeding unless either party desires to do so, or unless the Arbitrator directs. The responsibility of the costs of any such transcription or recording shall be determined by the Arbitrator.

Arbitration Proceedings

19. When more than one arbitrator is agreed upon, all the arbitrators shall sit at the hearing of the case unless, by written consent, all parties agree to a lesser number.

20. The Arbitrator may require the attendance of any person as a witness and the production of any book or written instrument or document. The fees for the attendance of the witness shall be those allowed witnesses in a civil action.

21. Subpoenas shall issue in the name of and be signed by the Arbitrator, and shall be directed to the person therein named and served in the same manner as a subpoena to testify before a court of record. Subpoenas may issue in the name of the Arbitrator regardless of whether this action has been instituted in the Superior Court of New Jersey, or whether such action has been stayed as a result of entry into arbitration. If a person subpoenaed to testify refuses or neglects to obey a subpoena, the court, upon summary proceeding, may compel his attendance before the Arbitrator or hold the person in contempt as if the person had failed to respond to a subpoena issued by the court.

22. The rules of evidence shall apply to this arbitration unless the parties agree they should be relaxed. Notwithstanding the foregoing, all statutes and common law rules relating to privilege shall remain in effect.

23. The location of the arbitration proceeding shall not affect the venue of any litigation related to the arbitration proceeding. Venue shall be established pursuant to the Rules of Court.

24. If at any time the Arbitrator is of the opinion that evidence by impartial experts would be of assistance, the Arbitrator may direct that expert evidence be obtained. The fees and expenses of expert witnesses shall be paid by the parties as directed by the Arbitrator.

25. The Arbitrator shall schedule proceedings for the convenience of the parties, witnesses and counsel and reasonable notice shall be provided. At all times, the parties shall first attempt to agree upon available dates for scheduling any proceedings necessary in connection with the Arbitration but the Arbitrator shall have authority to make scheduling decisions if the parties do not agree.

26. The Arbitrator may determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear.

27. The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

28. When more than one arbitrator has been designated to hear the matter, the hearing shall be conducted by all the arbitrators, but a majority may determine any question and render a final award. The power of the arbitrators may be exercised by a majority of them unless otherwise provided by this Consent Order/Agreement. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrators appointed to act may continue with the hearing and determination of the controversy.

29. All evidence introduced at the hearing shall be maintained by the Arbitrator for 45 days following the entry of an award. Thereafter, the Arbitrator shall cause the evidence to be delivered and returned to the party who had offered the evidence, or, in the event of joint exhibits, to the party who initiated the arbitration.

***Pendente Lite*/Interim Relief**

30. By executing this Consent Order/Agreement, the parties consent to the Arbitrator's authority to immediately act on any and all *pendente lite* or interim relief applications.

31. A party may seek *pendente lite* relief or interim relief, to the same extent as such relief could be requested in the Superior Court, Family Part, by notifying the Arbitrator and all other parties of the request by facsimile, email, and/or overnight delivery of a written notification of request (in the form of a motion with supporting certification(s) in accordance with the Rules of Court for *pendente lite* relief. Each party shall have an opportunity to respond in accordance with the time tables set forth in the Rules of Court, unless expanded by the Arbitrator or expanded by the consent of the parties, and the party seeking relief will have an opportunity to reply in accordance with the times tables set forth in the Rules of Court, unless said time tables are expanded by the Arbitrator or agreed to be expanded by the parties. The Arbitrator shall notify the parties of the date, time, and place of the hearing for *pendente lite* relief.

32. Any determination reached before a final award shall be considered *pendente lite* as provided for in this Consent Order/Agreement. The determination shall state findings of all relevant material facts and conclusions of law and shall be in writing.

Review of Pendente Lite Ruling of Arbitrator

33. A party has no right to seek judicial modification from a *pendente lite* ruling of the Arbitrator, except that a party may request from the court:

(a) an order confirming and enforcing the Arbitrator's award granting *pendente lite* relief;

(b) review or modification of any *pendente lite* ruling governing child custody or parental access upon a showing that the *pendente lite* ruling is harmful to a child; and the standard of review and proof burdens shall be in accordance with *Fawzy v. Fawzy*, 199 N.J. 456 (2009).

(c) Review pursuant to *N.J.S.A.* 2A:23B-23(a)(1), (2), (3), (4), (5), (6) or *N.J.S.A.* 2A:23B-24 (a)(1), (2), (3) or because _____.

34. An application to the court for review or enforcement of a *pendente lite* ruling of the Arbitrator shall be by way of summary procedure as defined in *N.J.S.A.* 2A:23B-18. Any such application must be filed and served within fourteen (14) days of the date of the Arbitrator's interim award. Except with respect to custody and parenting time awards, the Court shall issue an Order/Agreement to confirm the award unless the Court modifies or corrects the award pursuant to the standards set forth in *N.J.S.A.* 2A:23B-23(a)(1), (2), (3), (4), (5), (6) or *N.J.S.A.* 2A:23B-24(a)(1), (2), (3) or because _____. Review of applications pursuant to paragraph 32(b) shall be pursuant to the requirements of Fawzy v. Fawzy, supra, 199 N.J. 456 (2009).

35. The arbitration proceeding shall not be abated, stayed or delayed by the application for a *pendente lite* review unless the Arbitrator, so rules.

Final Determination

36. The final award in an arbitration proceeding also shall be in writing and signed by the Arbitrator. The award shall be delivered to each party who has appeared in the proceeding. The award shall state findings of all relevant material facts and conclusions of law.

37. An award shall be made within *(pick appropriate time frame by consent of the parties).* Failure to make an award within that time frame ☐ terminates / ☐does not terminate the jurisdiction of the Arbitrator. Either party, for good cause shown, may seek to extend the time for making the award upon application to the Arbitrator before the expiration of the time frame for delivery of the award. (Note: The parties should discuss and agree in the Arbitration

Agreement whether or not the issuance of the Arbitrator's award after the agreed upon time frame defeats jurisdiction of the Arbitration.)

