

# **FAMILY PRACTICE COMMITTEE REPORT**



## **2019-2021 RULES CYCLE**

January 15, 2021

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## I. Introduction

The Supreme Court Family Practice Committee ("Committee") recommends that the Supreme Court adopt the proposed rule amendments and new rules contained in this report. The Committee also reports on other issues reviewed where it concluded no rule change or a non-rule recommendation was appropriate.

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**

### **A. Name Change Applications for Minors**

The Supreme Court Committee on Diversity, Inclusion, and Community Engagement (SCCDICE), in its [2017-2019 Report](#), recommended a referral to the Family Practice Committee and the Civil Practice Committee to develop proposed rules for name change applications for minors See 2017-2019 SCCDICE Report at 25-32 (Recommendation 2019:13).

#### **1. Using initials and sealing all unredacted records**

The SCCDICE asserts that only parents and their children, and not the public, have an interest in name change applications for minors and, therefore, those proceedings should be private. The SCCDICE recommended that it should be standard practice to use only the initials of the parents and the minor, and that all pleadings displaying the names should be filed under seal. See 2017-2019 SCCDICE Report at 28-29.

The Family Practice Committee supports protecting the privacy of minors in such matters and recommends that R. 1:38-3(d) be amended to exclude from public access minor name change applications. The Family Practice Committee further recommends referral of operational considerations such as implementation of technological solutions and case management protocols to the Conference of the Family Presiding Judges.

#### **R. 1:38-3. Court Records Excluded from Public Access**

The following court records are excluded from public access:

(a) General. . . no change.

(b) Internal Records. . . no change.

(c) Records of Criminal and Municipal Court Proceedings. . . no change.

(d) Records of Family Part Proceedings.

(1) . . . no change.

(2) . . . no change.

(3) . . . no change.

(4) . . . no change.

(5) . . . no change.

(6) . . . no change.

(7) . . . no change.

(8) . . . no change.

(9) . . . no change.

(10) . . . no change.

(11) . . . no change.

(12) . . . no change.

(13) . . . no change.

(14) . . . no change.

(15) . . . no change.

(16) . . . no change.

(17) . . . no change.

(18) . . . no change.

(19) Records relating to actions to change the name of a minor.

(e) Records of Guardianship Proceedings. . . . no change.

(f) Records of Other Proceedings. . . . no change.

Note: New Rule 1:38-3 adopted July 16, 2009 to be effective September 1, 2009; subparagraph (b)(1) amended December 9, 2009 to be effective immediately; paragraphs (e) and (f) amended January 5, 2010 to be effective immediately; subparagraph (c)(11) amended, subparagraph (c)(12) adopted, and subparagraph (d)(10) amended February 16, 2010 to be effective immediately; subparagraph (d)(1) amended June 23, 2010 to be effective July 1, 2010; paragraph (e) amended October 26, 2010 to be effective immediately; paragraph (e) amended February 28, 2013 to be effective immediately; subparagraph (d)(12) amended July 9, 2013 to be effective September 1, 2013; subparagraphs (f)(2) and (f)(5) amended, and new subparagraph (f)(9) added December 9, 2014 to be effective immediately; subparagraph (d)(2) amended July 27, 2015 to be effective September 1, 2015; subparagraph (b)(1) amended May 30, 2017 to be effective immediately; paragraph (a) and subparagraphs (d)(1) and (d)(13) amended July 28, 2017 to be effective September 1, 2017, subparagraphs (c)(1), (d)(1), (d)(2), (d)(5), (d)(6), (d)(9), and (f)(6) amended May 15, 2018 to be effective immediately; new subparagraph (c)(13) adopted July 27, 2018 to be effective September 1, 2018; new subparagraph (c)(14) adopted and subparagraph (f)(5) amended September 12, 2018 to be effective immediately; new subparagraph (d)(18) adopted July 29, 2019 to be effective September 1, 2019; new subparagraph (d)(19) adopted \_\_\_\_\_ to be effective \_\_\_\_\_.

## **2. Waiving requirement to publish name change applications**

The Family Practice Committee considered and endorsed the SCCDICE's recommendation that the requirement to publish the filing of a name change application for a minor should be waived. See 2017-2019 SCCDICE Report at 29-31. The SCCDICE asserts that there are significant privacy concerns with requiring publication and no tangible public interest served. The Committee endorsed proposed amendments to R. 4:72-1(b) and R. 4:72-3 removing the publication requirement for name change applications for minors. On November 17, 2020, the Supreme Court, however, amended R. 4:72-3 to delete the requirement of newspaper publication for all name change applications. As such, the Committee's initial recommendations are moot and no further action is required. (See section V(A) below).

### **3. Permitting the option of summary dispositions on the papers for name change applications where no best interest hearing is required**

The SCCDICE suggested that a protocol be adopted to encourage judges to decide uncontested minor name change applications without requiring a court appearance (also known as a summary disposition on the papers). See 2017-2019 SCCDICE Report at 31-32. The Family Practice Committee, however, does not recommend further amendments to R. 4:72-1(b) or R. 4:72-4. Part I of the Rules of Court currently allows the trial court to address the minor name change in a summary manner on the papers. Therefore, the Committee does not recommend an additional rule amendment. (See section IV(F) below).

### **4. Adopting sample colloquies for the trial court in summary proceedings on the record and in best interest hearings**

The SCCDICE recommended the development of sample colloquies to assist the trial court in using appropriate language in matters involving trans-identified, gender non-conforming, and non-binary children. See 2017-2019 SCCDICE Report at 32. The SCCDICE is currently developing sample colloquies which will be shared with the Committee when they are completed. The Committee thus recommends holding this issue for consideration in the 2021-2023 cycle pending completion of the proposed colloquies. (See section VI(C) below).

## **B. Proposed Amendments in Arbitration Matters**

### **1. Proposed amendment to R. 5:1-4(a)(5) to clarify that post-judgment dissolution matters can be placed on the arbitration track**

The Committee recommends amending R. 5:1-4(a)(5) to clarify that dissolution matters can be placed on the arbitration track whether they are pre-judgment or post-judgment. The suggested revisions are intended to apply the procedures for the pre-judgment arbitration track to the post-judgment arbitration track. The Committee also recommends deleting the last sentence

of R. 5:1-4(a)(5) as unnecessary because the parties are free to mediate or proceed to trial on issues that are unresolved in arbitration without an authorizing court rule. Therefore, the Committee recommends the following rule amendment:

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

(a) Case Management Tracks; Standards for Assignment. . . . no change.

(1) Priority Track. . . . no change.

(2) Complex Track. . . . no change.

(3) Expediated Track. . . . no change.

(4) Standard Track. . . . no change.

(5) Arbitration [Track] Tracked Matters. At any point in a proceeding, pre- or post-judgment, the parties may agree to execute a Consent Order or Agreement to arbitrate or resolve the issues pending before the court pursuant to the Uniform Arbitration Act, N.J.S.A. 2A:23B-1, et seq., the New Jersey Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A:23A-1, et seq., or any other agreed upon framework for arbitration of disputes between and among parties to any proceeding arising from a family or family-type relationship except as provided in R. 5:1-5 (a)(1). If the parties elect to arbitrate, the litigation shall be assigned to the Arbitration Track, provided the parties have executed and filed with the court the Arbitration Questionnaire, which is set forth in Appendix XXIX-A, and the Arbitrator Disclosure Form, which is set forth in Appendix XXIX-D. Thereafter, the arbitration shall proceed pursuant to R. 5:1-5. [Issues not resolved in the arbitration shall be addressed in a separate mediation process or by the court after the disposition of the arbitration.]

(b) Procedure for Track Assignment. . . . no change.

(c) Track Reassignment. . . . 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 July 21, 2011 to be effective September 1, 2011; subparagraph (a)(4) amended, new subparagraph (a)(5) adopted, and paragraphs (b) and (c) amended July 27, 2015 to be effective September 1, 2015; subparagraph (a)(5) amended July 29, 2019 to be effective September 1, 2019; subparagraph (a)(5) amended \_\_\_\_\_ to be effective \_\_\_\_\_.

