

Steven Bonville

From: Rajeh A. Saadeh <rsaadeh@rajehsaadeh.com>
Sent: Wednesday, February 18, 2015 9:30 AM
To: Glenn Grant; Comments Mailbox
Subject: Rules comments re: Family Practice Committee Report
Attachments: RAS comments to Family Practice Committee Report.pdf

Dear Judge Grant,

Please see the attached containing in red my limited comments respecting the excellent report propounded by the Family Practice Committee.

I thank Your Honor for Your courtesies and consideration.

Respectfully submitted,

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LEGAL ADVICE/SOLICITATION

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Rule 1:21-1. Who May Practice; Attorney Access and Availability; Appearance in Court

(a) Qualifications. Except as provided below, no person shall practice law in this State unless that person is an attorney holding a plenary license to practice in this State, is in good standing, and complies with the following requirements:

(1) An attorney need not maintain a fixed physical location for the practice of law, but must structure his or her practice in such a manner as to assure, as set forth in RPC 1.4, prompt and reliable communication with and accessibility by clients, other counsel, and judicial and administrative tribunals before which the attorney may practice, provided that an attorney must designate one or more fixed physical locations in this State where client files and the attorney's business and financial records may be inspected on short notice by duly authorized regulatory authorities, where mail or hand-deliveries may be made and promptly received, where depositions and meetings shall be scheduled and where process may be served on the attorney for all actions, including disciplinary actions, that may arise out of the practice of law and activities related thereto.

Meetings need not be scheduled in that attorney's physical office location in this State. Many meetings are held electronically via video conference (i.e. Skype), in another attorney's office in this State, or even in a courthouse conference room. Depositions may also take place in courthouse conference rooms or in meeting rooms that can be rented by the hour (i.e. Regis). The FPC's proposed changes reinstate two antiquated provisions of the *bona fide* office rule that favor established attorneys (like myself and the members of the FPC) and needlessly limit the ability of newer attorneys to establish themselves in this State.

- (2) . . . no change.
- (3) . . . no change.
- (4) . . . no change.

(b) Appearance. . . . no change.

(c) Prohibition on Entities. . . . no change.

(d) Federal Government Agencies. . . . no change.

(e) Legal Assistance Organizations. . . . no change.

(f) Appearances Before Office of Administrative Law and Administrative Agencies. . . .

no change.

(g) Appearances at Personal Injury Protections Arbitrations. . . no change.

Note: Source - R.R. 1:12-4(a) (b) (c) (d) (e) (f). Paragraph (c) amended by order of December 16, 1969 effective immediately; paragraphs (a) and (c) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended July 24, 1978 to be effective September 11, 1978; paragraph (a) amended September 21, 1981 to be effective immediately; paragraph (c) amended and paragraph (d) adopted July 15, 1982 to be effective September 13, 1982; paragraph (a) amended August 13, 1982 to be effective immediately; paragraph (e) adopted July 22, 1983 to be effective September 12, 1983; paragraph (c) amended November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 5, 1986 to be effective January 1, 1987; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended and paragraph (d) caption and text amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended and paragraph (e)(8) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (c), (e), and (e)(7) amended, and paragraph (e)(9) added July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (e) amended June 28, 1996 to be effective September 1, 1996; paragraph (c) amended November 18, 1996 to be effective January 1, 1997; paragraph (c) amended January 5, 1998 to be effective February 1, 1998; paragraph (a) amended, former paragraphs (d) and (e) redesignated as paragraphs (e) and (f), and new paragraph (d) adopted July 10, 1998 to be effective September 1, 1998; closing paragraph amended July 5, 2000 to be effective September 5, 2000; paragraph (f) amended and new paragraph (f)(11) added July 12, 2002 to be effective September 3, 2002; paragraph (a) amended November 17, 2003 to be effective January 1, 2004; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraph (e) caption and text amended July 27, 2006 to be effective September 1, 2006; paragraph (f) amended and paragraph (g) adopted July 16, 2009 to be effective September 1, 2009; paragraph (c) caption and text amended July 23, 2010 to be effective September 1, 2010; caption and paragraphs (a) and (d) amended January 15, 2013 to be effective February 1, 2013; paragraphs (a)(1) and (a)(2) amended February 27, 2013 to be effective immediately; paragraph (a) amended July 9, 2013 to be effective September 1, 2013; subparagraph (a)(1) amended to be effective.