38. The Arbitrator shall make the award on all issues submitted for arbitration in accordance with applicable principles of the laws of New Jersey in effect at the time of the issuance of the award. The Arbitrator shall make specific findings of fact and conclusions of law.

Correction, Supplementation, Clarification or Reconsideration of Final Award by Arbitrator

39. On written application to the Arbitrator of a party served within 20 days after delivery of the final award to the applicant, the Arbitrator may:

(a) correct the award upon the grounds stated in *N.J.S.A.* 2A:23B-24 (a)(1), (2), (3) or because _____;

(b) supplement the award to include a determination of an issue submitted to arbitration but not decided by the Arbitrator;

(c) clarify the method by which the decision shall be implemented; or

(d) reconsider any portion of the award based upon mistake of fact or any factor set forth in *R.* 4:50-1.

Written notice of the application shall be served upon the other parties to the proceeding and the Arbitrator. Written objection to the application shall be served on the Arbitrator and other parties to the proceeding within 14 days of receipt of the notice. Any reply to the objection shall be served on the Arbitrator and the parties to the proceeding within seven (7) days of receipt of the response to the objection.

40. The Arbitrator shall dispose of any application made under this section in writing, signed by him, within 30 days after either reply to the written objection to the application has been served or the time for serving an objection or reply has expired, whichever is earlier.

41. There shall be no further jurisdiction of the Arbitrator to consider any further applications of either party, absent written consent of the parties to expand the scope of arbitration.

Application to Court

42. A party who participated in an arbitration proceeding may apply to the Superior Court, Chancery Division, Family Part for the vacation, correction, supplementation, or modification of an award of the Arbitrator within 25 days after the final award is served upon the applicant, or within 10 days after service of an award corrected or supplemented by the Arbitrator, solely for the reasons set forth in *N.J.S.A.* 2A:23B-23 (a)(1)-(6) or because _____. The application shall be by summary proceeding if the arbitration proceeding had been conducted prior to any litigation being instituted; otherwise, the application shall be by way of notice of motion in the pending litigation. Responses to the application shall be served and filed within twenty (20) days and replies shall be filed and served within ten (10) days.

Confirmation of Award

43. The court shall confirm the arbitration award upon summary application of either party made subsequent to the expiration of the period to move for vacation correction, supplementation, clarification or reconsideration of the award pursuant to paragraph 43 of this Consent Order/Agreement. An application to confirm the award may be made in response to an application to vacate, correct, supplement or modify the award. An application to the Arbitrator

pursuant to paragraph 40 of this Order/Agreement shall toll the time to move for confirmation of the award. The remaining time shall again begin to run from the date of the entry of an arbitration award disposing of such application.

Standards of Review

44. Except with respect to issues pertaining to child custody and parental time sharing, or for requests set forth in paragraph 43, supra, when the Court considers an application for vacation, modification, correction or supplementation of an arbitration award, a decision of the Arbitrator on the facts shall be final. However, _____

_____.

45. With respect to review of the Arbitrator's decisions about child custody or parental access, if the applicant establishes on a *prima facie* basis that the award threatens harm to a child or children at issue in the arbitration, the court shall direct a hearing. If the hearing yields a finding of harm to the child, the Court must set aside the Arbitration Award and decide the case anew using the best interest standards. If after a hearing, the Court sets aside the Arbitrator's award because of harm to a child or children, then any appeal of the trial court's Order/Agreement following hearing shall be in accordance with the Rules of Court

46. Upon denial of a motion to vacate the award, the court to which the application for that relief was directed shall confirm the award.

47. If the application to modify, correct, or supplement the award is granted, the Arbitrator shall modify, correct, or supplement the award to effect its intent and shall confirm the award as so modified, corrected, or supplemented.

Burden of Proof

48. The burden of proof in all applications to review an award of the Arbitrator shall be on the party seeking to vacate, modify, correct, or supplement the award of the Arbitrator or in accordance with the provisions of Fawzy v. Fawzy with respect to child custody and parenting time.

Procedures for Entry of Revised Award

49. Upon vacating an award, the court shall order a rehearing and determination of all or any of the issues, which rehearing may be before the court, the same Arbitrator, or before a new Arbitrator appointed in accordance with the terms of this Consent Order/Agreement. The rehearing and time for entry of an award shall be fixed by the court.

Judgment on Award

50. Upon the granting of an order confirming, modifying, correcting, or supplementing an award, a judgment or decree shall be entered by the court in conformity therewith and shall be enforced as any other judgment or decree. There shall be no further appeal or review of the judgment or decree except as set forth in this Consent Order/Agreement.

Appeals

51. There shall be no appellate review of the Arbitrator's award or the trial court's confirmation of said award, except for (1) awards of child custody or parental access as provided for in this Consent Order/Agreement or (2) if the trial court fails to apply the requisite standards of review and procedural requirements as detailed in this Consent Order/Agreement.

52. An appeal may be taken to the Superior Court, Appellate Division with respect to any ruling by a trial court regarding the issue of harm to a child, or the following:

(a) An order denying an application to compel arbitration made under this Consent Order/Agreement;

(b) An order granting an application to stay an arbitration proceeding made under this Consent Order/Agreement;

(c) An order denying confirmation of an award;

(d) An order vacating an award without directing a rehearing.

Death or Incompetency of Party

53. In the event a party dies after execution of this Consent Order/Agreement, the proceedings may be initiated or continued for such relief that may then be available under existing law upon the application of, or upon notice to, the party's executor or administrator or, when it relates to real property, the party's distributee or devisee who has succeeded to the party's interest in the real property.

54. When a custodian of the property or a guardian of the person of a party to this Consent Order/Agreement is appointed, the proceedings may be continued upon the application of, or notice to, the custodian or guardian.