**2. Proposed amendment to R. 5:1-5 to clarify prerequisites for cases on the family arbitration track**

The Committee considered amendments to R. 5:1-5 (b) to clarify the prerequisites for cases on the family arbitration track. It was agreed that the parties must file the Arbitration Questionnaire, Arbitrator Disclosure Form and the Agreement or Consent Order before the case is placed on the arbitration track. The Committee further recommends that the first year a matter is placed on the arbitration track, the trial court should minimally case manage the matter and not require in person court appearances so as to minimize legal costs. If, however, the matter is pending for more than one year, the appropriate level of case monitoring shall be in the discretion of the court.

The Committee also recommends deleting subparagraph (b)(4) of the Rule since the requirement to file a certification once the parties agree to arbitrate is contained in R. 4:5-1(b)(2), which governs all arbitrations, including Family cases.

Lastly the Committee recommends amending R. 5:1-5(c) to clarify that dissolution matters can be placed on the arbitration track whether they are pre-judgment or post-judgment.

Therefore, the following rule amendments are recommended:

**Rule 5:1-5. Arbitration**

- (a) Scope of Rule. . . . no change.
- (b) Prerequisites.

(1) The Arbitration Questionnaire. [Each party shall review and execute the Arbitration Questionnaire, which is the] The Arbitration questionnaire, which is set forth in Appendix XXIX-A, shall be signed by each party, [and each party's questionnaire shall be] attached to the Agreement or Consent Order and shall be filed with the court.

(2) The Arbitrator Disclosure Form. The Arbitrator/Umpire Disclosure Form, which is set forth in Appendix XXIX-D, shall be signed by the arbitrator/umpire, attached to the Agreement or Consent Order, and filed with the court. The parties must file the Arbitration Questionnaire, Arbitrator Disclosure Form and the Agreement or Consent Order before the case is placed on the arbitration track.

(3) Agreement or Consent Order. . . . no change.

[(4) Certification. If the parties have entered into an Agreement or Consent Order to arbitrate or an arbitration award has issued, the certification filed pursuant to R. 4:5-1(b)(2) shall so state.]

(c) Arbitration Track. Any action, pre- or post-judgment, pending at the time that an Agreement or Consent Order to arbitrate is reached shall be placed on the Arbitration Track referenced in R. 5:1-4 for no more than one year following Arbitration Track assignment, which term may be extended by the court for good cause shown. Cases assigned to the Arbitration Track should be given scheduling consideration when fixing court appearances in other matters. If the case is not resolved after one year, counsel or the parties must report to the court in person consistent with R. 5:5-7(d) [amendment pending approval of the Supreme Court in this report].

Note: Adopted July 27, 2015 to be effective September 1, 2015; subparagraph (b)(1) amended, new subparagraph (b)(2) adopted, subparagraphs (b)(2) and (b)(3) redesignated as subparagraphs (b)(3) and (b)(4) July 29, 2019 to be effective September 1, 2019; subparagraphs (b)(1) and (b)(2) amended; subparagraph (b)(4) deleted; paragraph (c) amended \_\_\_\_\_ to be effective \_\_\_\_\_.

### **3. Proposed amendment to R. 5:5-7 to clarify time goals for arbitration track matters**

The Committee considered an amendment to R. 5:5-7 to add a new paragraph (d) to address family matters that are placed on the arbitration track. The purpose of new paragraph (d) is to prevent unnecessary court appearances for parties who are participating in arbitration, but also to provide access to the court in instances where an arbitration has been delayed by either a party to the arbitration or the arbitrator. The proposed rule amendment also prevents improper bifurcation of a divorce by barring entry of a judgment of divorce without a showing of extraordinary circumstances. It further permits the court to dismiss a matter after one year if the parties do not seek an extension to continue on the arbitration track. For clarification, the Committee recommends cross-referencing the one-year time goals contained in R. 5:5-7(d) and R. 5:1-5(c).

Although the Committee recommends parameters for court appearances, it recognizes that the rule recommendation restricts the court's discretion on the frequency of conducting in-person status conferences. Such a restriction on judicial discretion is not found in the civil or criminal court rules. This concern, however, was outweighed by the need to minimize the expense to the litigants of having to make required court appearances while actively participating in arbitration proceedings.

Therefore, the Committee recommends the following rule amendment:

#### **Rule 5:5-7. Case Management Conferences in Civil Family Actions**

- (a) Dissolution Priority and Complex Actions. . . . no change.
- (b) Dissolution Standard and Expedited Cases. . . . no change.
- (c) Non-Dissolution Actions. . . . no change.

(d) Arbitration Track Matters. No in-person conference or written submission shall be required by the court except as provided by R. 5:1-5(c) [amendment pending approval of the Supreme Court in this report]. The court may conduct remote status conferences with counsel or the parties no more frequently than monthly during the first year after the matter is placed on the Arbitration Track. No matter shall be dismissed on the court's own motion and no judgment of divorce shall be entered while a matter is pending on the arbitration track absent extraordinary circumstances.

Note: Adopted as R. 5:5-6 November 5, 1986 to be effective January 1, 1987; full text deleted and new paragraphs (a) and (b) adopted January 21, 1999 to be effective April 5, 1999; redesignated as R. 5:5-7 July 27, 2006 to be effective September 1, 2006; paragraphs (a) and (b) captions amended, and new paragraph (c) caption and text adopted July 27, 2015 to be effective September 1, 2015; new paragraph (d) caption and text adopted \_\_\_\_\_ to be effective \_\_\_\_\_.

**C. Proposed Amendments to R. 5:6-9. Termination of Child Support Obligations to be consistent with amendments to N.J.S.A. 2A:17-56.67, et seq.**

The child support termination law, N.J.S.A. 2A:17-56.67, et seq., went into effect on December 1, 2020. That law clarified certain procedures concerning the collection of court ordered child support when the child is over the age of 23 and suffers from a severe mental or physical disability. Specifically, the law permits the continuation of the child support obligation and/or full Title IV-D services (i.e., establishing, monitoring and enforcing child support through the Probation Division) for a child over age 23 with severe physical or mental incapacity. The child support services would continue until the court finds the child is relieved of the incapacity or is no longer financially dependent on their parents. Amendments to R. 5:6-9 are necessary to conform to the statutory changes.

Therefore, the Committee recommends the following rule amendments:

**Rule 5:6-9. Termination of Child Support Obligations**

(a) Duration of Support. In accordance with N.J.S.A. 2A:17-56.67 et seq., unless otherwise provided in a court order, judgment, or court-approved preexisting agreement, the obligation to pay current child support and provide medical support [including health care coverage,] shall terminate by operation of law when the child being supported:

(1) dies;

(2) marries;

(3) enters the military service; or

(4) reaches 19 years of age, except as otherwise provided within this rule or applicable statute. [In no case shall a child support obligation extend beyond the date the child reaches the age of 23.]

**(b) Termination of Obligation in Cases Administered by the Probation Division.**

(1) Notices of Proposed Termination. . . . no change.

(2) Written Request for Continuation. In response to the notice prescribed in [section] subparagraph (b)(1), the obligee may submit to the court a written request for continuation, on a form and within timeframes promulgated by the Administrative Office of the Courts, with supporting documentation and a future termination date, seeking the continuation of support beyond the child's nineteenth birthday if the child being supported:

(A) is still enrolled in high school or other secondary educational program;

(B) is enrolled full-time in a post-secondary educational program; or

(C) has a physical or mental disability as determined by a federal or state agency or court order that existed prior to the child reaching the age of 19 and requires continued support.

(3) Review of Written Request for Continuation. . . . no change.

(4) No Response to Notice of Proposed Termination. . . . no change.

(5) Motion or Application. . . . no change.

(6) Arrears Remain Due and Enforceable. . . . no change.

(7) Notice of Termination. . . . no change.

(8) Unallocated Orders . . . . no change

(9) Allocated Orders . . . . no change

(c) Termination or Continuation of Child Support Obligations Not Administered by the Probation Division. . . . no change.

(d) Other Reasons for Termination of Child Support Obligations. . . . no change.