Rule 5:4-2. Complaint

Rule 5:4-2. Complaint

(a) Complaint Generally. . . no change.

(b) Correspondent. . . no change.

(c) Affidavit of Verification and Non-Collusion. . . no change.

(d) Counterclaim. . . no change.

(e) Amended or Supplemental Pleadings.

(1) Amended or Supplemental Complaint or Counterclaim for Dissolution Matters. In any action for divorce, dissolution of civil union, termination of domestic partnership, nullity, 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 the originally pleaded cause to any other cognizable family or family type action.

(2) Amended or Supplemental Applications or Counterclaim Applications for Non-Dissolution Matters. In any non-dissolution action, any party or attorney shall file the form application and may supplement the form application with an attached pleading setting forth any facts in issue in greater detail.

(3) Designation of Complex Non-Dissolution Matters. In any non-dissolution action, any party or attorney may submit an Application or Counterclaim or may write to the court prior to the first hearing seeking to designate a case as a complex matter by providing specific information why the case needs extended discovery, an expert evaluation or involves another material complexity which cannot be adjudicated in a summary manner. At the first hearing, a court, on its application or on the oral application of an attorney or a party, may

designate a non-dissolution matter as a complex matter. Applications for a complex track

assignment made after the initial hearing may be considered upon presentation of **exceptional**

circumstances.

(f) Affidavit or Certification of Insurance Coverage. . . . no change.

(g) Confidential Litigant Information Sheet. . . . no change.

(h) Affidavit or Certification of Notification of Complementary Dispute

Resolution Alternatives. The first pleading of each party shall have annexed thereto an

affidavit or certification in the form prescribed in Appendix XXVII-A or XXVII-B of

these rules that the litigant has been informed of the availability of complementary

dispute resolution ("CDR") alternatives to conventional litigation, including but not

limited to mediation, [or] arbitration, and collaborative law (New Jersey Family

Collaborative Law Act, N.J.S.A. 2A:23D-1 through -18), and that the litigant has

received descriptive material regarding such CDR alternatives.

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 amended 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 July 21, 2011 to be effective September 1, 2011; paragraph (g) amended July 9, 2013 to be effective September 1, 2013; paragraph (e) caption amended, former paragraph (e) redesignated as subparagraph (e)(1), subparagraph (e)(1) caption adopted, new subparagraphs (e)(2) and (e)(3) captions and text adopted, and paragraph (h) amended _____ to be effective _____.

Without any indication as to what constitutes "exceptional circumstances," family part judges are going to have broad discretion to deny requests to designate non-dissolution matters as complex after the first hearing.

What is more appropriate given the nature of these proceedings would be to impose a "good cause" standard, which would put a family part judge's inclination to either grant or deny such an application more in equipoise.

Rule 5:5-4. Motions in Family Actions

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(a) Motions. Motions in family actions shall be governed by R. 1:6-2(b) except that, in exercising its discretion as to the mode and scheduling of disposition of motions, the court shall ordinarily grant requests for oral argument on substantive and non-routine discovery motions and ordinarily deny requests for oral argument on calendar and routine discovery motions. When a motion is [brought] filed for enforcement or modification of a prior order or judgment, a copy of the order or judgment sought to be enforced or modified shall be appended to the pleading filed in support of the motion. When a motion or cross-motion is [brought] filed to establish alimony or child support [for the entry or modification of any order or judgment for alimony or child support based on changed circumstances], the [pleading] pleadings filed in support of, or in opposition to the motion, shall [have appended to it a copy of the prior case information statement or statements filed before entry of the order or judgment to be modified and] include a copy of a current case information statement. In the event a motion or cross-motion is filed to modify an obligation for alimony or child support based on changed circumstances, the movant Changed circumstances is no longer the exclusive standard by which to modify support. See N.J.S.A. 2A:34-23(k) & (l). shall append copies of the movant's current case information statement and the movant's case