55. Upon the death or incompetency of a party, the court may extend the time within which an application to confirm, vacate, modify, or supplement the award or to stay arbitration must be made. Where a party has died since an award was delivered, the proceedings thereupon are the same as when a party dies after a judgment.

Consent Order/Agreement to Mediate

56. Nothing in this Consent Order/Agreement shall prevent the Arbitrator, with the written consent of the parties to the arbitration, from mediating an issue submitted, and such

agreed-upon mediation shall not disqualify the Arbitrator from arbitrating the issue should mediation not be successful.

Post Confirmation Applications Based on Changed Circumstances

57. Any post confirmation application regarding alimony, child support, custody or parenting time based on changed circumstances or other legally cognizable reason shall be made to the Court unless the parties execute another arbitration agreement regarding post-judgment applications.

_____	_____
Attorney for Plaintiff	Plaintiff
_____	_____
Attorney for Defendant	Defendant

Attorney(s) for _____

_____ Plaintiff, v. _____ Defendant.	**SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION - FAMILY PART COUNTY OF _____ DOCKET NO.: _____** **Civil Action** **CONSENT ORDER FOR ARBITRATION**

WHEREAS, the parties desire to resolve by way of arbitration all issues relevant to their family dispute as delineated herein, and desire to provide for the arbitration of these matters in this Consent Order; and

WHEREAS, each party has given independent, mature judgment to the terms and provisions of this Consent Order, and has had a full and complete opportunity to read this Consent Order, and to have any questions concerning this Consent Order to be answered, and has consulted with counsel with any such questions, and fully understands all of the terms and provisions contained in this Consent Order;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter contained, the parties agree as follows:

Informed Consent to Arbitrate & Associated Waivers

1. The parties, after full and complete discussions with their counsel, have elected to enter into Alternative Dispute Resolution ("ADR") to be conducted pursuant to the procedures set forth in the *New Jersey Alternative Procedure for Dispute Resolution Act*, ("APDRA"), *N.J.S.A.* 2A:23A-1, et seq., as modified by consent of the parties in this Consent Order.

2. The parties have been made fully aware of their rights not to enter into ADR and to have all or portions of their matter heard to completion by the Superior Court, Chancery Division, Family Part.

3. By indicating their consent to this Consent Order, each party also acknowledges having received a copy of the APDRA, that they have read same, and that they have discussed all terms of the APDRA with counsel.

4. Each party further represents that they have discussed all provisions contained in this Consent Order, including all provisions in this Consent Order that modify the APDRA.

5. The parties acknowledge that in the event the provisions of this Consent Order conflict with the provisions of the APDRA, the provisions of this Consent Order shall govern.

6. The use of the term "Arbitrator" herein shall refer to the use of the term "Umpire" within the APDRA.

7. This Consent Order shall constitute a waiver by the parties of the right to trial and to appeal or review by the court, except as specifically provided herein. This waiver of trial is given freely, voluntarily and is done without coercion or duress.

8. Neither party shall have the right or power to revoke this Consent Order without the consent in writing of the other party hereto.

Issues to be Submitted to ADR

9. The parties agree that all issues pertaining to their family dispute, except any issue specifically excluded, shall be submitted to the ADR process as set forth in this Consent Order.

10. These issues may be expanded upon by mutual written Consent Order of the parties prior to the commencement of ADR, and with consent of the Arbitrator subsequent to the commencement of ADR.

11. The parties specifically exclude the following issues from the ADR process: _____.

(This provision may be omitted if no issues are excluded)

Superior Court Jurisdiction of Proceedings

12. Whenever a party to this Consent Order has the right to apply to the Superior Court under the provisions of this Consent Order, the proceedings shall be heard in the Chancery Division – Family Part of New Jersey (hereinafter "court"). All such applications to the court shall be by summary proceeding and expedited. The summary proceeding shall be initiated by motion of either party, before or after entry of judgment, or by way of summary action pursuant to the Rules of Court if no action has been filed. In order to prevent irreparable harm, an application for emergent relief in an existing matter may be made pursuant to the Rules of Court.

13. When a party is aggrieved by the failure, neglect, or refusal of another to perform under this Consent Order, or seeks a declaration that this Consent Order is not valid, that party may apply to the Superior Court for an order directing that arbitration proceed in the manner provided for in this Consent Order or an order declaring this Consent Order unenforceable. The application shall be made by motion, before or after entry of judgment, or by way of summary action pursuant to the Rules of Court if no action has been filed. If such an application is made:

(a) The court shall determine whether there has been a failure to comply with a demand for arbitration as contained in this Consent Order.

(b) If the court determines arbitration is to commence, the court shall order the parties to proceed and participate in same.

(c) If a party chooses to not participate, then, and in that event, the Arbitrator shall interpret all evidence adduced in favor of the participating party and shall draw inferences necessary against the non-participating party.

(d) A non-participating party who has received proper notice of a demand for arbitration shall have no right to seek to vacate, modify, correct, supplement, clarify or reconsider an arbitration award thereafter entered, except for an award of child support, custody, or parental access, which awards shall be subject to review pursuant to this Consent Order (in accordance with the standard of review for child related issues detailed herein) without regard to whether the objector participated in the underlying arbitration.

Stay of Court Action

14. In an action brought in any court upon an issue arising out of this Consent Order, the court, when satisfied that this Consent Order is valid, shall stay judicial resolution of the issues being arbitrated until the arbitration proceeding has been conducted in accordance with the terms of this Consent Order. No further court proceedings shall be initiated by the court.

Arbitrators and Disclosures by Arbitrators

15. The parties agree to appoint _____ as the Arbitrator. *(Multiple arbitrators may also be appointed)* Each party shall promptly sign the Retainer Consent Order of the Arbitrator, if so requested.