(e) Emancipation. . . . no change.

(f) Support for Children in Out-of-Home Placement through the Division of Child Protection and Permanency. . . . no change.

(g) Support for a Child Beyond 23 Years of Age. Pursuant to N.J.S.A. 2A:17-56.14, N.J.S.A. 2A:17-56.67 et seq., and N.J.S.A. 2A:34-23:

(1) A parent, or a child, may apply to the court for an order continuing the child support obligation, as well as the continuation of Title IV-D services, for a child with a severe physical or mental incapacity that causes the child to be financially dependent upon a parent. The

parental obligation to provide support for the child shall continue until the court finds that the child is relieved of the incapacity or is no longer financially dependent on the parent. In such cases, if the court order so provides, the Probation Division shall be required to provide full Title IV-D monitoring and enforcement services until further order of the court.

(2) In cases where a child is over the age of 23, and has not established a Title IV-D case through the Probation Division, the obligor or obligee may apply for limited non-IV-D monitoring only services through the Probation Division, pursuant to the provisions of N.J.S.A. 2A:17-56.14 and R. 5:7-11. The Probation Division shall not be required to provide full Title IV-D enforcement services for such cases.

[(g)] (h) Financial Maintenance for a Child Beyond 23 Years of Age. Pursuant to [N.J.S.A. 2A:34-23,] N.J.S.A. 2A: 17-56.67 et seq., and N.J.S.A. 2A: 34-23 [, and related case law]:

(1) . . . no change.

(2) . . . no change.

(3) . . . no change.

(4) . . . no change.

[(h)] (i) Foreign Orders or Judgments. . . . no change.

Note: Adopted July 28, 2017 to be effective September 1, 2017; paragraph (a), subparagraph (a)(4), and subparagraph (b)(2)(C) amended; new paragraph (g) added; former paragraph (g) amended and redesignated as (h); former paragraph (h) redesignated as (i) \_\_\_\_\_ to be effective \_\_\_\_\_.

**D. Proposed Rule Amendments to implement N.J.S.A. 2A:17-56.41, Revocation or Suspension of License for Nonpayment of Child Support**

The Committee considered amendments to R. 5:7-4A and R. 5:7-5 to conform to and implement statutory changes. Effective January 1, 2021, N.J.S.A. 2A:17-56.41 has been amended to remove the provision authorizing the automatic suspension of a person's driver's license by operation of law upon the issuance of a child support related warrant. Under the new law, the court retains discretion to suspend a driver's license after notice and a hearing. While federal statutes permit license suspension as an enforcement mechanism, New Jersey's child support enforcement case management system contained an automatic linkage between the issuance of a bench warrant for non-compliance and the suspension of a driver's license. The new statute removes that automatic license suspension and provides additional due process safeguards.

To conform to N.J.S.A. 2A:17.56.41, the Committee recommends the following rule amendments to R. 5:7-4A and R. 5:7-5:

**Rule 5:7-4A. Income Withholding for Child Support: Notices**

- (a) Immediate Income Withholding. . . . no change.
- (b) Initiated Income Withholding. . . . no change.
- (c) Rules Applicable to All Withholdings. . . . no change.
- (d) All Notices Applicable to All Orders and Judgments that Include Child Support

Provisions. The judgment or order shall include notices stating:

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

(5) 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, or (iii) the court issues a warrant for the obligor's arrest for failure to pay child support as ordered, or (iv) the obligor fails to appear at a hearing to establish paternity or child support, or (v) the obligor fails to appear at a child support hearing to enforce a child support order and said warrant remains outstanding;

[(6) 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;]

(6) [(7)] 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 State IV-D agency or designee [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;

(7) [(8)] after a judgment or order is entered and a probation support account has been established, the obligee and the obligor [parties] are required to notify the appropriate Probation Division of any change of employer, address, [or] health care coverage provider, or a change in the status of the children within 10 days of the change and that failure to provide such information shall be considered a violation of the order;

(8) [(9)] in accordance with N.J.S.A. 2A:34-23b, the obligee [custodial parent] may require the obligor's [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; and

(9) [(10)] Social Security numbers are collected and used in accordance with section 205 of the Social Security Act (42 U.S.C.A. § 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.A. § 651 et seq.) [; and (11) 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].

Note: Former R. 5:7-5(b) redesignated as R. 5:7-4A(a), former R. 5:7-5(c) redesignated as R. 5:7-4A(b), former R. 5:7-5(d) redesignated as R. 5:7-4A(c), former R. 5:7-4(f) redesignated as R. 5:7-4A(d) July 27, 2015 to be effective September 1, 2015; subparagraph (a)(3) amended July 28, 2017 to be effective September 1, 2017; subparagraph (d)(5) amended; former subparagraph (d)(6) deleted; former subparagraph (d)(7) amended and redesignated as (d)(6); former subparagraph (d)(8) amended and redesignated as (d)(7), former subparagraph (d)(9) amended and redesignated as (d)(8), former subparagraph (d)(10) redesignated as (d)(9), former subparagraph (d)(11) deleted \_\_\_\_\_ to be effective \_\_\_\_\_.

**Rule 5:7-5. Failure to Pay; Enforcement by the Court or a Party; 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. . . . no change.

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

(1) Driver's License, Recreation 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. . . . no change.

(3) Transmittal of Order Suspending or Revoking License. . . . no change.

(4) Term of Suspension/Restoration of License. . . . no change.

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

(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, new paragraph (b) adopted, former paragraphs (b), (c) and (d) deleted and redesignated as paragraphs (a), (b) and (c) in new R. 5:7-4A, paragraph (e) deleted, former subparagraph (e)(5) amended and redesignated as new subparagraph (b)(3), former subparagraph (e)(7) redesignated as new subparagraph (b)(4), former paragraph (f) redesignated as paragraph (c), and former paragraph (g) redesignated as paragraph (d) July 27, 2015 to be effective September 1, 2015; subparagraph (b)(1) amended \_\_\_\_\_ to be effective \_\_\_\_\_

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#### **E. Proposed Amendment to R. 5:10-1. Venue**

The Committee considered a rule recommendation regarding venue in Division of Child Protection and Permanency (DCP&P) adoption matters. Two approaches were considered: (a) amend the rule to include text from the adoption statute; or (b) amend the rule so that the adoption is venued in the county where the termination of parental rights (FG docket) occurred. The second approach was a favored recommendation from the Conference of Family Presiding Judges to ensure that the trial court terminating parental rights also conducts the adoption proceeding.

The current court rule permits DCP&P adoptions to be filed in any county in which the agency has an office. Since DCP&P has an office in every county of the State, the existing rule encourages forum shopping.

Therefore, the Committee recommends the following rule amendment:

## **R. 5:10-1. Venue**

An action for the adoption of a child, shall be brought [or the venue laid in the county where the plaintiff is domiciled, except that if the child to be adopted is in the custody and control of an approved agency, the action may be brought or the venue laid in the county in which such approved agency has an office.] in the county in which the prospective parent resides, or in the county where the child resided immediately prior to placement for adoption, or if the child is less than three months of age, the county in which the child was born; except that whenever the child to be adopted has been received into the home of a prospective parent from an approved agency, the action may be instituted in the Superior Court, Chancery Division, Family Part of the county in which the approved agency has an office. For placements by the Division of Child Protection and Permanency, which is an approved agency, the office shall be deemed to be in the county where parental rights were terminated.

Note: Source-R. (1969) 4:94-1(a). Adopted December 20, 1983, to be effective December 31, 1983; amended \_\_\_\_\_ to be effective \_\_\_\_\_.

## **F. Proposed Amendment to R. 5:10-4. Surrogate Action**

### **1. Proposed amendment to R. 5:10-4. Surrogate Action**

The Committee considered a rule recommendation regarding a requirement to provide notice in the context of an adoption proceeding. The Committee considered amending R. 5:10-4(b)(3) to be consistent with the notice requirement in N.J.S.A. 9:3-45 and In the Matter of the Adoption of a Child by J.E.V. and D.G.V., 226 N.J. 90 (2016).