information statement previously executed or filed in connection with the order, judgment or

agreement sought to be modified. [The pleading filed in opposition to entry of such an order

The marital standard of living, an important factor in the alimony analysis, may not be set forth in the CIS filed in connection with the order/judgment/agreement containing the alimony of which modification is sought. Also, limiting the the alimony or child support] the court concludes either that the party seeking relief has previously filed CISs limits the ability of a family part judge to consider all relevant factors, which may include the reasons demonstrated a prima facie showing of a substantial change of circumstances or that there is why alimony was previously modified.

other good cause, then the court will order the [other] opposing party to file a copy of a current

Many applications to modify support are unopposed by the other party.
case information statement.

(b) Page Limits. . . . no change.

(c) Time for Service and Filing. . . . no change.

(d) Advance Notice. . . . no change.

(e) Tentative Decisions. . . . no change.

(f) Orders on Family Part Motions. . . . no change.

(g) Exhibits. . . . 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 amended 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 July 21, 2011 to be effective September 1, 2011 paragraph (g) amended July 9, 2013 to be effective September 1, 2013; paragraph (a) caption adopted and text amended _____ to be effective _____.

Rule 5:7-5. Failure to Pay; Enforcement by the Court or Party; Suspension and Revocation of Licenses for Failure to Support Dependents; Execution of Assets for Child Support; Child Support Judgments and Post-Judgment Interest

Rule 5:7-5. Failure to Pay; Enforcement by the Court or Party; [Income Withholding for Child Support;] Suspension and Revocation of Licenses for Failure to Support Dependents; Execution of Assets for Child Support; Child Support Judgments and Post-Judgment Interest

(a) Application for Relief in Aid of Litigant's Rights. If a person fails to make payments or provide health insurance coverage as directed by an order or judgment, the Probation Division responsible for monitoring and enforcing compliance shall notify such person by mail that such failure may result in the institution of Relief to Litigant proceedings in accordance with R. 1:10-3. Upon the accumulation of a support arrearage equal to or in excess of the amount of support payable for 14 days or failure to provide health insurance coverage as ordered, the Probation Division shall file a verified statement setting forth the facts establishing disobedience of the order or judgment. The Probation Division may then, on the litigant's behalf, apply to the court for relief in accordance with R. 1:10-3 and R. 5:3-7. Actions for relief under this rule shall be brought in the county in which the support case is being enforced, unless another county is designated by court order. If the application for relief is made on behalf of a party by the Probation Division, filing fees shall be waived. If the application for relief is made by or on behalf of the obligee, other than by the Probation Division, and the applicant 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 the discretion of the court, filing fees subsequently may be assessed against the adverse party if it is determined that he or she has not complied with the order or judgment being enforced. For past-due alimony or child support payments that have not been docketed as a civil money judgment with the Clerk of the Superior Court, the court may, on its own motion or on motion by the party bringing the

enforcement action, assess costs against the adverse party at the rate prescribed by R. 4:42-11(a). For past-due child support payments that have been docketed as a civil money judgment, see paragraph [g] d of this Rule.

(b) Suspension and Revocation of Licenses for Failure to Support Dependents.

(1) Driver's License, Recreational Activity License, Professional License.