16. If said Arbitrator shall refuse or be unable to serve, then the parties shall agree, in writing, upon a substitute Arbitrator. If the parties are unable to agree in writing to a substitute Arbitrator within 14 days of notice of the previously agreed-upon Arbitrator's refusal or inability to serve, then they shall each submit three names to the court and the court shall select the Arbitrator. Any Arbitrator so appointed by the court shall serve with the same powers pursuant to this Consent Order as if the Arbitrator were specifically designated by the parties.

17. The Arbitrator's fee shall be his [or her] usual and customary hourly fee of $ _____ per hour. The Arbitrator shall be reimbursed for out-of-pocket disbursements.

18. The parties confirm that prior to accepting appointment, the Arbitrator shall, after making reasonable inquiry, disclose to all the parties to this Consent Order any known facts that a reasonable person would consider likely to affect the impartiality of the Arbitrator in the arbitration proceeding, including, but not limited to:

(a) A financial or personal interest in the outcome of the arbitration proceeding; and/or

(b) An existing or past relationship with any of the parties to the Consent Order to arbitrate, their counsel or representatives, a witness, or other Arbitrators.

19. The parties confirm that the Arbitrator has a continuing obligation to disclose to all parties to this Consent Order any facts that the Arbitrator learns after his appointment that a reasonable person would consider likely to affect his impartiality as the Arbitrator.

20. In the event the Arbitrator discloses a fact required by paragraphs 13 and 14 of this Consent Order, upon timely objection by a party, the court may vacate any award or ruling of the Arbitrator or appoint an alternate Arbitrator.

21. In the event the Arbitrator makes full disclosure as required by this Consent Order and a party fails to object within a reasonable time, the party receiving such information shall be held to have waived any right to the designation of the Arbitrator on the grounds so revealed. By consenting to be bound by this Consent Order, all parties to this Consent Order hereby waive any right to object to the designation of the Arbitrator based on any disclosures made by the Arbitrator as of the date of this Consent Order.

22. Notwithstanding the preceding waiver, if at any time it is determined that the Arbitrator has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with either party, the Arbitrator may not serve as Arbitrator and any award entered by the Arbitrator shall be vacated by the court upon application.

23. The parties confirm that the Arbitrator has not served, and shall not serve, in another capacity in this matter being arbitrated. If it is determined that the Arbitrator has served in such a matter, then any award entered by the Arbitrator shall be vacated by the court upon application.

24. The parties acknowledge and understand that the Arbitrator, prior to accepting appointment, shall be provided with a copy of this Consent Order. By thereafter accepting appointment, the Arbitrator shall accept all terms of this Consent Order and shall sign a copy of this Consent Order indicating the Arbitrator's acceptance of the terms of the Arbitrator's appointment.

Immunity of Arbitrator and Fees and Costs of Arbitration

25. The Arbitrator is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. However, this provision shall not apply:

(a) To the extent necessary to determine the claim of the Arbitrator against a party to the arbitration proceeding;

(b) To a hearing in a summary action to vacate an award pursuant to paragraph 77 of this Consent Order if the movant establishes *prima facie* that a ground for vacating the award exists.

(c) In any subsequent proceeding arising out of or related to this arbitration proceeding, except for an action brought against the Arbitrator pursuant to paragraph 27 of this Consent Order.

26. The Arbitrator shall be immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity. The immunity afforded by this section supplements any immunity pursuant to other law. The failure of an Arbitrator to make a disclosure required by paragraphs 18 and 19 of this Consent Order does not cause any loss of immunity pursuant to this section.

27. If any party commences a civil action against the Arbitrator arising from the services of the Arbitrator in this arbitration, or if a party seeks to compel the Arbitrator to testify or produce records in violation of paragraph 25 of this Consent Order, and the court decides that the Arbitrator is immune from civil liability or that the Arbitrator is not competent to testify, the court shall award to the Arbitrator reasonable attorney's fees and other reasonable expenses of litigation.

Complete Authority of Arbitrator

28. The Arbitrator shall have full jurisdiction to provide all relief and to determine all claims and disputes arising in the arbitration, whether *pendente lite* or final, including whether a particular issue or dispute is covered by this Consent Order.

29. Any claim that this Consent Order, or a provision contained herein, was procured by fraud or is otherwise invalid shall be submitted to the court by way of summary proceeding for resolution prior to the commencement of arbitration, or shall be deemed waived unless facts giving rise to the claim of invalidity are discovered after commencement of the arbitration

proceeding. In that event, the Arbitrator shall have jurisdiction to determine the validity of such claim during the arbitration proceeding.

30. Whenever possible, all requests for relief ancillary to the claims and disputes covered by this Consent Order shall first be addressed to the Arbitrator.

31. There shall be no review of any intermediate ruling or determination made by the Arbitrator during the course of the arbitration proceeding except as provided in this Consent Order. An appeal from a final award by the Arbitrator may be instituted only as provided in paragraphs 93 through 95 of this Consent Order.

Initial Case Management Ruling and Discovery

32. The Arbitrator, at his discretion, may conduct a Case Management Conference to identify the issues to be arbitrated, the scope and timing of discovery, the payment of fees and costs, the scheduling of the arbitration proceeding and submission of required documents, the manner of recordation, if any, and any other issues the parties or Arbitrator deem appropriate. An interim ruling shall be issued reflecting the results of the Case Management Conference.

33. With respect to issues of child custody or parenting time only, a record of all documentary evidence shall be made and testimony as to these issues shall be recorded verbatim. As to all other issues, no record shall be made of the arbitration proceeding unless otherwise provided for by written agreement of the parties or in a future interim ruling by the Arbitrator.

34. Except as provided herein, the Rules of the Courts of the State of New Jersey shall govern discovery except as expressly modified by the parties pursuant to this agreement or in a subsequent writing.

35. All discovery shall be completed within 90 days following service of the interim ruling. The Arbitrator shall have the authority to extend the time for completion of permitted discovery

or to limit or terminate any permitted discovery upon application, which application may be heard in any suitable way, including telephone conference or on submitted papers. In addition, the parties, by consent, may agree to reasonable extensions of time, as authorized by the Arbitrator.