N.J.S.A. 9:3-45 sets forth a requirement to: (a) send a notice of an adoption complaint and hearing to the birth parent in a non-agency adoption; or (b) send a notice of a birth parent's intent to place a child for adoption or the placement of the child in an agency adoption. In cases

where a child is placed by a private adoption agency, J.E.V. requires a form (JEV form) to be sent to the birth parent, which should:

- (1) advise parents that they have the right to object, (2) outline how they should do so, (3) explain that failure to respond to the notice in writing will constitute a waiver of future notices, (4) tell parents about the statutory right to counseling before they decide whether to sign a surrender form to an adoption agency, (5) advise them what to do if they wish to surrender the child, (6) inform parents that they have the right to be represented by an attorney if they object and that the court will appoint counsel if they are indigent, and (7) provide details about how to apply for counsel.

Id. at 112-13.

The rule amendment proposed by the Committee clarifies that: (1) there is a notice requirement in N.J.S.A. 9:3-45; and (2) the JEV form provides the information required by the Supreme Court's decision in J.E.V.

Therefore, the Committee recommends the following rule amendment:

**R. 5:10-4. Surrogate Action**

(a) Review of Complaint Prior to Docketing. . . . no change.

(b) Jurisdiction.

(1) . . . no change.

(2) . . . no change.

(3) In private placement adoptions, [Upon] the court shall assign a date [fixing a day] for the preliminary or final hearing [in private placement adoptions, the]. The Surrogate shall attach [append] to the court's order a form promulgated by the Administrative Director of the Courts for [informing the child's] parents in an adoption proceeding, which informs the child's parents whose parental rights are subject to [a] termination [proceeding of the procedure] how to object to the adoption, [the] their right to legal counsel, and how to apply for a court-

appointed attorney. The signed order and form shall be returned to the plaintiff for service of the [form and] notice of the hearing [on the child's parents whose parental rights are subject to a termination proceeding] pursuant to N.J.S.A. 9:3-45, and for service of the appropriate form on the child's parents. Service of the form on the child's parent whose rights are not being terminated shall not be required.

(4) . . . no change.

Note: Source - R. (1969) 4:94-3. Adopted December 20, 1983, to be effective December 31, 1983; caption amended, former text redesignated as paragraph (b), paragraph (b) caption adopted, paragraph (b) amended, and new paragraph (a) adopted July 21, 2011 to be effective September 1, 2011; former subparagraph (b)(3) redesignated as subparagraph (b)(4) and new subparagraph (b)(3) adopted May 30, 2017 to be effective immediately; subparagraph (b)(3) amended July 29, 2019 to be effective September 1, 2019; subparagraph (b)(3) amended, \_\_\_\_\_ to be effective \_\_\_\_\_.

## **2. Proposed revisions to Notice forms required by J.E.V.**

In 2019, R. 5:10-4 was amended in accordance with J.E.V. The Judiciary then promulgated two JEV forms to conform to the requirements of J.E.V.: (1) "Notice of Rights in an Adoption Proceeding (Agency Placement)" (CN 12144) to address adoption agency placements; and (2) "Notice of Rights in an Adoption Proceeding (Non-Agency Placement)" (CN 12145) to address private party placements.

The Committee now recommends revisions to the JEV forms to streamline their content and clarify their purpose. This includes renaming the JEV forms to distinguish them from the notice required in N.J.S.A. 9:3-45, advise parents of their right to object, outline how they should do so, and inform them of their right to be represented by counsel. (See Revised JEV forms attached as Exhibits 1 and 2 respectively).

**G. Proposed Amendment to R. 5:12-3. Discovery**

The Committee considered a rule recommendation on providing discovery to self-represented parties in guardianship cases (Children in Court termination of parental rights matters)(FG docket) brought by DCP&P. This issue arose from Division of Child Protection and Permanency v. B.D., 2019 N.J. Super. Unpub. LEXIS 810 (App. Div. April 8, 2019), which addressed a self-represented defendant's access to discovery, including being provided copies of the file to assist with trial preparation.

The Committee concluded that, as a matter of fundamental fairness, self-represented parties in a termination of parental rights case have the same rights to discovery as attorneys. R. 5:12-3 provides for discovery as a matter of right only to attorneys in a Children in Court matter. The court rule currently permits discovery for any party only by leave of the court. Unlike attorneys, however, self-represented parties do not have the benefit of copies, as described in the B.D. case, although they have been permitted, with leave of the court, to inspect DCP&P's file. The Committee considered the scope of N.J.S.A. 9:6-8.10a, which addresses confidentiality and provides authority regarding the release of DCP&P records. While self-represented parties should be allowed discovery, the Committee determined that the court rule should include a provision to specify that the court must execute a protective order with the release of the DCP&P records. The protective order shall prohibit further dissemination of the discovery to a third party, unless permitted by the court's protective order. Disclosure to an attorney or expert of the self-represented party would be permitted to assist the defendant with preparing a defense. The Committee also recommends including a provision for a hearing to address contested discovery issues.

Therefore, the Committee recommends the following rule amendment:

**R. 5:12-3. Discovery**

(a) Generally. All relevant reports of the Division of Child Protection and Permanency and other reports of experts or other documents upon which the Division intends to rely shall be provided to the court and to counsel for all parties on the first return date of the Order to Show Cause, if then available, or as soon as practicable after they become available. The Division's case file shall also be available for inspection to the attorneys for the parties without court order. All other discovery by any party shall be permitted only by leave of court for good cause shown.

(b) Self -Represented Parties. All relevant reports of the Division of Child Protection and Permanency and other reports of experts or other documents upon which the Division intends to rely shall be provided to any self-represented party on the first return date of the Order to Show Cause, if then available, or as soon as practicable after they become available. If records of the Division, reports of experts, or other documents are provided to a self-represented party, the court shall issue a protective order prohibiting disclosure to third parties unless otherwise permitted by the court. Self-represented parties are permitted to review, but not copy, the Division's file without a court order.

(c) Protective Orders. In matters involving self-represented parties, on motion by a party or on the court's own motion, for good cause shown or by consent of the parties, the court may enter an additional protective order or any order that justice requires. This order shall include, but not be limited to, specifying the terms, scope, limitations, conditions and/or methods of the inspection of the Division's case file and/or the discovery exchange.

Note: Source-R. (1969) 5:7A-3. Adopted December 20, 1983, to be effective December 31, 1983; amended June 28, 1996 to be effective September 1, 1996; amended July 9, 2013 to be effective September 1, 2013; paragraph (a) caption added; new paragraphs (b) and (c) adopted; amended \_\_\_\_\_ to be effective \_\_\_\_\_.

## H. **Proposed Amendments to Implement the Automated Juvenile Delinquency Complaint Process and Juvenile Detention Risk Screening Tool**

### 1. Proposed amendment to R. 5:20-2. Summons

The Committee considered a recommendation for issuing a complaint-summons when a juvenile is not to be detained. Where a complaint is issued and a juvenile is not to be detained, it shall be issued as a complaint-summons. Law enforcement should continue to make the probable cause determination in these situations.

This rule recommendation includes a requirement for law enforcement to serve both the juvenile and their parent, guardian or custodian personally upon the filing of the complaint-summons. Personal service would require additional law enforcement resources and might result in unintended consequences such as: detaining a juvenile for the sole purpose of effectuating service; serving a juvenile in school; or other difficulties in effectuating service in situations where a juvenile is released prior to the complaint being drafted. To address these concerns, the Committee endorsed a provision for personal service to be effectuated within five days of filing the complaint-summons. Therefore, the Committee recommends the following rule amendment:

#### **Rule 5:20-2. Summons.**

(a) Issuance. [If it appears from the complaint that there is probable cause to believe that a juvenile is delinquent and after review of the complaint by the court intake service it recommends court action, a summons shall issue to the juvenile and the juvenile's parents, guardians or custodian.] A summons may be issued on a complaint if the law enforcement officer who made the complaint issues the complaint-summons upon the law enforcement officer's finding of probable cause. This shall be done without the necessity of a judicial officer making the probable cause finding to issue the complaint. Once the complaint-summons is filed with the court, a law enforcement officer shall within 5 days of filing of the complaint-summons

personally serve the complaint-summons on the juvenile and the parent, guardian or custodian without taking the juvenile into custody. After expeditious review of the complaint-summons by the court intake service, a notice of proceeding date and time shall issue to the juvenile and the juvenile's parent, guardian or custodian.