Pursuant to N.J.S.A. 2A:17-56.41, a child support obligor's driver's license shall be suspended by operation of law upon the issuance of a child support-related warrant. Pursuant to N.J.S.A. 2A:17-56.41 to 56.52, an obligor's licenses to drive, participate in recreational activities, or to practice licensed occupations may be denied, suspended, or revoked after notice and a hearing if:

(A) child support arrears equal or exceed the amount payable for six months; or

(B) court-ordered health care coverage for a child is not provided for six months;

or

(C) the obligor fails to respond to a subpoena relating to a paternity or child support action; or

(D) a warrant for the obligor's arrest has been issued by the court due to the:

(i) failure to pay child support as ordered,

(ii) failure to appear at a hearing to establish paternity or child support, or

(iii) failure to appear at a child support hearing to enforce a child support order.

(2) License to Practice Law. A license to practice law may be suspended under the same statutory standards as other occupational licenses. If the obligor is an attorney licensed to practice law in New Jersey, the order shall notify the Supreme Court to suspend the obligor's license to practice law.

There is no reason to single out the practice of law from other licensable professions, such as medicine, real estate sales and brokering, accounting, etc. Proposed R. 5:7-5(b)(1) covers all licensable practices, without omission or specificity, and provides the court with both the ability and framework to suspend.

[(b) Immediate Income Withholding. All orders that include child support shall be paid through immediate income withholding from the obligor's current and future income unless the parties agree, in writing, to an alternative arrangement or either party shows, and the court finds, good cause for an alternative arrangement. If included in the same order as child support, the court may, in its discretion, garnish a separate amount for alimony, maintenance or spousal support in accordance with N.J.S.A. 2A:17-50 et seq. and include such amount in the immediate income withholding order.

(1) Application. Immediate income withholding applies to all orders which include child support that are established or modified on or after October 1, 1990.

(2) Procedure. If an order or judgment contains a child support provision, the child support shall be paid through immediate income withholding, and the withholding may include amounts for alimony, maintenance or spousal support, unless the parties agree, in writing, to an alternative arrangement or either party shows and the court finds good cause for an alternative arrangement. The court shall forward the order to the Probation Division which shall prepare and send a Notice to Payor of Income Withholding to the obligor's employer or other source of income.

(3) Advance Notice. Every complaint, notice or pleading for the entry or modification of a child support order shall include the following written notice: In accordance with N.J.S.A. 2A:17-56.7 et seq., the child support provisions of a court order are subject to income withholding on the effective date of the order unless the parties agree, in writing, to an alternative arrangement or either party shows and the court finds good cause to establish an alternative arrangement. The income withholding is effective upon all types of income including wages from current and future employment.

(c) Rules Applicable to All Withholdings. The income withholding shall be binding on the obligor's employer or other source of income and successive payors of the obligor's income immediately after service of the Notice to Payor of Income Withholding upon the payor of such income. An employer or other source of income is not required to alter normal pay cycles to comply with the withholding but shall withhold and forward the required amount beginning with the first pay period that ends immediately after the notice is postmarked and each time the obligor is paid thereafter. The Notice to Payor of Income Withholding shall state that the payor of the obligor's income, except for the Division of Unemployment and Temporary Disability, may deduct a fee of \$1.00 for each payment. Such fee shall be deducted from the obligor's income in addition to the amount withheld for child support. The total amount of the withholding shall not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act (15 U.S.C. 1673(b)). If the court modifies any support order based upon changed circumstances, the Probation Division shall notify the payor to change the income withholding accordingly. When the Probation Division is unable to locate the obligor's current employer or other source of income to effectuate an income withholding, it may use any other procedures authorized by law to obtain this information. An income withholding for child support shall have priority over all other legal processes under State law without regard to the date of entry. If the obligor has more than one support order subject to withholding, the employer or other source of income shall withhold the payments on a pro-rata basis. The income withholding shall remain in effect until such time as the court enters an order to the contrary and the Probation Division delivers a Notice of Termination of Income Withholding to the employer or other source of income. An employer may not use an income withholding as a basis for discharge, discipline or discrimination in hiring. An aggrieved obligor may institute court action