36. A notice for inspection and copying of documents served by a party may require that the same shall be made available no sooner than 15 days after receipt of service of the notice. The cost of copying shall be paid by the party demanding the inspection.

Hearing by Arbitrator; Witnesses; Subpoena; Factual and Legal Contentions

37. When more than one arbitrator is agreed upon, all the arbitrators shall sit at the hearing of the case unless, by written consent, all parties agree to a lesser number. References to the Arbitrator shall refer to a majority of the arbitrators, unless the arbitrators have selected a lead arbitrator to act on behalf of the majority.

38. The Arbitrator may require the attendance of any person as a witness and the production of any book or written instrument or document. The fees for the attendance of the witness shall be those allowed witnesses in a civil action.

39. Subpoenas shall issue in the name of and be signed by the Arbitrator, and shall be directed to the person therein named and served in the same manner as a subpoena to testify before a court of record. Subpoenas may issue in the name of the Arbitrator regardless of whether this action has been instituted in the Superior Court of New Jersey, or whether such action has been stayed as a result of entry into arbitration. If a person subpoenaed to testify refuses or neglects to obey a subpoena, the court, upon summary proceeding, may compel his attendance before the Arbitrator or hold the person in contempt as if the person had failed to respond to a subpoena issued by the court.

40. The rules of evidence shall apply to this arbitration. However, the Arbitrator may freely relax those rules in his/her discretion so that the informality and expediency of the proceedings is maintained. Notwithstanding the foregoing, all statutes and common law rules relating to privilege shall remain in effect.

41. The location of the arbitration proceeding shall not affect the venue of any litigation related to the arbitration proceeding. Venue shall be established pursuant to the Rules of Court.

42. If at any time the Arbitrator is of the opinion that evidence by impartial experts would be of assistance, the Arbitrator may direct that expert evidence be obtained. The fees and expenses of expert witnesses shall be paid by the parties as directed by the Arbitrator.

43. The Arbitrator shall appoint a time and place for the arbitration hearing and cause notification to the parties through counsel by regular and certified mail, return receipt requested, or overnight delivery with proof of service, or any other agreed upon method of service, not less than 14 days before the hearing. A party's appearance at the hearing waives the notice requirement.

44. The Arbitrator may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon his own motion, may postpone the hearing to a time not later than the date fixed by this Consent Order for making the award, unless the parties consent to a later date.

45. The Arbitrator may determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The court, on application in any summary proceeding, may direct the Arbitrator to proceed promptly with the hearing and determination of the controversy.

46. The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

47. When more than one arbitrator has been designated to hear the matter, the hearing shall be conducted by all the arbitrators, but a majority may determine any question and render a final award. The power of the arbitrators may be exercised by a majority of them unless otherwise provided by this Consent Order. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrators appointed to act may continue with the hearing and determination of the controversy.

48. All evidence introduced at the hearing shall be maintained by the Arbitrator for 45 days following the entry of an award. Thereafter, the Arbitrator shall cause the evidence to be delivered and returned to the party who had offered the evidence, or, in the event of joint exhibits, to the party who initiated the arbitration.

***Pendente Lite*/Interim Relief**

49. Where reasonably required by the circumstances, a party may apply to the Arbitrator for an order granting any provisional remedy or other relief section, which may be obtained from the Superior Court or any other court of competent jurisdiction .

50. By executing this Consent Order, the parties consent to the Arbitrator's authority to immediately act on any and all *pendente lite* or interim relief issues and applications. Notwithstanding this provision, in the event the Arbitrator is unable or unavailable to act, then a party seeking *pendente lite* relief may make such application to the court in order to prevent irreparable harm. Any such temporary interim order shall be subject to de novo review and/or modification by the Arbitrator upon application of either party.

51. A party seeking *pendente lite* relief or any other proceeding before the Arbitrator shall proceed in accordance with this Consent Order. The party shall request *pendente lite* relief or a hearing by notifying the Arbitrator and all other parties of the request by telephone, facsimile, and/or overnight delivery of a written notification of request (in the form of a motion with supporting certification(s) in accordance with the Rules of Court for *pendente lite* relief. The Arbitrator shall notify the parties of the date, time, and place of the hearing for *pendente lite* relief.

52. The Arbitrator may grant an award for provisional remedies, including procedural rulings and interim awards, as the Arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action.

53. The Arbitrator may, at a party's request, direct any party to take such interim measures of protection as the Arbitrator considers necessary in respect of the subject matter of the dispute. The Arbitrator may require any party to provide appropriate security in connection with interim measures.

54. Any determination reached before a final award shall be considered *pendente lite* as provided for in this Consent Order.

Limited Intermediate Review

55. A party has no right to seek interim relief from a *pendente lite* ruling of the Arbitrator, except that a party may request from the court:

(a) an order enforcing the Arbitrator's award granting *pendente lite* relief;

(b) review or modification of any *pendente lite* ruling governing allocated child support, child custody or parental access upon a showing that the *pendente lite* ruling is harmful to a child; and/or

(c) an order seeking relief resulting from the failure of the Arbitrator to act on a request for *pendente lite* relief . However, an application seeking judicial relief from the failure of the Arbitrator to act on a request for *pendente lite* relief shall only be made if it is alleged that there are exceptional circumstances existing and relief is necessary to prevent a manifest denial of justice, or it clearly appears that a party will suffer irreparable harm, or that damages may not be collectible absent *pendente lite* relief.

56. An application to the court for review of a *pendente lite* ruling of the Arbitrator shall be by way of summary procedure as defined in this Consent Order for an expedited intermediate review.

57. In considering a request for interim review, modification, or enforcement of *pendente lite* rulings of the Arbitrator, any finding of fact by the Arbitrator in the proceeding shall be binding on the court, including any finding regarding the probable validity of the claim that is the subject of the interim relief sought or granted.