(b) Form. . . . no change.

(c) Service. . . . no change.

Note: Source-R.R. (1969) 5:8-4(a)(b)(c); 5:8-5(a)(b). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a), (b) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended \_\_\_\_\_ to be effective \_\_\_\_\_.

## **2. Proposed Rule Amendment to Rule 5:20-3. Warrant**

The Committee considered a recommendation to formalize the process for issuing a complaint-warrant when a juvenile is to be detained. Where a complaint is issued and detention is authorized by court intake services, the complaint shall be issued as a complaint-warrant. Designating complaint-warrants for matters where detention is authorized facilitates the statistical reporting of the number of juveniles initially detained. Therefore, the Committee endorses the following rule amendment:

### **Rule 5:20-3. Warrant.**

(a) When Issued.

(1) Complaint-warrant. A complaint-warrant may only be issued pursuant to R. 5:21-1(a) where detention is authorized by court intake services or a judge.

(2) Bench warrant. In lieu of summons the judge may issue a warrant if the nature of the case requires the immediate custody of the juvenile. A warrant may also issue if any person or persons fail to appear as required by summons.

(b) Execution. . . . no change.

Note: Source-R.R. (1969) 5:8-5(a) and (c). Adopted December 20, 1983, to be effective December 31, 1983; new subparagraph (a)(1) caption and text adopted and former paragraph (a) captioned and renumbered as subparagraph (a)(2) \_\_\_\_\_ to be effective \_\_\_\_\_.

### **3. Proposed amendments to R. 5:21-1. Taking Into Custody, Initial Procedure**

The Committee considered a recommendation to formalize the current practice that court intake services or a judge must authorize detention when law enforcement files a juvenile delinquency complaint. The recommended amendments to R. 5:21-1 also are necessary to memorialize the process to be consistent with the development of the juvenile eCDR and the issuance of a complaint-warrant when detention is authorized. Therefore, the Committee endorses the following rule amendments:

#### **Rule 5:21-1. Taking into Custody, Initial Procedure.**

A law enforcement officer may take into custody without process a juvenile who the officer has probable cause to believe is delinquent as defined by N.J.S. 2A:4A-23. When a juvenile has been taken into custody for delinquency and detention is authorized by court intake services or a judge, a complaint-warrant [, a complaint, if not already filed,] shall immediately be filed as provided by R. 5:20-1. The taking of a juvenile into custody shall not be construed as an arrest but shall be deemed a measure to protect the health, morals and well-being of the juvenile, and the person taking the juvenile into custody shall immediately notify the juvenile's parents, guardian or other custodian.

Note: Source-R. (1969) 5:8-2(a) (first and second sentence), (e). Adopted December 20, 1983, to be effective December 31, 1983; amended July 13, 1994 to be effective September 1, 1994; amended \_\_\_\_\_ to be effective \_\_\_\_\_.

## **2. Proposed amendment to R. 5:21-3. Detention Hearings**

The Committee considered recommendations to clarify the current practice of initial detention hearings. This rule recommendation is consistent with the current practice of the court's initial detention hearing and probable cause review no later than the morning following the juvenile's placement in custody, which includes holding that hearing on holidays and weekends. The rule recommendation also clarifies that notice of the hearing must be provided to the youth's parent, guardian or a custodian. A separate probable cause hearing continues to be held by the judge within two court days after the initial hearing pursuant to R. 5:21-3(b) and N.J.S.A. 2A:4A-38(i). The rule recommendation also deletes the reference to a subsequent filing of a juvenile delinquency complaint as the implementation of the juvenile electronic disposition reporting (eCDR) system requires the complaint to be filed before the hearing is to be held. Therefore, the Committee endorses the following rule amendments:

### **Rule 5:21-3. Detention Hearings**

(a) Initial Detention Hearing. If the juvenile has not been released pursuant to R. 5:20-2 or 5:21-2, an initial hearing for a preliminary probable cause review and for [to determine whether] pretrial detention is required to be held pursuant to the standards of R. 5:21-5. The hearing shall occur [be held] no later than the morning following the juvenile's placement in custody, including holidays and weekends. [Said] The hearing shall be on oral or written notice to the juvenile and the juvenile's parents, [or] guardian or custodian, all of whom shall be present at the hearing. The hearing, however, shall not be adjourned if such notice or process fails to produce the attendance of the parents, [or] guardian or custodian. [If a complaint has not been filed by the time the initial hearing is held, the juvenile shall be immediately released from custody.] If the juvenile is not represented by counsel at the initial hearing and if the court

determines that the juvenile should be detained, a second detention hearing shall be held within two court days after the initial hearing at which the juvenile shall be represented by assigned or retained counsel or by the Public Defender as the circumstances require.

(b) Probable Cause Hearing. . . . no change.

(c) Detention Review Hearing. . . . no change.

(d) Findings. . . . no change.

Note: Source-R. (1969) 5:8-2(c) and (d); R. (1969) 5:8-6(d). Adopted December 20, 1983, to be effective December 31, 1983; paragraph (e) adopted November 1, 1985 to be effective January 2, 1986; paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (e) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended August 1, 2016 to be effective September 1, 2016; paragraph (a) amended \_\_\_\_\_ to be effective \_\_\_\_\_.

### **III. Proposed New Rules**

#### **A. Proposed New R. 5:10-17. Co-Parent Adoption**

The Committee considered a recommendation to adopt a new rule for adoption proceedings based on the enactment of N.J.S.A. 9:17-60, et seq. L. 2019, c. 323, entitled "Adoption by Civil Union/Spouse" (effective April 1, 2020). The Committee recommends adopting a new "standalone" rule for ease of reference. The recommendations include the following provisions based on the new statute:

1. Referring to the citation of definitions contained in the statute rather than paraphrasing the definitions in the rule recommendation. The Committee recommends not using the term "natural parent" as referenced in the statute as the term does not properly capture all the means by which a child can be conceived.
2. Requiring a joint petition by both the genetic and adopting parent.
3. Permitting litigants to attach copies of the required documents to the complaint if they are certified to be true by an attorney licensed to practice in New Jersey. This is recommended because parents may have limited original documents and obtaining additional original documents may be difficult or expensive. Additionally, using documents certified to be true by attorneys is routinely used in adoption filings, such as foreign re-adoptions and is consistent with R. 4:67-3 relating to summary actions in civil matters.
4. Scheduling a date for the final hearing no later than 10 days after the complaint and requiring the Surrogate to provide the entire adoption file to the court for review no later than 5 days before the final hearing.

Therefore, the Committee recommended the following new rule:

**R. 5:10-17. Co-parent Adoption Complaints [new]**

(a) Verification of Complaint. The complaint shall be verified by both the co-parent, as defined in N.J.S.A. 9:17-70, of the child and the person treated in State law as the legal parent of the child, as defined in N.J.S.A. 9:17-70.

(b) Venue. The complaint shall be filed in the county of residence of the co-parent or legal parent.

(c) Contents of Complaint. The Complaint shall state the following:

(1) The name and address of the co-parent seeking to adopt as it appears on the child's birth certificate;

(2) The name and address of the legal parent of the child as it appears on the child's birth certificate;

(3) The name, birthdate, place of birth and primary residential address of the child to be adopted;

(4) The nature of the relationship between the co-parent and the legal parent at the time of the birth of the child. If the co-parent is currently married or a partner in civil union to a third party, the name of the current spouse or partner in the civil union;

(5) The facts surrounding the conception of the child, identifying any other involved parties who may have parental rights with respect to the child;

(6) A statement as to whether the child is subject to the Indian Child Welfare Act pursuant to R. 5:10-6.