against the employer or other source of income as set forth in N.J.S.A. 2A:17-56.12. If the obligor's source of income fails to comply with a Notice to Payor of Income Withholding, it is liable for amounts that should have been withheld. The employer or other source of income shall notify the Probation Division promptly upon termination of the obligor's employment. If an employer or other source of income fails to comply with the terms of the income withholding or any withholding provision in this paragraph, the court may, upon application of the Probation Division, issue an Order to Show Cause for Contempt against the payor and proceed with contempt proceedings under Rule 1:10-3. The forms and notices required herein shall be prescribed by the Administrative Director of the Courts.

(d) All Notices Applicable to All Orders and Judgments That Include Child Support Provisions. The judgment or order shall include notices stating: (1) that, if support is not paid through immediate income withholding, the child support provisions of an order or judgment are subject to income withholding when a child support arrearage has accrued in an amount equal to or in excess of the amount of support payable for 14 days; the withholding is effective against the obligor's current and future income from all sources authorized by law; (2) that any payment or installment of an order for child support or those portions of an order that are allocated for child support shall be fully enforceable and entitled to full faith and credit and shall be a judgment by operation of law against the obligor on or after the date it is due; before entry of a warrant of satisfaction of the child support judgment, any party to whom the child support is owed has the right to request assessment of post-judgment interest on child support judgments; (3) that no payment or installment of an order for child support or those portions of an order that are allocated for child support shall be retroactively modified by the court except for the period during which the party seeking relief has pending an application for modification as provided in

N.J.S.A. 2A:17-56.23a; (4) that the occupational, recreational, and professional licenses, including a license to practice law, held or applied for by the obligor may be denied, suspended or revoked if: (i) a child support arrearage accumulates that is equal to or exceeds the amount of child support payable for six months, or (ii) the obligor fails to provide health care coverage for the child as ordered by the court within six months, or (iii) a warrant for the obligor's arrest has been issued by the court for obligor's failure to pay child support as ordered, or for obligor's failure to appear at a hearing to establish paternity or child support, or for obligor's failure to appear at a child support hearing to enforce a child support order and said warrant remains outstanding; (5) that the driver's license held or applied for by the obligor may be denied, suspended, or revoked if (i) a child support arrearage accumulates that is equal to or exceeds the amount of child support payable for six months, or (ii) the obligor fails to provide health care coverage for the child as ordered by the court within six months; (6) that the driver's license held or applied for by the obligor shall be denied, suspended, or revoked if the court issues a warrant for the obligor's arrest for failure to pay child support as ordered, or for failure to appear at a hearing to establish paternity or child support, or for failure to appear at a child support hearing to enforce a child support order and said warrant remains outstanding; (7) that the amount of child support and/or the addition of a health care coverage provision in Title IV-D cases shall be subject to review, at least once every three years, on written request by either party to the Division of Family Development, P.O. Box 716, Trenton, NJ 08625-0716 and adjusted by the court, as appropriate, or upon application to the court; (8) that the parties are required to notify the appropriate Probation Division of any change of employer, address, or health care coverage provider within 10 days of the change and that failure to provide such information shall be considered a violation of the order; (9) that, in accordance with N.J.S.A. 2A:34-23b, the

custodial parent may require the non-custodial parent's health care coverage provider to make payments directly to the health care provider by submitting a copy of the relevant sections of the order to the insurer; (10) that Social Security numbers are collected and used in accordance with section 205 of the Social Security Act (42 U.S.C. 405), that disclosure of an individual's Social Security number for Title IV-D purposes is mandatory, that Social Security numbers are used to obtain income, employment, and benefit information on individuals through computer matching programs with federal and state agencies, and that such information is used to establish and enforce child support under Title IV-D of the Social Security Act (42 U.S.C. 651 et seq.); and (11) that after a judgment or order is entered and a probation support account has been established, the obligee and the obligor shall notify the appropriate Probation Division of any change of employer, health insurance provider, or address and the obligee and obligor shall notify the Probation Division of a change of address or a change in the status of the children as may be required in the order or judgment within ten days of the change, and any judgment or order that includes alimony, maintenance, or child support shall so provide. Failure to provide information as to change of employer, health insurance provider, address, or status of the children shall be considered a violation of the order.