58. The burden of proof at a hearing for review of an Arbitrator's *pendente lite* ruling is on the party seeking to vacate or modify the Arbitrator's ruling.

59. If the Arbitrator makes a *pendente lite* ruling in favor of a party to the arbitration proceeding, the party may request the Arbitrator to incorporate the ruling into an award pursuant to paragraph 66 of this Consent Order. A prevailing party may file a summary action with the court for an expedited order to confirm the award pursuant to paragraph 71 of this Consent Order, in which case the court shall summarily decide the application. The court shall issue an

order to confirm the award unless the court vacates, modifies, or corrects the award pursuant to this Consent Order.

60. The arbitration proceeding shall not be abated, stayed or delayed by the application for an intermediate review unless the Arbitrator or the court, in exceptional cases or circumstances, so rules.

61. The ruling on a summary intermediate review application by the court shall thereafter govern the parties in the arbitration proceeding, provided, however, that such ruling may be later modified or vacated by the Arbitrator where specific facts are thereafter determined that would make the continuance of the court ruling manifestly unfair, unjust or grossly inequitable.

62. When it appears that resort to the court for summary intermediate review has been abused by any party, the court may award reasonable counsel fees without regard to the ultimate outcome of the arbitration proceeding.

Determination in Writing

63. The award in an arbitration proceeding shall be in writing and signed by the Arbitrator. The award shall be delivered to each party who has appeared in the proceeding. The award shall state findings of all relevant material facts and make all applicable determinations of law.

64. An award shall be made within *(pick appropriate time frame by consent of the parties)*. Failure to make an award within that time frame ☐ terminates / ☐does not terminate the jurisdiction of the Arbitrator. Either party, for good cause shown, may seek to extend the time for making the award upon application to the Arbitrator before the expiration of the time frame for delivery of the award. (Note: The parties should discuss and agree in the Arbitration Agreement whether or not the issuance of the Arbitrator's award after the agreed upon time frame defeats jurisdiction of the Arbitration.)

65. The Arbitrator shall make the award on all issues submitted for arbitration in accordance with applicable principles of substantive law in effect at the time of the issuance of the award, with the exception that with regard to determinations of alimony only, the Arbitrator shall be guided by, but not bound by, the laws of New Jersey. The Arbitrator shall make specific findings of fact as to each applicable statutory factor and rule of court. *(Parties may agree on the extent to which the Arbitrator must apply the law)*

Correction, Supplementation, Clarification or Reconsideration of Final Award by Arbitrator

66. On written application to the Arbitrator of a party served within 20 days after delivery of the award to the applicant, the Arbitrator may:

(a) correct the award upon the grounds stated in Paragraph 80 of this Consent Order;

(b) supplement the award to include a determination of an issue submitted to arbitration but not decided by the Arbitrator;

(c) clarify the method by which the decision shall be implemented; or

(d) reconsider any portion of the award based upon mistake of fact or any factor set forth in R. 4:50-1.

67. Written notice of the application shall be served upon the other parties to the proceeding and the Arbitrator. Written objection to the application shall be served on the Arbitrator and other parties to the proceeding within 10 days of receipt of the notice.

68. The Arbitrator shall dispose of any application made under this section in writing, signed by him, within 30 days after either written objection to the application has been served or the time for serving an objection has expired, whichever is earlier.

69. There shall be no further jurisdiction of the Arbitrator to consider any further applications of either party, absent written consent of the parties to expand the scope of arbitration.

Confirmation of Award

70. The court shall confirm the arbitration award upon summary application of either party made subsequent to the expiration of the period to move for correction, supplementation, clarification or reconsideration of the award pursuant to this Consent Order. An application to the Arbitrator pursuant to paragraph 71 of this Consent Order shall toll the time to move for confirmation of the award. The remaining time shall again begin to run from the date of the entry of an arbitration award disposing of such application.

Application to Court for Review of Award

71. A party who participated in an arbitration proceeding shall apply to the Superior Court, Chancery Division, Family Part for the vacation, correction, supplementation, or modification of an award of the Arbitrator within 25 days after the award is served upon the applicant, or within 10 days after service of an award corrected or supplemented by the Arbitrator pursuant to this Consent Order. Within the same application, the applicant may also seek correction, supplementation, or modification of the award for the reasons set forth in paragraph 80 of this Consent Order only if such an application had previously been made to the Arbitrator. The application shall be by summary proceeding if the arbitration proceeding had been conducted prior to any litigation being instituted; otherwise, the application shall be by way of notice of motion.

72. Except in the event of such change in circumstances that would render an award of alimony, child support, or child custody subject to modification as provided in paragraphs 88 and

89 of this Consent Order, a party shall waive his or her right to seek vacation, modification, correction or supplementation of the award of the Arbitrator if said application is not commenced as required by this paragraph. The award of the Arbitrator shall become final and shall be confirmed by the court upon application unless an action is commenced as required by this subsection. A party who has failed to participate in an arbitration proceeding, after receiving proper notice of said proceeding, shall have no right to seek vacation, correction, supplementation, or modification of the award, except for modification of same as set forth in paragraphs 88 and 89 of this Consent Order.

73. The fact the Arbitrator provided a remedy that could not or would not be granted by the court is not a ground for refusing to confirm an award or to vacate an award.

Standards of Review

74. When considering an application for vacation, modification, correction or supplementation of an arbitration award, a decision of the Arbitrator on the facts shall be final. However, when the application to the court is to vacate the award pursuant to the following paragraph of this Consent Order, the court shall make an independent *de novo* determination of any facts relevant thereto**,** upon such record as may exist or as it may determine in an expedited summary proceeding.