(d) Documents to be filed with the Complaint. The following documents shall be attached to the complaint:

(1) A certified marriage or civil union certificate issued prior to the child's birth, or a copy certified to be true by an attorney licensed to practice law in this state;

(2) A certified copy of the child's birth certificate on which both the co-parent and legal parent are named, or a copy certified to be true by an attorney licensed to practice law in this state;

(3) If the parties are no longer married or in a civil union, proof of the dissolution of the marriage or civil union;

(4) If the adopting co-parent is currently married or a partner in civil union to a third party, the verified consent to the adoption;

(5) An affidavit or certification signed by both the co-parent and the legal parent describing how the child was conceived and identifying any other involved parties to the conception. The parties may attach proof from a medical doctor with respect to any insemination or other fertility procedure;

(6) A form of Final Judgment of Adoption; and

(7) A Report of Adoption shall be required only if an amendment to the birth certificate is requested.

(e) Home Study or Background Check or Affidavit of Non-Military Service. No home study, background check or Affidavit of Non-Military Service is required when filing a complaint.

(f) Surrogate Action on the Complaint.

(1) Prior to docketing the complaint, the Surrogate shall review the complaint to ensure the proper venue is laid in accordance with paragraph (b) of this Rule, and that it contains the contents and documents required under paragraphs (c) and (d) of this Rule.

(2) If the complaint is deemed incomplete, the court shall order the parties to file an amended complaint or shall dismiss the complaint without prejudice, as the situation requires.

(3) Upon determining that the complaint is complete and ready to be filed, a date shall be fixed for final hearing not later than ten (10) days after filing. The Surrogate shall provide the entire adoption file to the court for review no later than five (5) days before the final hearing.

(g) Notice Requirements. No notice of hearing or court-promulgated form entitled, "Parental Rights in an Adoption Proceeding (Non-Agency Placement)" shall be required to be served on the legal parent.

(h) Final Hearing.

(1) If the court determines that the parental rights of any other interested party have been relinquished or terminated, it shall issue a judgment of adoption confirming both parties to the action as legal parents of the child, without need for an appearance by the parties.

(2) If the court determines that another individual may have existing parental rights to the child, it shall order and conduct a hearing on the matter, providing notice to all parties, before issuing a judgment of adoption.

Note: Adopted \_\_\_\_\_ to be effective \_\_\_\_\_.

#### **IV. Issues Considered Without Recommendation**

##### **A. Enactment of N.J.S.A. 2C:52-4.1 and N.J.S.A. 2C:52-6; L. 2019, c. 269**

The Committee considered whether a rule should be adopted based upon revisions to N.J.S.A. 2C: 52-4.1 and N.J.S.A. 2C: 52-6. Specifically, the enactment of paragraph (c) of N.J.S.A. 2C:52-4.1 and N.J.S.A. 2C: 52-6 permit the immediate expungement of all records and information pertaining to juvenile delinquency charges at the time of dismissal. The purpose of the rule adoption would be to increase awareness of the new statute and expedite expungements in cases that result in a dismissal.

There has not in the past been a need for a court rule to address the expungement process. Information in the form of the Judiciary's Expungement Packet (CN 10557) has provided sufficient publication of the expungement process. In addition, a Supplement to Administrative Directive #02-16 entitled, "Criminal / Family / Municipal – Expungement Order (CN 12621) – Expungement of Arrests Not Resulting in Conviction or Adjudication of Delinquency (N.J.S.A. 2C:52-6)" was issued on June 29, 2020. This Supplement to Administrative Directive #02-16, which is a document available to the public, promulgates the new procedures to expunge arrests not resulting in a conviction or adjudication of delinquency and a new expungement order. With the promulgation of this Supplement to Directive #02-16 to address the immediate expungement process, the Committee concluded that no action was necessary.

##### **B. Amendment to the Evidence Rules Regarding the Admissibility of a Child's Prior Statement**

This issue was referred to the Committee on the Rules of Evidence to consider a rule recommendation on two issues:

Issue 1: Whether the evidence rules should include hearsay exceptions set forth in N.J.S.A. 9:6-8.46 (child protection matters) (FN docket) and N.J.S.A. 30:4C-15.1a (termination of parental rights matters) (FG docket) relating to proceedings brought by DCP&P; and

Issue 2: Whether the hearsay exception set forth in N.J.S.A. 30:4C-15.1a is applicable to non-party children.

The Evidence Committee formed a working group that included members of this Committee to discuss these issues. The working group concluded that: (1) it is not necessary to adopt evidence rules to address the hearsay exceptions set forth in N.J.S.A. 9:6-8.46 and N.J.S.A. 30:4C-15.1a; and (2) whether to apply the hearsay exception under N.J.S.A. 30:4C-15.1a is best left to a reviewing court, after full briefing, and the development of a complete record with full consideration of competing views. The Evidence Committee will formally present this issue in its final report. Therefore, the Committee concluded that no action is necessary.

**C. Proposed Amendment to R. 2:7-1. Relief from Filing Fees; Deposit for Cost.**

The Committee considered whether to revise R. 2:7-1 to exempt indigent parties from paying a transcript fee when appealing the denial of a protective order under the Prevention of Domestic Violence Act and Sexual Assault Survivor Protection Act. The concern presented to the Committee is whether an indigent party is denied a meaningful opportunity to appeal due to the cost of the transcript fee. The Committee considered whether an alternative record could be provided to the Appellate Division in lieu of a transcript and who would bear the cost of the transcript. The Appellate Division is unable to accept an alternative record. Additionally, the cost of a transcript is under the authority of third parties (county government). Finally, the Committee concluded that the Judiciary's neutral position would be compromised if the Judiciary were to bear the cost for plaintiffs only. Therefore, the Committee recommends no action.

**D. Necessary information to be Provided in a Domestic Violence Proceeding to Ensure Due Process Protections**

The Committee considered issues to ensure due process protections are equally afforded to both plaintiffs and defendants in domestic violence matters.

**1. Necessary information that should be provided to the parties**

The Committee was advised that the Conference of the Family Presiding Judges is currently developing domestic violence informational materials for both plaintiffs and defendants. The materials will include: notifications to both the plaintiff and defendant regarding their rights once a Temporary Restraining Order has been granted; information for both parties on how to prepare for a Final Restraining Order hearing; specific information for both parties related to the party's right to consult with counsel; information on requesting an adjournment of a proceeding; information on how to present witnesses at trial; and information on how to conduct cross-examination.

The domestic violence materials will be required to be served on both parties when served with the domestic violence temporary restraining order. Additionally, the Domestic Violence Procedures Manual is being updated to include instructions to judicial officers and staff on addressing due process rights of both plaintiffs and defendants. Additionally, a judicial working group is developing a statewide domestic violence bench book to ensure statewide consistency of procedures where possible. The bench book will include a section on the parties' due process rights. Therefore, as the Conference of Family Presiding Judges is compiling materials to address this issue, the Committee recommends no action.

## **2. Whether the Family Part Summons should be revised to be consistent with the Civil Part Summons to include telephone numbers for the Lawyer Referral Service**

The Committee considered reviewing the discrepancy between the Civil and Family Part summonses. This referral stems from M.D.C. v. J.A.C., 2018 N.J.Super. Unpub. LEXIS 2634 (App. Div. Dec. 3, 2018), which states that a summons served in a civil action requires a defendant to be advised that they may contact the Lawyer Referral Service to hire counsel. The Civil Part summons contains a current list of telephone numbers for the Lawyer Referral Service in each county. See R. 4:4-2. For a civil family action, R. 5:4-1 provides that the summons shall comply with the requirements of R. 4:4-2 except that in lieu of requiring an answer, it shall notify the defendant to appear at a specified time, date and place to answer the complaint. The Committee concluded that the Civil and Family Part summonses should be consistent. The Committee recommends referring this issue to the Conference of Family Presiding Judges for further review.

### **E. Qualification of Family Arbitrators**

The Committee considered whether arbitrator qualifications should be established. There is a concern that “untrained” individuals are serving as arbitrators and that non-attorney arbitrators may not fully understand the legal aspect(s) of arbitration and the court process. The opposing view is that placing too many restrictions or qualifications on arbitrators could have the unintended consequence of making arbitration less accessible. After weighing all factors, the Committee concluded that the level of expertise and selection of the arbitrator is with the litigants and that no further action was needed.