(e) Suspension and Revocation of Licenses for Failure to Support Dependents.

(1) General Provisions. If a child support arrearage equals or exceeds the amount of child support payable for six months, or court-ordered health care coverage for a child is not provided within six months of the date that it is ordered, or the obligor fails to respond to a subpoena relating to a paternity or child support action, or a warrant for the obligor's arrest has been issued by the court due to the failure to pay child support as ordered, failure to appear at a hearing to establish paternity or child support, or failure to appear at a child support hearing to enforce a

child support order, and said warrant remains outstanding, and the obligor is found to possess a license in the State of New Jersey, including a license to practice law, and attempts to enforce the support provisions through income withholding, withholding of civil lawsuit awards, and the execution of assets, when available, have been exhausted, the Probation Division shall send a written notice to the obligor, by certified and regular mail, return receipt requested, at the obligor's last-known address or place of business or employment, stating that the obligor's licenses may be revoked or suspended unless, within 30 days of the postmark date of the notice, the obligor pays the full amount of past-due child support, or provides proof that health care coverage for the child has been obtained, or responds to a subpoena, or makes a written request for a court hearing to the Probation Division. If a child support-related warrant exists, the license revocation or suspension will be terminated if the obligor pays the full amount of the child support arrearage, provides proof that health care coverage for the child has been obtained, or surrenders to the county sheriff or the Probation Division. No license revocation action shall be initiated if the Probation Division has received notice that the obligor has pending a motion to modify the child support order if that motion was filed prior to the date that the notice of the license suspension or revocation was sent by the Probation Division. If the court issues a warrant for the obligor's arrest for failure to pay child support as ordered, or for failure to appear at a hearing to establish paternity or child support, or for failure to appear at a child support hearing to enforce a child support order, and said warrant remains outstanding, the Probation Division shall immediately notify the Motor Vehicle Commission of the warrant and the requirement to suspend the obligor's driving privileges pursuant to N.J.S.A. 2A:17-56.41.

(2) Suspension by Default of the Obligor. If, after receiving notice of a proposed license suspension or revocation, the obligor fails to take one of the actions specified in paragraph (e)(1)

of this Rule, the Probation Division shall provide the court with a certification setting forth the obligor's non-compliance and failure to respond to the written notice of the pending license revocation or suspension as well as proof of service of the written notice of license suspension or denial. If, based on the papers filed by the Probation Division, the court is satisfied that service on the obligor was effective as set forth below, it shall, without need for further due process or hearing, enter an order suspending or revoking all licenses held by the obligor except that if the obligor is an attorney licensed to practice law in New Jersey, the order shall notify the Supreme Court to suspend the obligor's license to practice law.

(3) Service of the Notice of Proposed License Suspension or Revocation. For the purpose of license suspensions or revocations initiated in accordance with this paragraph, simultaneous certified and regular mailing of the written notice shall constitute effective service. The court may deem procedural due process requirements for notice and service of process to be met with respect to a party thereto upon delivery of written notice to the most recent residential or employer address filed with the Probation Division for that party. If a party fails to respond to a notice and no proof is available that the party received the notice, the Probation Division shall document to the court that it has made a diligent effort to locate the party by making inquiries that may include, but are not limited to: the United States Postal Service, the Motor Vehicle Commission, the Division of Taxation in the Department of the Treasury, the Department of Corrections, and the Department of Labor. The Probation Division shall provide an affidavit to the court presenting such documentation of its diligent effort, which certifies its inability to locate the party. If the United States Postal Service returns the mail to the Probation Division within the 30-day response period marked "moved, unable to forward," "addressee not known," "no such number/street," "insufficient address," or "forwarding order expired," the court may