75. Vacation of award. On the application of a party, the court shall vacate the arbitration award if the court finds that the rights of that party were substantially prejudiced by:

(a) Corruption, fraud, or misconduct in or during the arbitration process;

(b) Failure of the Arbitrator to disclose a conflict as required under paragraphs 18 and 19 of this Consent Order;

(c) In making the award, the Arbitrator exceeded his power or so imperfectly executed his power that a final and definite award was not made; or

(d) Failure to follow the procedures set forth in this Consent Order to arbitrate, unless the party applying to vacate the award continued with the proceeding with notice of the defect and without objection.

76. In addition to the preceding, the court may vacate an award for child support, child custody or parental access upon application if the applicant establishes on a *prima facie* basis that the award threatens harm to a child at issue in the arbitration. Upon establishment of that *prima facie* case, the court shall review the record of the arbitration proceeding and render a decision in the best interest of the child. In the absence of a *prima facie* case of harm to the child, the standard for vacation of the award shall be as set forth in paragraph 78 of this Consent Order. In all cases, a child support award that is consistent with the Child Support Guidelines, applying the facts as found by the Arbitrator, shall be presumed to not threaten harm to a child.

77. Upon denial of a motion to vacate the award, the court to which the application for that relief was directed shall confirm the award.

78. Modification, correction or supplementation of award by the court. An award may be modified, corrected or supplemented upon application of a party if:

(a) There was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award;

(b) The Arbitrator has made an award based on a matter not submitted to him and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(c) The award is imperfect in a matter of form, not affecting the merits of the controversy.

79. In addition to the above, the court may modify an award for child support, child custody or parental access upon application if the applicant establishes on a *prima facie* basis that the award threatens harm to a child. Upon establishment of that *prima facie* case, the court shall review the record before the Arbitrator and render a decision in the best interest of the child. In the absence of harm to the child, the standard for modification of the award shall be as set forth in paragraph 80 of this Consent Order. In all cases, a child support award that is consistent with the Child Support Guidelines, applying the facts as found by the Arbitrator, shall be presumed to not threaten harm to a child.

80. If the application to modify, correct, or supplement the award is granted, the court shall modify, correct, or supplement the award to effect its intent and shall confirm the award as so modified, corrected, or supplemented.

81. Upon denial of a motion to modify, correct, or supplement the award, the court to which the application for that relief was directed shall confirm the award.

82. An application to modify, correct, or supplement an award may be joined in the alternative with an application to vacate the award.

Burden of Proof

83. The burden of proof in all applications to review an award of the Arbitrator shall be on the party seeking to vacate, modify, correct, or supplement the award of the Arbitrator, and shall be by clear and convincing evidence, except that an applicant seeking to vacate or modify an award regarding child support, child custody, or parental access need only to establish by a preponderance of the evidence a *prima facie* case of risk of harm to a child to invoke the court's review of the Arbitrator's award.

Procedures for Entry of Revised Award

84. Upon vacating an award, the court shall order a rehearing and determination of all or any of the issues, which rehearing may be before the court, the same Arbitrator, or before a new Arbitrator appointed in accordance with the terms of this Consent Order. The rehearing and time for entry of an award shall be fixed by the court.

85. Whenever it appears to the court to which application is made either to vacate or modify the award because the award threatens harm to a child, the court shall, after vacating or modifying the erroneous determination of the Arbitrator, appropriately set forth the applicable law and arrive at an appropriate determination in the best interest of the child based upon the record before the Arbitrator. The court shall then confirm the award as revised.

Post-Arbitration Modification of Award for Alimony, Child Support, Child Custody or Parental Access Based on Substantial Change of Circumstances

86. An award by the Arbitrator for alimony (unless awarded as non-modifiable), child support, child custody or parental access may be modified if a court order for child support, child custody or parental access could be modified pursuant to existing statute or case law, even if the award had not been previously submitted to the court for confirmation.

Judgment on Award

87. Upon the granting of an order confirming, modifying, correcting, or supplementing an award, a judgment or decree shall be entered by the court in conformity therewith and shall be enforced as any other judgment or decree. There shall be no further appeal or review of the judgment or decree except as set forth in this Consent Order.

Appeals

88. There shall be no appellate review of the Arbitrator's award or the trial court's confirmation of said award, except for (1) awards of child custody or parental access as provided

for in this Consent Order or (2) if the Trial Court fails to apply the requisite standards of review and procedural requirements as detailed in this Consent Order below.

89. Any order based upon an award vacated, modified, corrected, or supplemented by the court and entered after the trial court's review of the Arbitrator's award either by way of confirmation or application to vacate, modify, correct, or supplement same, or upon the record of arbitration in the case of child custody or parental access issues, after the trial court's application of the law to the facts as found by the Arbitrator, shall be deemed binding and not subject to further judicial review.

90. An appeal may be taken to the Superior Court, Appellate Division based on a failure to comply with the procedural aspects of this Consent Order. Thus, an appeal as of right may be taken from any of the following:

(a) An order denying an application to compel arbitration made under this Consent Order;

(b) An order granting an application to stay an arbitration proceeding made under this Consent Order;

(c) An order denying confirmation of an award;

(d) An order vacating an award without directing a rehearing.

Death or Incompetency of Party

91. In the event a party dies after execution of this Consent Order, the proceedings may be initiated or continued for such relief that may then be available under existing law upon the application of, or upon notice to, the party's executor or administrator or, when it relates to real property, the party's distributee or devisee who has succeeded to the party's interest in the real property.

92. When a custodian of the property or a guardian of the person of a party to this Consent Order is appointed, the proceedings may be continued upon the application of, or notice to, the custodian or guardian.

93. Upon the death or incompetency of a party, the court may extend the time within which an application to confirm, vacate, modify, or supplement the award or to stay arbitration must be made. Where a party has died since an award was delivered, the proceedings thereupon are the same as when a party dies after a judgment.

Fees, Expenses

94. The expenses and fees of the Arbitrator along with other expenses, including, but not limited to, each party's counsel fees, costs for the place where the hearings are held, deposition or hearing transcripts, expert fees, and copying of documents, incurred in the conduct of the proceeding, shall be paid as provided in the award.