**F. Summary Dispositions on Name Change Applications**

As indicated in section II (A)(3) of this report, the Committee declines to make a rule recommendation because a trial court judge has the discretion under Part I of the Rules of Court to address minor name change applications on the papers.

**G. Using Initials and Sealing all Unredacted Records**

The Family Practice Committee recommended referral of operational considerations such as implementation of technological solutions and case management protocols to the Conference of the Family Presiding Judges. (See section II(A)(1)).

## **V. Out of Cycle Activity**

### **A. Waiver of the Publication Requirement for a Name Change Application**

On November 17, 2020, the Supreme Court amended R. 4:72-3 to eliminate the requirement of newspaper publication for all name change applications; thereby mooted any further action by this Committee.

### **B. Assessing the Competency of Child Witnesses**

The Committee considered recommendations of the Joint Committee on Assessing the Competency of Child Witnesses as established in response to the Supreme Court's direction in State v. Bueso, 225 N.J. 193 (2016). The Committee considered the report and voted to endorse the proposal of the Joint Committee, which is published separately.

## **VI. Matters Held for Consideration**

### **A. Arbitration as a Topic for Judicial Education**

The Committee is considering whether a judicial education curriculum including an overview of key arbitration cases, rules and forms is necessary. As this issue could not be resolved during the current rules cycle, the Committee will carry this issue to the 2021-2023 rules cycle.

### **B. Family Practice and Advances in Technology and Social Media**

The Committee was requested to consider how the practice of family law has evolved due to advances in technology and increased use of social media. The referral stems from a New Jersey Law Journal article entitled, "How the Internet Has Impacted the Procedural Practice of Family Law." The article highlights the usefulness of social media as a tool in the areas of discovery, service of process, and evidence. The Committee was requested to review the Rules of Court to identify any court rules that should be amended to account for these advances. The

referral included, but was not limited to, alternative methods of service, discovery requests for information available through social medial, and evidentiary considerations on the use of such information.

A working group with members from this Committee and the Civil Practice Committee was formed to consider this referral. The working group is in the process of making recommendations and a report is forthcoming. This Committee is also considering whether a rule recommendation is necessary to address discovery and service of process in dissolution matters. As such, the Committee will carry this issue pending a report of the joint Civil/Family Practice Committee working group.

**C. Sample Colloquies for the Trial Court in Name Change Applications for Minors**

The Committee considered whether to adopt sample colloquies for the trial court's use in minor name change proceedings. (See section II(A)(4) above). Sample colloquies are being developed by the SCCDICE and will be shared when completed. Therefore, the Committee recommends carrying this issue to the 2021-2023 rules cycle pending completion of the SCCDICE's work.

**D. Rule Amendments on Contemporaneous Video Transmission of Testimony of Unavailable Witnesses**

This issue was referred to the Supreme Court Practice Committees in response to Pathri v. Kakarlamath, 462 N.J. Super. 208 (App. Div. 2020). This case, in the context of a divorce trial, addresses the issue of whether contemporaneous video testimony is admissible when a witness is unavailable to appear in person in court. As the Rules of Court provide no guidance regarding testimony by contemporaneous video transmission, the panel in Pathri recommended consideration of this issue by the appropriate Supreme Court rules committees. A joint working group was formed to consider a rule recommendation. This group included members of the

Supreme Court Committees on Family Practice, Civil Practice, Criminal Practice and Municipal Practice. The working group's recommendations are pending. Therefore, the Committee anticipates submitting a supplemental report on this issue.

**E. Amendment to R. 5-7A to Include a Mandatory Consideration of Emergent and Interim Support in a Domestic Violence Matter**

This issue was referred to the Committee to consider amending R. 5-7A to include a mandatory consideration of ordering spousal and child support on an emergent and interim basis in a domestic violence matter. As this issue cannot be resolved during the current rules cycle, the Committee will carry it to the 2021-2023 rules cycle. In the interim, the Administrative Office of the Courts will develop guidance to municipal judges, domestic violence hearing officers, and Superior Court judges to consider the need for emergent and interim support for victims and/or their dependents.

**F. Quadrennial Review / Whether to Adjust the Child Support Guidelines Self-Support Reserve (SSR) - Rules Appendix IX-A, Section 7.h**

**1. Quadrennial Review**

The Committee has continued to meet regularly in this cycle to work on the quadrennial review of the New Jersey Child Support Guidelines, as required by federal law (42 U.S.C. §667) and federal regulation (45 C.F.R. §302.56 and 45 C.F.R. §303.4). This review is done in collaboration with the New Jersey Division of Family Development, Office of Child Support Services (OCSS), which is New Jersey's designated Title IV-D child support agency responsible for ensuring compliance with the quadrennial review. To assist the Committee in meeting New Jersey's obligations as required by Title IV-D of the federal Social Security Act, OCSS has retained the services of an economist to review economic data and offer recommendations regarding changes to the guidelines.

OCSS reported that the federal Office of Child Support Enforcement has confirmed New Jersey's quadrennial review began on January 1, 2018 and will end on December 2022, and that New Jersey is in compliance with its quadrennial review obligations. Accordingly, the Committee recommends the work on this issue be carried to the next rules cycle.

## **2. Self-Support Reserve**

In the 2017-2019 rules cycle, the Committee carried the issue of adjusting the Self-Support Reserve (SSR) for further consideration. In New Jersey, the SSR is a factor in calculating a child support award when the income of the parents is below a pre-determined threshold based on the federal poverty level. For non-custodial parents (NCPs), the SSR is an amount calculated to ensure that sufficient income is available to maintain a basic subsistence level and there is an incentive to work so that child support can be paid. New Jersey's current SSR income threshold is 105% of the federal poverty guideline established by the U.S. Department of Health and Human Services for a single individual living alone. If the NCP's income is less than 105% of the poverty guideline, then the court may order a minimal amount of child support.

For this issue, OCSS's economist has developed simulations of child support guidelines for each of the SSR levels under consideration with a variety of incomes for NCPs and custodial parents. The issue of whether the SSR should be adjusted will be resolved in this cycle and be submitted by way of supplemental report.

### **G. Implementation of the "Final Rule" Under the "Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs"**

The President's Executive Order 13563 required States to revise their child support guidelines. To carry out that Executive Order, on December 20, 2016, a "Final Rule" was adopted by regulation entitled, "The Flexibility, Efficiency and Modernization in Child Support

Enforcement Programs." See Federal Register, Vol. 81, No. 244. The goal of the "Final Rule" is to set realistic child support orders for NCPs to pay regularly, rather than setting an unrealistically high child support obligation that results in higher rates of nonpayment. Additional issues relating to the "Final Rule" are being considered. Therefore, the Committee will carry discussions on the "Final Rule" to the 2021-2023 rules cycle.

#### **H. Bifurcation of Child Support Issues in Summary Actions**

The Committee considered amending R. 5:6-3 to address bifurcation of child support from other issues in a non-dissolution matter (FD docket). Rule 5:7-8 addresses bifurcation in dissolution matters, and provides that bifurcation is permitted only with the approval of the Family Presiding Judge, under extraordinary circumstances and for good cause shown. In summary actions in the non-dissolution docket type, issues of custody and parenting time may be bifurcated from the establishment and calculation of child support without judicial approval. Bifurcation of child support issues to be referred to child support hearing officers inconveniences the parties who must appear in court again on a future date and delays the establishment of child support. The Committee expects to complete its consideration of this issue within the 2019-2021 rules cycle. Therefore, the Committee anticipates submitting a supplemental report on this issue.

#### **I. Amendment to R. 5:7-10. Suspension Provisions of Child Support Orders**

The Committee considered an amendment to R. 5:7-10 to clarify the term "suspension of enforcement" and provide additional guidance as to the administrative and judicial enforcement remedies that may be ordered by the court. The Committee expects to complete its consideration of this issue within the 2019-2021 rules cycle. Therefore, the Committee anticipates submitting a supplemental report on this issue.