deem procedural due process requirements for notice and service of process to be met upon a finding that the Probation Division has provided the affidavit documenting the diligent effort to locate the party. If the certified mail is returned for any other reason without the return of the regular mail, the regular mail service shall constitute effective service. If the mail is addressed to the obligor at the obligor's place of business or employment, with postal instructions to deliver to the addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the obligor. Acceptance of certified mail notice signed by the obligor, the obligor's attorney, or a competent member of the obligor's household above the age of 14 shall be deemed effective service.

(4) License Suspension or Revocation Hearings. If the obligor requests a hearing, the Probation Division shall file a petition for a court hearing, which shall occur within 45 days of the obligor's request. If, at or prior to the hearing, the obligor pays the full amount of the child support arrearage or provides proof that health care coverage for the child has been obtained or responds to the subpoena or surrenders to the county sheriff or the Probation Division, the license revocation process shall be terminated. The court shall suspend or revoke the obligor's licenses (if the obligor is an attorney licensed to practice law in New Jersey, the order shall notify the Supreme Court to suspend the obligor's license to practice law) if it finds that: (a) all appropriate enforcement methods have been exhausted, (b) the obligor is the holder of a license, (c) the requisite child support arrearage amount exists or health care coverage for the child has not been provided as ordered, (d) no motion to modify the child support order, filed prior to the date that the notice of the license suspension or revocation was sent by the Probation Division, is pending before the court, and (e) there is no equitable reason, such as involuntary unemployment, disability, or compliance with a court-ordered plan for the periodic payment of

the child support arrearage amount, for the obligor's non-compliance with the child support order. If the court is satisfied that these conditions exist, it shall first consider suspending or revoking the obligor's driver's license prior to a professional or occupational license. If the obligor fails to appear at the hearing after being properly served with notice, the court shall order the suspension or revocation of all licenses held by the obligor except that if the obligor is an attorney licensed to practice law in New Jersey, the order shall notify the Supreme Court to suspend the obligor's license to practice law. In the case of a driver's license, if the court finds that the license revocation or suspension will result in a significant hardship to the obligor, to the obligor's legal dependents under 18 years of age living in the obligor's household, to the obligor's employees, or to persons, businesses, or entities to whom the obligor provides goods or services, the court may allow the obligor to pay 25% of the past-due child support amount within three working days of the hearing, establish a payment schedule to satisfy the remainder of the arrearages within one year, and require that the obligor comply with any current child support obligation. If the obligor agrees to this arrangement, no suspension or revocation of any licenses shall be ordered. Compliance with the payment agreement shall be monitored by the Probation Division. If the obligor has good cause for not complying with the payment agreement within the time permitted, the obligor shall immediately file a motion with the court and the Probation Division requesting an extension of the payment plan. The court may extend the payment plan if it is satisfied that the obligor has made a good faith effort to comply with the plan and is unable to satisfy the full amount of past-due support within the time permitted due to circumstances beyond the obligor's control. In no case shall a payment plan extend beyond the date that the dependent child reaches the age of 18. If the obligor fails to comply with the court-ordered payment schedule, the court shall, upon receipt of a certification of non-compliance from the

Probation Division, and without further hearing, order the immediate revocation or suspension of all licenses held by the obligor. If the obligor is an attorney licensed to practice law in New Jersey, the order shall notify the Supreme Court to suspend the obligor's license to practice law. If required by existing law or regulation, the court shall order that the obligor surrender the license to the issuing authority within 30 days of the date of the order.