95. Upon conclusion of an application to vacate, modify, correct, or supplement an award as provided for in this Consent Order and subsequent entry of an order based on that determination, the court, upon application, shall in a summary proceeding determine all fees, costs and expenses related to that application.

Consent Order to Mediate

96. Nothing in this Consent Order shall prevent the Arbitrator, with the written consent of the parties to the arbitration, from mediating an issue submitted, and such agreed-upon mediation shall not disqualify the Arbitrator from arbitrating the issue should mediation not be successful.

97. The Arbitrator shall determine how his fees shall be allocated between the parties. However, until such determination is made, _____ shall advance the initial fees of said

Arbitrator. The advance of money is without prejudice to the rights of either party and therefore is subject to final allocation by the Arbitrator.

_____	_____
Attorney for Plaintiff	Plaintiff
_____	_____
Attorney for Defendant	Defendant

QUESTIONS REGARDING AGREEMENT TO ARBITRATE FAMILY MATTER

		Yes	No
1	Do you know that you are scheduled to have a trial to resolve all the issues in conflict between you and the other party pertaining to decisions about your finances and the custody and parenting time for your children?	☐	☐
2	Instead of exercising that right to have the Court decide this case after a trial, at which you would be able to present to the Judge all relevant evidence capable of being considered pursuant to the Rules of Evidence, have you decided to waive that right of presentation to a Judge, and instead elected to make that presentation of the issues to an arbitrator.	☐	☐
3	Do you understand that by entering into an arbitration agreement and agreeing to the terms and conditions for the arbitration set forth in this agreement, you are waiving your right to have this court or any court decide, except in certain limited circumstances?	☐	☐
4	Mark Arbitration Agreement. Do you understand that the arbitration, when it is conducted, will be governed by the terms of this Agreement?	☐	☐
5	Have you read it and had an opportunity to discuss each and every provision of that Agreement with your attorney?	☐	☐
6	Do you understand that by signing this Agreement, you are giving the Arbitrator instead of the Judge authority to decide issues, in accordance with the terms and conditions of the Agreement marked J-1?	☐	☐
7	Did you discuss that issue with your attorney, and did he/she answer any questions you had to your satisfaction?	☐	☐
8	Did you attorney advise you that the Arbitrator's award can be vacated, amended or changed only under certain circumstances?	☐	☐
8a	Were you advised this would occur only if you are able to prove that it was secured by corruption, fraud or other undue means, partisanship or bias of the Arbitrator or misconduct of the Arbitrator which prejudiced the rights of one or all the parties to the arbitration proceeding?	☐	☐
8b	Were you also advised that this would only occur if you are able to prove that the Arbitrator exceeded his/her power and did not provide proper notice to the participants such that their rights were substantially prejudiced?	☐	☐
8c	Were you advised that the burden of proof will lie with you if you seek to vacate, amend or change the Arbitrator's award based on the circumstance outlined in questions 8a or 8b?	☐	☐
9	Do you understand that another reason an award pertaining to custody or parenting time could be vacated because either you or the other party establish that it threatens or poses harm to the child?	☐	☐

Initials: _____

QUESTIONS REGARDING AGREEMENT TO ARBITRATE FAMILY MATTER

		Yes	No
10	Do you understand that following the arbitrator's award you will not be able to vacate it, modify it, or reverse it, solely on the grounds that you think the best interests of your children are better served by a different decision, or that you disagree with it?	☐	☐
11	Do you understand that if you challenge the arbitrator's award with respect to custody or parenting time you will need to establish, with evidence, a prima facie case of harm to your child or children in order to obtain a hearing before a Judge, and that simply disagreeing with the amount of time the Arbitrator awards will not ordinarily constitute prima face evidence of harm?	☐	☐
12	Do you understand that only in the event the Court concludes following a hearing, if it allows a hearing, that there would be harm to your child or children in the event the arbitrator's award was followed would you be entitled to have the Court decide the case anew using the best interest of the children standard?	☐	☐
13	Do you understand further that all documentary evidence and a record of testimony presented during the arbitration proceeding pertaining to the custody and parenting time of your children must be maintained and kept?	☐	☐
14	Do you understand that this may mean having to hire a Court Reporter to transcribe the proceeding or that the Arbitrator will have to create a detailed record for review through some other agreed upon methodology?	☐	☐
15	Do you understand that there may be an extra cost for that?	☐	☐
16	Do you understand that the arbitrator cannot simply make an award granting custody to one or both of you, or jointly and allocating time between you without giving reasons grounded in law and the facts of your case?	☐	☐
17	Have you had ample time to reflect upon, and consider, the implications of your decision to arbitrate this case, rather than have it presented to a Judge and be decided by a Judge?	☐	☐
18	Have you entered into this Agreement to arbitrate your custody and parenting time issues freely and voluntarily without coercion or duress being exercised upon you?	☐	☐
19	Are you under the influence of any substances, such as drugs, medication or alcohol that may affect your ability to understand or voluntarily consent to this agreement?	☐	☐
20	Do you believe this is a reasonable way to resolve the dispute between you and the other party about custody and/or parenting time?	☐	☐

Initials: _____

QUESTIONS REGARDING AGREEMENT TO ARBITRATE FAMILY MATTER

		Check one
1	I certify that I have read each and every question in this questionnaire, and that my attorney, has reviewed these questions with me and explained them to me. I further certify that my attorney has answered any questions that I have with respect to this questionnaire.	☐
2	If I do not have an attorney, I certify that I fully understand the questions and that my answers are given voluntarily, without coercion or duress and that I was free of the influence of narcotics, drugs or alcohol. If I do not have counsel, I certify that I know I have the right to consult with counsel before executing this questionnaire and that I knowingly have waived my right to do so.	☐

_____

Sworn to before me on this _____ day
of _____, 2010

_____
NOTARY PUBLIC