## Committee Members and Staff

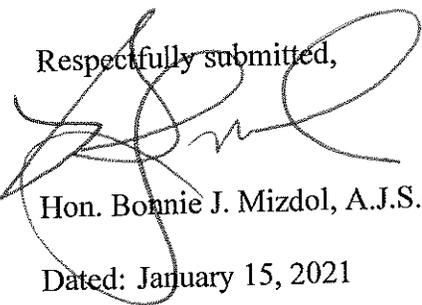
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Hon. David Katz  
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Marla Marinucci, Esq.

Hon. Hany Mawla  
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Joanne M. Dietrich, Esq.  
Emily Mari, Esq.

Respectfully submitted,



Hon. Bonnie J. Mizdol, A.J.S.C., Chair

Dated: January 15, 2021

## **List of Attachments**

- 1.** CN 12144 Notice of Rights in Adoption Proceeding (Agency Placement)
- 2.** CN 12145 Notice of Rights in Adoption Proceeding (Non-Agency Placement)

# Attachment 1



New Jersey Judiciary  
Family Practice Division  
**Parental [Notice of] Rights in Adoption Proceeding  
(Agency Placement)**

**You should speak with an attorney if you need help understanding or completing this form.**

**Instructions:** Read this Notice and check the box(es) that apply to your situation. [If you are:]

- [• objecting to the adoption, ]
- [• applying for a court-appointed attorney, and/or ]
- [• requesting counseling sessions as part of a *Voluntary Surrender* form.]

File the completed form with the \_\_\_\_\_ County Surrogate within **20 days** of receiving this notice if you live in New Jersey, or **35 days** of receiving this notice if you live outside of New Jersey.

You [are identified as the parent], \_\_\_\_\_ (name of identified parent), are identified as the parent of the child \_\_\_\_\_, born on \_\_\_\_\_, at (location) \_\_\_\_\_, to \_\_\_\_\_ (name of mother) \_\_\_\_\_. This child [\_\_\_\_\_,] has been placed for adoption through the \_\_\_\_\_ adoption agency. If this child [\_\_\_\_\_,] is adopted, you will **permanently** lose your parental rights to this child [\_\_\_\_\_,].

You have the **RIGHT TO OBJECT** to the adoption of this child [\_\_\_\_\_,] by completing this form. If you do not object to the adoption, you will **permanently** lose your parental rights to this child [\_\_\_\_\_]. Once the adoption is finalized, any promises made by the agency or adoptive parents for future contact or information about this child [\_\_\_\_\_,] are not enforceable in court.

If you do **NOT** object to the adoption, or if you deny that you are the child's parent, you do **NOT** need to take any further action or file this form with the court.

### How to Object to This Adoption

If you wish to object to this adoption do the following:

1. Check this box:  **I object to this adoption.**
2. File this form with the \_\_\_\_\_ County Surrogate located at

\_\_\_\_\_ within **20 days** of receiving this notice if you live in New Jersey, or within **35 days** of receiving this notice if you live **outside** of New Jersey.

**If you do not file this form objecting to the adoption, this will be the LAST NOTICE you receive about the adoption.**

### Right to Counsel

You have the right to be represented by an attorney.

If you can afford an attorney but do not know one, you may call the [Lawyer Referral Service](#) of [your local] the county Bar Association where the case will be heard at \_\_\_\_\_.

Free legal advice may be available by contacting the New Jersey Legal Services system through the Legal Services of New Jersey Statewide Hotline, at [LSNJLawHotline.org](http://LSNJLawHotline.org) or 1-888-LSNJ-LAW (1-888-576-5529).

If **you cannot afford an attorney** and are qualified as indigent, the court will appoint an attorney to represent you in the adoption proceeding.

## How to Apply For a Court-Appointed Attorney

If you wish to file for a court appointed attorney do the following:

1. Check this box:  **I want to apply for a court-appointed attorney.**
2. Complete the attached *Application for Assignment of Counsel* form.
3. File this form with the \_\_\_\_\_ **County Surrogate** located at

\_\_\_\_\_ within **20 days** of receiving this notice if you live in New Jersey, or within **35 days** of receiving this notice if you live **outside** of New Jersey.

You will be notified by the court about your application for a court-appointed attorney.

## How to Consent to This Adoption

If you [consent] **DO NOT object** to this adoption, you [may] do [nothing] **NOT need to take any further action or file this form with the court**, and the adoption will go forward uncontested.

If you consent to this adoption, you may sign a *Voluntary Surrender* form. You should contact the \_\_\_\_\_ adoption agency for the form. The adoption agency's telephone number is \_\_\_\_\_. The adoption agency will provide you with instructions on how to complete [the] that form. A *Voluntary Surrender* form cannot be withdrawn after it is signed and submitted to the adoption agency.

### Right to Counseling Sessions

If you are considering signing a *Voluntary Surrender* form, you are entitled to three face-to-face counseling sessions on three separate days with a social worker before you sign the form.

Do you [wish to go through] want counseling?

- Yes, I want [to go through] counseling.  
 No, I do not want [to go through] counseling.

## If You Are Not the Parent of This Child

If you deny that you are a parent of this child, you will be considered to have surrendered the child for adoption.

If you deny that you are a parent of this child, you may do nothing and the adoption will go forward uncontested.

If you deny that you are a parent of this child, you may sign a *Denial of Parentage* form. You should contact the \_\_\_\_\_ adoption agency for this form. The adoption agency's telephone number is \_\_\_\_\_. The adoption agency will provide you with instructions on how to complete it.

I have completed this form by checking the above boxes that apply to my situation.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

# Attachment 2

New Jersey Judiciary  
Family Practice Division  
**Parental [Notice of] Rights in Adoption Proceeding**  
**(Non-Agency Placement)**

**You should speak with an attorney if you need help understanding or completing this form.**

**Instructions:** Read this Notice and check the box(es) that apply to your situation. [If you are:]

- [• objecting to the adoption, and/or]
- [• applying for a court-appointed attorney.]

File the completed form with the \_\_\_\_\_ County Surrogate within **20 days** of receiving this notice if you live in New Jersey, or **35 days** of receiving this notice if you live outside of New Jersey.

You [are identified as the parent], \_\_\_\_\_ (name of identified parent) \_\_\_\_\_, are identified as the parent of the child \_\_\_\_\_, born on \_\_\_\_\_, at (location) \_\_\_\_\_, to \_\_\_\_\_ (name of mother) \_\_\_\_\_. This child is the subject of an adoption proceeding as set forth in the attached notice. If this child [\_\_\_\_\_] is adopted, you will **permanently** lose your parental rights to this child [\_\_\_\_\_].

You have the **RIGHT TO OBJECT** to the adoption of this child [\_\_\_\_\_] by completing this form. If you do not object to the adoption, you will **permanently** lose your parental rights to this child [\_\_\_\_\_]. Once the adoption is finalized, any promises made by the adoptive parents for future contact or information about this child [\_\_\_\_\_] are not enforceable in court.

If you do **NOT** object to the adoption, or if you deny that you are the child's parent, you do **NOT** need to take any further action or file this form with the court.

### **How to Object to This Adoption**

If you wish to object to this adoption do the following:

1. Check this box:  **I object to this adoption.**
2. File this form with the \_\_\_\_\_ County Surrogate located at \_\_\_\_\_ within **20 days** of receiving this notice if you live in New Jersey, or within **35 days** of receiving this notice if you live **outside** of New Jersey.

**If you do not file this form objecting to the adoption, this will be the LAST NOTICE you receive about the adoption.**

### **Right to Counsel**

You have the right to be represented by an attorney.

If you can afford an attorney but do not know one, you may call the [Lawyer Referral Service](#) of [your local] the county Bar Association where the case will be heard at \_\_\_\_\_.

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\_\_\_\_\_ within **20 days** of receiving this notice if you live in New Jersey, or within **35 days** of receiving this notice if you live **outside** of New Jersey.

You will be notified by the court about your application for a court-appointed attorney.

I have completed this form by checking the above boxes that apply to my situation.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name