(5) Transmittal of Order Suspending or Revoking License. If the court issues an order suspending or revoking a license pursuant to paragraph (e) of this Rule, the Probation Division shall forward a copy of the order to the obligor and all appropriate licensing authorities. If the order notifies the Supreme Court to suspend a license to practice law in New Jersey, the Probation Division shall forward the order to the Clerk of the Supreme Court and a copy to the Director of the Office of Attorney Ethics. The suspension of a license to practice law in the State of New Jersey pursuant to paragraph (e) of this Rule, shall be governed by R. 1:20-11A.

(6) Relief From Suspension or Revocation Due to Mistaken Identity. If the licensee, upon receipt of the notice of suspension or revocation from the licensing authority, disputes that he or she is the obligor, the licensee shall notify the licensing authority and the Probation Division by registered mail within 20 days of the postmark date of the notice and request a hearing. Upon receipt of the licensee's request for a hearing, the Probation Division shall determine if the licensee is the obligor. If the Probation Division determines that the licensee is not the obligor, the Probation Division shall so notify the licensee and the licensing authority. If the Probation Division determines that the licensee is the obligor and the licensee still disputes this finding, the Probation Division shall file a petition for a court hearing to resolve the issue. The hearing shall be held within 30 days of the date that the Probation Division determines that a hearing is

required. If a hearing is held to determine if the licensee is the obligor, the Probation Division shall notify the licensing authority of the court's finding.

(7) Term of Suspension/Restoration of License. A license suspension or revocation ordered by the court remains in effect until the obligor files with the licensing authority either a court order restoring the license or a Probation Division certification attesting to the full satisfaction of the child support arrearage. Within three working days of the full payment of the child support arrearage, the Probation Division shall provide the court with a certification stating that the obligor has satisfied the past-due child support amount. Upon receipt of the certification, the court shall issue an order restoring the obligor's licenses. The Probation Division shall immediately forward the restoration order or certification to the obligor. The obligor is responsible for filing the court order or Probation certification with the licensing authority. If a license to practice law in New Jersey was suspended by the Supreme Court pursuant to R. 1:20-11A, the attorney shall forward the Chancery Division, Family Part order that recommends the restoration of the license to the Clerk of the Supreme Court and a copy of the order to the Director of the Office of Attorney Ethics. The reinstatement of a license to practice law in New Jersey shall be governed by R. 1:20-11A. When the court issues an order to vacate a child support-related warrant or local law enforcement authorities execute the warrant, the Probation Division shall send a certification or the court's order to the obligor and to the Motor Vehicle Commission indicating that the child support-related warrant is no longer effective. The Motor Vehicle Commission, upon receipt of the order or certification, may reinstate the obligor's driving privileges, provided that the obligor pays the Division's restoration fee.]

[(f)] (c) Execution on Assets to Collect Alimony and Child Support. . . . no change.

[(g)] (d) Child Support Judgments and Post-judgment Interest. . . . no change.

Note: Source - R. (1969) 4:79-9(b)(1), (2) (3). Adopted December 20, 1983 to be effective December 31, 1983; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a) amended July 13, 1994, to be effective August 1, 1994; paragraphs (b), (c) and (d) amended July 13, 1994 to be effective September 1, 1994; caption amended, paragraph (e) adopted March 15, 1996, to be effective immediately; caption amended, paragraphs (a) and (d) amended, and paragraphs (f) and (g) adopted June 28, 1996, to be effective immediately; paragraphs (b), (c), and (e) amended May 25, 1999 to be effective July 1, 1999; paragraph (a) caption and text, and paragraphs (e)(1), (e)(3), and (e)(7) amended June 15, 2007 to be effective September 1, 2007; paragraph (f) amended July 19, 2012 to be effective September 4, 2012; caption amended, paragraph (a) amended, former paragraphs (b), (c), (d) and (e) deleted, new paragraph (b) adopted, former paragraph (f) redesignated as paragraph (c), and former paragraph (g) redesignated as paragraph (d) _____ to be effective _____.